

JOINT MOTION RECORD VOLUME IV

Court File No. 00-CV-192059CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHARLES BAXTER, SR. AND ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

- and -

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

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

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Third Parties

Proceeding under the *Class Proceedings Act, 1992*

JOINT MOTION RECORD
(Certification, Settlement Approval and Approval of Legal Fees)

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ABBREVIATED INDEX

TAB NO.

DOCUMENT DESCRIPTION

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VOLUME II***

1. Agreement in Principle, dated November 20, 2005
2. Residential Schools Settlement Agreement, dated May 10, 2006

VOLUME III

3. Notice of Motion for Settlement Approval, returnable August 29-31, 2006
 - A. Schedule “A” to the Notice of Motion [Amended Statement of Claim]
 - B. Schedule “B” to the Notice of Motion [Draft Order Amending the Title of Proceedings]
 - C. Schedule “C” to the Notice of Motion [Draft Order Approving the Settlement]
 - D. Schedule “D” to the Notice of Motion [Draft Order Approving Fees]
4. Affidavit of Jonathan Ptak
5. Affidavit of the Honourable Frank Iacobucci, Q.C.
6. Affidavit of Chief Larry Phillip Fontaine

VOLUME IV – National Background

7. Affidavit of Robert Robson
8. Affidavit of David Russell
9. Affidavit of Len Marchand

VOLUME V – Regional Histories

10. Affidavit of Richard Courtis
11. Affidavit of Donald Belcourt
12. Affidavit Nora Bernard

<u>TAB NO.</u>	<u>DOCUMENT DESCRIPTION</u>
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14.	Affidavit of Bonnie Reid
15.	Affidavit of Doug Keshen
<i>VOLUME VI – Notice Program</i>	
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17.	Affidavit of Todd Hilsee (June 29, 2006)
18.	Affidavit of Todd Hilsee (July 26, 2006)
19.	Affidavit of Kerry Eaton
20.	Order of the Honourable Mr. Justice Warren K. Winkler, dated May 24, 2006
21.	Affidavit of James Bruce Boyles [Anglican Church]
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22.	Affidavit of James Vincent Scott (United Church Entities)
23.	Affidavit of Stephen Kendall (Presbyterian Entities)
24.	Affidavit of Sister Bernadette Poirer s.g.m. (Catholic)
25.	Affidavit of Father Jacques Gagné (Catholic)
26.	Affidavit of Archbishop Joseph Edmond Emilius Goulet (Catholic)
27.	Affidavit of Sister Gloria Keylor s.p. (Catholic)
28.	Affidavit of Father Jacques L'Heureux (Catholic)
29.	Affidavit of Father Camille Piche (Catholic)
30.	Affidavit of Father Bernard Pinet (Catholic)
31.	Affidavit of Father Cécil Fortier (Catholic)
32.	Affidavit of Bishop Gary Gordon (Catholic)
33.	Affidavit of Sister Dorothy Jean Beyer (Catholic)

<u>TAB NO.</u>	<u>DOCUMENT DESCRIPTION</u>
34.	Affidavit of Sister Pauline Phaneuf (Catholic)
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37.	Affidavit of Sister Pearl Goudreau (Catholic)
38.	Affidavit of Sister Denise Brochu (Catholic)
39.	Affidavit of Sister Suzanne Bridet (Catholic)
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41.	Affidavit of Sister Gloria Paradis (Catholic)
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52.	Affidavit of Malcolm Dawson
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<u>TAB NO.</u>	<u>DOCUMENT DESCRIPTION</u>
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TAB NO.

DOCUMENT DESCRIPTION

VOLUME I - Agreement in Principle & Settlement Agreement

1. **Agreement in Principle, dated November 20, 2005**
 - A. Schedule "A" to the Agreement in Principle, dated November 20, 2005 [List of Catholic Entities]
 - B. Schedule "B" to the Agreement in Principle, dated November 20, 2005 [Independent Assessment Process (IAP) for Continuing Indian Residential Schools Abuse Claims]
 - C. Schedule "C" to the Agreement in Principle, dated November 20, 2005 [List of Residential Schools]
 - D. Schedule "D" to the Agreement in Principle, dated November 20, 2005 [List of Additional Residential Schools]
 - E. Schedule "E" to the Agreement in Principle, dated November 20, 2005 [Truth and Reconciliation Principles]
 - F. Schedule "F" to the Agreement in Principle, dated November 20, 2005 [Inuit and Inuvialuit Schools to be Researched]
 - G. Schedule "G" to the Agreement in Principle, dated November 20, 2005 [AIP Implementation]
 - H. Schedule "H" to the Agreement in Principle, dated November 20, 2005 [Letter to Former Students of Indian Residential Schools and their Legal Counsel from Mario Dion, Deputy Minister, Indian Residential Schools Resolution Canada, July 2005]

2. **Residential Schools Settlement Agreement, dated May 10, 2006**
 - A. Schedule "A" to Residential Schools Settlement Agreement, dated May 10, 2006 [Application for Common Experiences Payment for Former Students Who Resided at Indian Residential Schools]
 - B. Schedule "B" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Anglican Defendants]
 - C. Schedule "C" to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Corporate Catholic Defendants]

<u>TAB NO.</u>	<u>DOCUMENT DESCRIPTION</u>
D.	Schedule “D” to Residential Schools Settlement Agreement, dated May 10, 2006 [Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims]
E.	Schedule “E” to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Residential Schools]
F.	Schedule “F” to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Additional Residential Schools]
G.	Schedule “G” to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Anglican Defendants]
H.	Schedule “H” to Residential Schools Settlement Agreement, dated May 10, 2006 [List of Other Catholic Entities]
I.	Schedule “I” to Residential Schools Settlement Agreement, dated May 10, 2006 [Trust Agreement]
J.	Schedule “J” to Residential Schools Settlement Agreement, dated May 10, 2006 [Commemoration Policy Directive]
K.	Schedule “K” to Residential Schools Settlement Agreement, dated May 10, 2006 [Settlement Notice Plan Prepared by Hilsoft Notifications]

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L.	Schedule “L” to Residential Schools Settlement Agreement, dated May 10, 2006 [Common Experience Payment Process Flowchart and Memorandum]
M.	Schedule “M” to Residential Schools Settlement Agreement, dated May 10, 2006 [Funding Agreement]
N.	Schedule “N” to Residential Schools Settlement Agreement, dated May 10, 2006 [Mandate for the Truth and Reconciliation Commission]
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TAB NO.

DOCUMENT DESCRIPTION

- A. Schedule A to Schedule O-1 Second Amending Agreement [The Presbyterian Fund for Healing and Reconciliation]
- B. Schedule B to Schedule O-1 Second Amending Agreement [Full and Final Release in Claims by Persons who Opt Out of the IRSSA]
2. Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-2 Amending Agreement]
 - A. Schedule A to Schedule O-2 Second Amending Agreement [The Anglican Entities]
 - B. Schedule B to Schedule O-2 Second Amending Agreement [The Anglican Fund for Healing and Reconciliation ("AFHR")]
 - C. Schedule C to Schedule O-2 Second Amending Agreement [Full and Final Release in Claims by Persons Who Opt Out of the IRSSA]
 - D. Schedule D to Schedule O-2 Second Amending Agreement [Process for Providing Documents to the Truth and Reconciliation Commission]
 - E. Schedule E to Schedule O-2 Second Amending Agreement [Sections of IRSSA Incorporated by Reference]
 - F. Schedule F to Schedule O-2 Second Amending Agreement [Notice Information for Anglican Entities]
3. Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-3 Settlement Agreement]
 - A. Schedule A to Schedule O-3 Settlement Agreement [List of the Catholic Entities]
 - B. Schedule B to Schedule O-3 Settlement Agreement [The Catholic Healing, reconciliation and Service Evaluation Committee]
 - C. Schedule C to Schedule O-3 Settlement Agreement [Conditions Under Which Payments are Made from the Corporation to the Aboriginal Healing Foundation]
 - D. Schedule D to Schedule O-3 Settlement Agreement [Full and Final Release in Claims by Persons who Opt Out of the IRSSA]
 - E. Schedule E to Schedule O-3 Settlement Agreement [Process for Providing Documents to the Truth and Reconciliation Commission]

TAB NO.

DOCUMENT DESCRIPTION

- F. Schedule F to Schedule O-3 Settlement Agreement [Sections of IRSSA Incorporated by Reference]
- G. Schedule G to Schedule O-3 Settlement Agreement [Names and Addresses of the Catholic Entities for Giving Notice]
- 4. Schedule "O" to Residential Schools Settlement Agreement, dated May 10, 2006 [Schedule O-4 Settlement Agreement]
 - A. Schedule A to Schedule O-4 Settlement Agreement [Indian Residential Schools Related to the United Church]
 - B. Schedule B to Schedule O-4 Settlement Agreement [Healing and Reconciliation and In-Kind Services Criteria]
 - C. Schedule C to Schedule O-4 Settlement Agreement [Full and Final Release in Claims by Persons Who Opt Out of the IRSSA]
- P. Schedule "P" to Residential Schools Settlement Agreement, dated May 10, 2006 [Full and Final Release]
- Q. Schedule "Q" to Residential Schools Settlement Agreement, dated May 10, 2006 [Treasury Board of Canada Secretariat Travel Directive]
- R. Schedule "R" to Residential Schools Settlement Agreement, dated May 10, 2006 [July 2005 Open Letter to Former Students of Indian Residential Schools and their Legal Counsel from Mario Dion, Deputy Minister, Indian Residential Schools Resolution Canada]
- S. Schedule "S" to Residential Schools Settlement Agreement, dated May 10, 2006 [National Certification Committee Members]
- T. Schedule "T" to Residential Schools Settlement Agreement, dated May 10, 2006 [ADR Pilot Projects]
- U. Schedule "U" to Residential Schools Settlement Agreement, dated May 10, 2006 [IAP Working Group Members]
- V. Schedule "V" to Residential Schools Settlement Agreement, dated May 10, 2006 [Agreement Between the Government of Canada and the Merchant Law Group Respecting the Verification of Legal Fees]

VOLUME III

3. **Notice of Motion for Settlement Approval, returnable August 29-31, 2006**
 - E. Schedule “A” to the Notice of Motion [Amended Statement of Claim]
 - F. Schedule “B” to the Notice of Motion [Draft Order Amending the Title of Proceedings]
 - G. Schedule “C” to the Notice of Motion [Draft Order Approving the Settlement]
 - H. Schedule “D” to the Notice of Motion [Draft Order Approving Fees]
4. **Affidavit of Jonathan Ptak**
5. **Affidavit of the Honourable Frank Iacobucci, Q.C.**
 - A. Exhibit “A” to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Political Agreement]
 - B. Exhibit “B” to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Letter from the Honourable Frank Iacobucci to Interested Parties, dated June 1, 2005]
 - C. Exhibit “C” to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Letter from the Honourable Frank Iacobucci to Interested Parties, dated July 4, 2005]
 - D. Exhibit “D” to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Letter from the Honourable Frank Iacobucci to Interested Parties, dated July 15, 2005]
 - E. Exhibit “E” to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Chart describing meetings and telephone conversations]
 - F. Exhibit “F” to the Affidavit of the Honourable Frank Iacobucci, Q.C. [Agreement in Principle]
6. **Affidavit of Chief Larry Phillip Fontaine**
 - A. Exhibit “A” to the Affidavit of Chief Larry Phillip Fontaine [Chapter 10, *Report of the Royal Commission on Aboriginal Peoples*]

- B. Exhibit “B” to the Affidavit of Chief Larry Phillip Fontaine [Statement of Reconciliation]
- C. Exhibit “C” to the Affidavit of Chief Larry Phillip Fontaine [*Guiding Principles for Working Together to Build Restoration and Reconciliation*]
- D. Exhibit “D” to the Affidavit of Chief Larry Phillip Fontaine [*The Assembly of First Nations Report on Canada’s Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*]
- E. Exhibit “E” to the Affidavit of Chief Larry Phillip Fontaine [Political Agreement dated May 30, 2005]
- F. Exhibit “F” to the Affidavit of Chief Larry Phillip Fontaine [Assembly of First Nations’ Resolutions]
- G. Exhibit “G” to the Affidavit of Chief Larry Phillip Fontaine [Final Conference Report of the Assembly of First Nations’ Residential Schools July 2005 Conference]
- H. Exhibit “H” to the Affidavit of Chief Larry Phillip Fontaine [List of Residential Schools conferences of meetings attended by the Assembly of First Nations Indian Residential Schools Unit]

VOLUME IV – National Background

- 7. **Affidavit of Robert Robson**
 - A. Exhibit 1 to the Affidavit of Rob Robson [Affidavit of Rob Robson Previously Sworn on July 25, 2003]
- 8. **Affidavit of David Russell**
- 9. **Affidavit of Len Marchand**

VOLUME V – Regional Histories

- 10. **Affidavit of Richard Courtis**
 - A. Exhibit “A” to the Affidavit of Richard Courtis [Statement of Reconciliation issued January 7, 1998]
 - B. Exhibit “B” to the Affidavit of Richard Courtis [List of Members of the National Consortium]
 - C. Exhibit “C” to the Affidavit of Richard Courtis [Amended Fresh as Amended Statement of Claim]

- D. Exhibit "D" to the Affidavit of Richard Courtis [Order Amending Statement of Defence, dated February 16, 2005]
 - E. Exhibit "E" to the Affidavit of Richard Courtis [Order Amending Third Party Claim, dated February 16, 2005]
 - F. Exhibit "F" to the Affidavit of Richard Courtis [Minutes of Case Conferences]
 - G. Exhibit "G" to the Affidavit of Richard Courtis [Minutes of December 14, 2004 Case Conference]
 - H. Exhibit "H" to the Affidavit of Richard Courtis [Reasons of Justice Winkler dated May 30, 2005]
 - I. Exhibit "I" to the Affidavit of Richard Courtis [Proposed Amended Statement of Claim]
 - J. Exhibit "J" to the Affidavit of Richard Courtis [Proposed Application Form to be Completed by Eligible CEP Recipients]
 - K. Exhibit "K" to the Affidavit of Richard Courtis [Letter from Ms. Coughlan to Mr. Faulds, dated May 23, 2006]
 - L. Exhibit "L" to the Affidavit of Richard Courtis [Expert Opinion from Lalive, Attorneys-at-Law, dated November 2, 2005]
 - M. Exhibit "M" to the Affidavit of Richard Courtis [December 2005 Report of Siggner & Associates]
 - N. Exhibit "N" to the Affidavit of Richard Courtis [Plaintiff's Litigation Plan in *Baxter*]
11. **Affidavit of Donald Belcourt**
- A. Exhibit "A" to the Affidavit of Donald Belcourt [Case Management Order of the Honourable Mr. Justice T.F. McMahon, dated January 8, 2000]
 - B. Exhibit "B" to the Affidavit of Donald Belcourt [Alberta Law Reform Institute Class Actions Final Report No. 85, December 2000]
 - C. Exhibit "C" to the Affidavit of Donald Belcourt [Proposal of the Plaintiffs for the Conduct of Residential School Litigation]
 - D. Exhibit "D" to the Affidavit of Donald Belcourt [Reasons for Decision of the Honourable Mr. Justice T.F. McMahon, dated April 26, 2000]

- E. Exhibit "E" to the Affidavit of Donald Belcourt [Reasons for Decision of the Honourable Mr. Justice T.F. McMahon, dated May 20, 2003]
- 12. **Affidavit Nora Bernard**
- 13. **Affidavit of Brian O'Reilly**
- 14. **Affidavit of Bonnie Reid**
- 15. **Affidavit of Doug Keshen**

VOLUME VI – Notice Program

- 16. **Affidavit of Todd Hilsee (May 17, 2006)**
Exhibit "A" to the Affidavit of Todd Hilsee (May 17, 2006) [Notice Plan]
- 17. **Affidavit of Todd Hilsee (June 29, 2006)**
- 18. **Affidavit of Todd Hilsee (July 26, 2006)**
- 19. **Affidavit of Kerry Eaton**
 - A. Attachment "A" to the Affidavit of Kerry Eaton [Weekly Report No. 01-06]
 - B. Attachment "B" to the Affidavit of Kerry Eaton [Weekly Report No. 02-06]
 - C. Attachment "C" to the Affidavit of Kerry Eaton [Weekly Report No. 03-06]
- 20. **Order of the Honourable Mr. Justice Warren K. Winkler, dated May 24, 2006**

VOLUME VII – The Church Defendants

- 21. **Affidavit of James Bruce Boyles [Anglican Church]**
 - A. Exhibit "A" to the Affidavit of James Bruce Boyles (Anglican Entities) [Indian Residential Schools Related to Anglican Entities]
 - B. Exhibit "B" to the Affidavit of James Bruce Boyles (Anglican Entities) [Settlement Agreement dated March 11, 2003]
- 22. **Affidavit of James Vincent Scott (United Church Entities)**

- A. Exhibit "A" to the Affidavit of James Vincent Scott (United Church Entities) [Indian Residential Schools Related to the United Church]
- 23. **Affidavit of Stephen Kendall (Presbyterian Entities)**
- A. Exhibit "A" to the Affidavit of Stephen Kendall (Presbyterian Entities) [Indian Residential Schools Related to the Church]
- B. Exhibit "B" to the Affidavit of Stephen Kendall (Presbyterian Entities) [Settlement Agreement dated February 13, 2003]
- 78. **Affidavit of Sister Bernadette Poirer s.g.m. (Catholic)**
- 79. **Affidavit of Father Jacques Gagné (Catholic)**
- 80. **Affidavit of Archbishop Joseph Edmond Emilius Goulet (Catholic)**
- 81. **Affidavit of Sister Gloria Keylor s.p. (Catholic)**
- 82. **Affidavit of Father Jacques L'Heureux (Catholic)**
- 83. **Affidavit of Father Camille Piche (Catholic)**
- 84. **Affidavit of Father Bernard Pinet (Catholic)**
- 85. **Affidavit of Father Cécil Fortier (Catholic)**
- 86. **Affidavit of Bishop Gary Gordon (Catholic)**
- 87. **Affidavit of Sister Dorothy Jean Beyer (Catholic)**
- 88. **Affidavit of Sister Pauline Phaneuf (Catholic)**
- 89. **Affidavit of Sister Suzanne Tremblay (Catholic)**
- 90. **Affidavit of Sister Robéa Duguay (Catholic)**
- 91. **Affidavit of Sister Pearl Goudreau (Catholic)**
- 92. **Affidavit of Sister Denise Brochu (Catholic)**
- 93. **Affidavit of Sister Suzanne Bridet (Catholic)**
- 94. **Affidavit of Sister Diane Beaudoin (Catholic)**
- 95. **Affidavit of Sister Gloria Paradis (Catholic)**

VOLUME VIII – Legal Fees

- 96. **Affidavit of Darcy Merkur**
 - A. Exhibit “A” to the Affidavit of Darcy Merkur [Class Action Retainer Agreement]
 - B. Exhibit “B” to the Affidavit of Darcy Merkur [Verification Agreement]
- 97. **Affidavit of Sandra Staats**
- 98. **Affidavit of Laura Cabott**

VOLUME IX – Individual Representative Plaintiffs

- 99. **Affidavit of Percy Archie**
- 100. **Affidavit of Charles Baxter**
- 101. **Affidavit of Elijah Baxter**
- 102. **Affidavit of Evelyn Baxter**
- 103. **Affidavit of Janet Brewster**
- 104. **Affidavit of John Bosum**
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126. **Statutory Declaration of Christine Semple**
127. **Statutory Declaration of Dennis Smokeyday**
128. **Statutory Declaration of Kenneth Sparvier**
129. **Statutory Declaration of Edward Tapiatic**
130. **Statutory Declaration of Helen Wildeman**
131. **Statutory Declaration of Adrian Yellowknee**

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR.
and ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the Class Proceedings Act, 1992

AFFIDAVIT OF ROBERT ROBSON
(sworn July 9, 2006)

I, ROBERT ROBSON, of the City of Thunder Bay, MAKE OATH
AND SAY:

1. I am an Associate Professor and Acting Chair of the Department of Indigenous Learning at Lakehead University in the City of Thunder Bay, Ontario. I am now the Past Chair of the Northern Studies Program and an Adjunct Professor in the Department of History at Lakehead. As well, I am a Council Member of the University of the Arctic.
2. I was retained in June 2001 by plaintiffs' counsel, Richard Courtis and Thomson, Rogers, in the proposed Baxter National Class action, properly

referred to as *Baxter et al v. Canada*, filed in the Ontario Superior Court of Justice under Court File # 00-CV-192059CP (hereinafter referred to as the "*Baxter National Class Action*").

3. I was retained, amongst other reasons, to provide historical background information relating to the development and implementation of the Indian Residential School system by the Government of Canada.

4. As part of my retainer, I swore an Affidavit dated July 25, 2003 in support of the plaintiffs' Motion for Certification in the *Baxter National Class Action*. That Affidavit was filed with the Ontario Superior Court of Justice as part of the plaintiffs' Motion for Certification.

5. Attached as Exhibit 1 to this Affidavit is a true copy of the Affidavit sworn by me on July 25, 2003 and filed with the Ontario Superior Court of Justice along with the Exhibits A and B attached thereto.

6. Since July, 2003 I have also been retained by plaintiffs' counsel in the Alberta test case litigation regarding the Alberta Indian Residential School experience and I have continued to research Indian Residential School issues and to advise counsel in the within action.

7. I confirm that the facts, information and opinions set out in my Affidavit sworn July 25, 2003, attached hereto as Exhibit 1, remain accurate and valid.

Exhibit "A" referred to in the affidavit of Robert Robson

01320

Sworn before me this 9th day of July A.D. 2006

Court File No. 00-CV-192059 CP

R. W. Curtis
A Commissioner, etc.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES BAXTER, SR.
and ELIJAH BAXTER

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the Class Proceedings Act, 1992

AFFIDAVIT OF ROBERT ROBSON
(sworn July 25, 2003)

I, ROBERT ROBSON, of the City of Thunder Bay, MAKE OATH AND SAY:

1. I am an Associate Professor of Indigenous Learning at Lakehead University in the City of Thunder Bay, Ontario. I am also the Chair of the Northern Studies Program and an Adjunct Professor in the Department of History at Lakehead. As well, I am a Council Member of the University of the Arctic. My Curriculum Vitae is attached to this affidavit as Exhibit A.

2. In the following paragraphs, where I recite facts, conclusions, opinions or statistics, I believe them to be true, accurate and valid unless

otherwise stated or qualified. In all cases I have attempted to verify the authenticity of the sources that I have relied upon as well as the accuracy of the facts and statistics quoted or referred to in my affidavit. Whenever possible these sources are identified in footnotes. Where I express views and opinions of my own I believe them to be valid and to be based on my education, training and experience as a Professor and the extensive research and analysis conducted by me over the past two years on the subject of Indian Residential Schools and the Government of Canada's conduct in the operation of these schools.

RESEARCH MATERIAL AND METHODOLOGY

3. In June 2001, at the request of Richard Curtis, of Counsel for the plaintiffs in this action, I began research into the history and impact of the Indian Residential School system in Canada. Since that time I have reviewed extensive secondary and primary resource material in Thunder Bay, Ottawa and Toronto including over 170 published items as well as a variety of archival resources. This material offers a comprehensive overview of the history and evolution of Indian Residential Schools (Residential Schools) in Canada, the experience of students who attended Residential Schools and the impact of this experience on the Aboriginal Community in Canada. As an Associate Professor in the Department of Indigenous Learning at Lakehead University as well as through my previous teaching and research experiences at the University of Manitoba, the University of Winnipeg and Brandon University, I have also had the

opportunity to acquire what I consider to be a reasonable understanding of the residential school experience of the Aboriginal community.

4. The material which I consulted includes books, scholarly articles, government documents, thesis material and archival material. A bibliography of published material I reviewed is attached to this affidavit as Exhibit B. A detailed description of each category of resource material follows.

5. The books which I consulted range from F. Bartunek's Residential Education for Indian Education to T. C. Boon's The Anglican Church from the Bay to the Rockies to E. Furniss's Victims of Benevolence through to C. Haig-Brown's Resistance and Renewal.

6. In my opinion, the best of the monographs in terms of offering an overview of the residential school experience in Canada are: John Milloy's A National Crime; Jim Miller's Shingwauk's Vision; R. S. Chrisjohn, et. al., The Circle Game; and, the collection of essays in Jean Barman, et. al. (eds.) Indian Education in Canada.

7. Many of the books consulted deal with the specifics of an individual school or schooling in a particular region. Here for example are works such as A. R. Greyeyes' St. Michael's Indian Residential School which chronicles the residential school experience of the children who attended the St. Michael's in Duck Lake, Saskatchewan, Indian Residential Schools: The Nuu-chah-nulth Experience, speaks to the residential school experience of the children from the Nuu-chah-nulth First Nation on Vancouver Island, Basil Johnson's Indian School Days, which describes the experience of the children who attended the Spanish

Residential school in northern Ontario, A. R. King's The School at Mopass which documents the experience of the children attending the Mopass school in the Yukon or Behind Closed Doors: Stories from the Kamloops Indian Residential School which describes the experience of the children from the Secwepemc community in British Columbia or Agnes Grant's No End of Grief which considers the prairie experience of the Aboriginal community in the residential school system.

8. A good portion of the published material also deals specifically with the educational component of the residential school experience. I. R. Brooks and A. Marshall's work Native Education in Canada, R. M. Deaver's American Education, M. Mosher's Government of Canada and the Education of the Canadian Indian, L. Waller's The Education of Indian Children in Canada or J.D. Wilson's The Education of Indians in the Early 19th Century are all examples of books that attempt to document the educational experience of the residential school.

9. There is also a policy component to the monographs which is reflected in works such as J. Taylor's Canadian Indian Policy, Brian Titley's A Narrow Vision, Robin Fisher's Contact and Conflict, Rick Ponting and Roger Gibbins' Out of Irrelevance and Paul Tennant's Aboriginal Peoples and Politics.

10. The scholarly articles, like the monographs, are wide ranging. There are numerous essays on the topic of residential schools that appear as part of a collection of essays. D. Adams "From Bullets to Boarding Schools", Jean Barman "Aboriginal Education at the Crossroads", K. Coates "A Very

Imperfect Means of Education” and D. Nock “The Social Effects of Missionary Education” are all examples of essays appearing in book form.

11. In my opinion some of the best contemporary material on the topic of residential schools appears in journals such as Canadian Journal of Native Education, BC Studies, Canadian Journal of Native Studies, Ontario History and Native Studies Review. It is here that work such as L. Bull “Indian Residential Schools”, R. Ing “The Effects of Residential Schools on Native Child Rearing Practices”, J.R. Miller’s “The Irony of Residential Schooling”, S. Trevithick “Native Residential Schooling in Canada” or C. Harrington’s “Shingwauk School” appear.

12. There are a number of special reports or commissioned publications such as Susan Altar’s “Apologizing for Serious Wrongdoing”, R. Claes and D. Gifton’s Needs and Expectations for Redress of Victims of Abuse at Native Residential Schools or K Annett’s Hidden from History which provide valuable insight into the residential school experience of the Aboriginal community.

13. Government documents are those materials that have been published by government. The majority of government documents that are relevant to the topic of residential schools were published by the Federal Government. These documents range from the yearly publications of the Department of Indian and Northern Affairs such as the Annual Reports to reports such as Indian Education in Canada, the Policy Manual for Residential Schools, Report on the Indian Schools of Manitoba and the North West Territories and the Report on Industrial Schools for Indians and Half-Breeds.

14. In my view the Annual Reports are particularly useful as at various times they include everything from principals' reports to a tabular accounting of student enrolment. One of the most thorough accounts of the residential school experience can be found in the report of the Royal Commission on Aboriginal Peoples entitled Suffer the Little Children.

15. There is a voluminous amount of thesis material available that either speaks specifically to the residential school experience or to a component of the residential school experience in Canada. Much of this work documents a particular case study or schooling experience. Work such as J. Gresko's "The Qu'Appelle Industrial School" in Saskatchewan, J. Pettit's "From Longhouses to School Houses: The Mohawk Institute" in Ontario, D. Pearson's "Blue Quills: A Case Study of Indian Residential Schools" in Alberta, K. Kozak's "Education and the Blackfoot" in Alberta and W. Wasylow's "History of the Battleford Industrial School" in Saskatchewan are all examples of the case study approach to the topic and while they focus specifically on a particular residential school experience each study offers a tremendous amount of insight into the overall experience in schools across Canada.

16. Other studies tend to focus on the educational component of the schooling experience. J. Benson's "Different Visions: The Government Response", R.J. Carney's "Church-State and Northern Education", E.R. Daniels' "The Legal Context of Indian Education", D.M. Koenig's "Cognitive Styles of Indian, Metis, Inuit and Non-Natives" and H.J. Vallery's "A History of Indian Education in Canada" all tend to concentrate on the educational aspect of the

residential schooling experience. Whether focussed on curriculum or the ideological framework of the educational program, these studies also offer considerable insight into the residential school experience in Canada.

17. The Church as well has been a focal point of discussion in the thesis work cited. Work such as V. Fast "The Protestant Missionary and the Fur Trade", G. Fauk "Missionary Work Among the Prairie Indians", J. Foster "The Anglican Clergy in the Red River Settlement", I. Getty "The Church Missionary Society Among the Blackfoot Indians", M. Haig "The Methodist Contribution to Indian Education", N. Gull "The Indian Policy of the Anglican Church", H. Maclean "The Hidden Agenda: Methodists Attitudes", E. Porter "Anglican Church and Native Education" all consider the role of the various churches involved in the residential school program across Canada.

18. Educational policy is a topic that has been pursued at the graduate level. Work such as S. Dayton "Ideology of Native Education Policy", J.B.D. Larmour "Edgar Dewdney, Commissioner of Indian Affairs", J. Milloy "The Era of Civilization", J. Pettit "To Christianize and Civilize" all document the development of an educational policy. Each of them in their own way speaks to the development of a national educational program by the federal government for the Aboriginal community. From Dayton to Milloy the majority of works that focus on educational policy also focus on a developing system of education for Aboriginal people which was intended by the government of Canada to "civilize" the population.

19. The Department of Indian and Northern Affairs archival collection is a most detailed source of archival material relevant to the topic of residential schools. Housed in the National Archives, the collection which is catalogued as Record Group 10 (RG 10) assisted me in coming to a thorough understanding of not only the residential school program across Canada but also the relationship between the Federal Government and the Aboriginal community in Canada. Of particular importance are the "School Files", the "Agency Files" as well as the "General Administration Records" all of which are included as part of the RG 10 collection. Whether through the "School Files" or the "Agency Files" the RG 10 collection provides considerable insight into the residential school experience. From Alert Bay in British Columbia to St. Albert in Alberta through to Shubenacadie in Nova Scotia and Carcross in the Yukon or Fort Resolution in the Northwest Territories, the RG 10 collection documents not only the day-to-day school experience of the children attending the various residential schools but it also clearly portrays the residential school system as it evolved over the course of the twentieth century.

20. Specific records in the collection include, for example: "Quarterly Returns"; memoranda and/or correspondence to and from the various schools; "Inspector's Reports"; Committee and/or Sub-Committee Reports; copies of photographs and plans of the various schools; death certificates; health records (including dental health), and account books or ledgers. Each of these categories of record in the RG 10 collection is discussed in the paragraphs below with

comments on the significance of each category to my analysis and understanding of the residential school experience in Canada.

21. The "Quarterly Returns" are the reports that were filed four times a year (September, December, March and June) with the Department of Indian and Northern Affairs by the principal and/or administrator of the school. The reports document student enrolment, student name, home community, form or level attained by the student and includes a section for principal's comments which at various times offered commentary such as "not back", "broken leg" or "at San". The "Quarterly Returns" not only provide for the tracking of students over a long period of time, but they also highlight the catchment area of the school, document success rates in terms of student advancement and through the principal's commentary, also speak to the general well-being of the children confined in these schools.

22. The RG 10 collection memoranda and correspondence to and from the various schools provides a tremendously detailed overview of the day-to-day operations of the schools. Included in the collection, for example, are numerous items to and from Frank Pedley, Deputy Superintendent General of Indian Affairs, Duncan Campbell Scott, Deputy Superintendent General, J.D. McLean, Assistant Deputy Superintendent, Russell Ferrier, Superintendent of Indian Education, J.D. Sutherland, Acting Superintendent of Indian Education, Dr. H.W. McGill, Director of Indian Affairs, A. Spencer, Indian Agent, Frank Edwards, Indian Agent, J. Wright, Indian Agent, P. Bousquet, Principal, Fort Frances residential school, the Reverend Ernest Duke, Principal, Moose Fort residential

school, the Reverend L. Dugas, Principal of the Wikwemikong industrial school, the Right Reverend George Holmes, Bishop of Moosonee, Archbishop Langevin, Oblate Missionaries of Mary Immaculate, the Right Reverend John Anderson, Bishop of Moosonee, as well as Chief Kesik, Chief Redsky, Sacachiwaecabawo, Oshashinakoo.

23. The "Inspectors' Reports" included in the RG 10 collection provided me with an understanding of the government officials' perspective on the circumstances of the residential schools. The reports document everything from building conditions to student reading levels. In my view many of the reports are quite revealing, particularly those that were undertaken in response to perceived problems at the schools. Some of these, for example, speak to issues such as inadequate "air space" per child, plaster falling off the walls, toilets that overflowed every time they are used while others note "hard work" and "frequent punishment" as the main reasons why children were running away from the schools.

24. On occasion, within the RG 10 collection, Committee and/or Sub-Committee Reports can be found. Some, such as the Indian Mission Committee of the Synods of Manitoba and Saskatchewan Sub-Committee Report details everything from the condition of "Outside water closets" to "Discipline" at the school while others such as the Commission Report of the Missionary Society of the Church of England document "Furnishings and Equipment". In each, however, the reports provide a snap-shot of school conditions across Canada

and at various times in the history of the residential school system, as they were observed and reported by committee and commission members.

25. The photographs and plans that can be found in the RG 10 collection offer a graphic visual description of the residential schools. The photographs included in the record group feature both interior and exterior shots of the main buildings at many of the school locations across Canada. The majority of the photos are exterior shots that document not only the physical structure but also the spatial orientation of the school and in some cases the local landscape as well. The interior photos are for the most part classroom, chapel and/or dormitory pictures. Although most of the interior photos appear to be posed photos, they nonetheless help to provide a visual of interior space.

26. The plans that can be located in the collection include building plans, site location plans (which often show not only the location of the school but also its proximity to the community) sewage disposal system plans and water system plans. The interior plans, by showing floor space, room orientation, window location and fire exits as well as communal or recreational space, offer valuable insight into the realities of the day-to-day life of the schools. The exterior plans which, for example, document out-buildings, road access, fences, playground areas (usually described as "Boys play ground" and "Girls play ground"), rail lines, septic tanks, water supply systems, gardens and rivers and lakes, also speak to the day-to-day life of the schools. More importantly, in my view, the exterior plans document the use of space as a means of asserting authority.

27. The death certificates that can be found in the RG 10 collection appear to have been prepared in response to deaths that may have occurred at one of the schools under unusual circumstances. A sudden death, an accidental death or multiple deaths all appear to have been reasons for the inclusion of death certificates in the Department's records. The death certificates provide information about the age and gender of the deceased, family background of the deceased, home community, the presumed cause of death and often a detailed description of the circumstances of the death. Most telling, in my opinion, are the descriptions offered on the death certificates - particularly if the death was considered an accidental death, as the descriptions often speak to the living and/or working conditions encountered by the children attending the schools. As well, the descriptions of death by disease, especially when several deaths are recorded, provide valuable insight into the living conditions of students in the schools across Canada.

28. The health records that appear in the archival collection, although limited, provide useful information on not just health care but also on the well-being of the children attending the schools. At various times the health records speak to everything from frost-bite to head lice. Information on the quality of dental care as well can be gleaned from the records. As an example, in a letter dated October 3, 1922, from J.D. McLean, Assistant Deputy Superintendent General to J. Wright, Indian Agent, on the topic of the dental care of the children attending the Fort Frances residential school, it was stated that "it would be

better to remove the teeth than go to any unnecessary expense in having fillings made”.

29. The account books and ledgers of the various residential schools provide information relevant to the funding structure of the residential school program across Canada as well as, in some cases, to the expenditures of each individual school. For the most part the account books show that the money made available to provide for the educational needs of the children attending the schools was inadequate and that the money made available to provide for the day-to-day needs of the children was also inadequate. The most obvious educational need was staffing and it is readily apparent through the account books that most of the schools across Canada, most of the time, were in dire need of not only staff - particularly teachers, but qualified staff. The day-to-day needs of the children as reflected in the account books speaks to everything from the adequacy of the diet provided to the children to the appropriateness of the clothing given to the children.

A HISTORY OF INDIAN RESIDENTIAL SCHOOLS IN CANADA

30. According to the Assembly of First Nations' report, Breaking the Silence, the “term ‘residential school’ appears to have come into formal use during the 1920s; prior to the 1920s residential schools were officially called ‘industrial’ or boarding schools”.¹ The Indian Residential Schools were “total

¹ Assembly of First Nations, Breaking the Silence: An Interpretative Study of Residential School Impact and Healing as Illustrated by the Stories of First Nations Individuals, Ottawa: First Nations Health Commission, 1994, p. 3.

institutions" where "a large number of people lived and worked together".² They were established in all the provinces with the exception of Newfoundland, Prince Edward Island and New Brunswick and also in the then two Territories, Yukon and the Northwest Territories. The Indian Residential Schools, as they were created, were purportedly intended to provide an educational program for Aboriginal children. Aboriginal children were the children of the Aboriginal community or the communities of the original inhabitants of what is now Canada. The Aboriginal community or communities are those communities that are indigenous to what is now Canada.

31. E.R. Daniels in his Ph.D. dissertation, "The Legal Context of Indian Education in Canada", writes that the first schools established in Canada for Indian children were those of the Recollets at Trois Rivières and Tadoussac in 1615 and 1618 respectively.³ According to J.R. Miller in Shingwauk's Vision, "the first known boarding school arrangement for Indian youths in Canada began in 1620" and was established by the Recollets.⁴ The Recollets' educational efforts were followed by various other Catholic Orders, including the Jesuits, the Sulpicians, the Capuchins and the Ursulines and eventually by the Church of the United Brethren, the Anglican Church, the Baptist Church, the Methodist Church and the Congregationalist.⁵ By the seventeenth century, Church related educational activity was supplemented by the work of organizations such as the New England Company and the Society for the Propagation of the Gospel, both

² Ibid.,

which had established schools specifically for the education of Aboriginal children.⁶

32. By the eighteenth century and in large part as a result of the changing circumstances of the European community in what would become Canada, responsibility for administration of Indian affairs shifted from a military to a civil authority and concurrently, a new found interest in the education of Aboriginal peoples came to the fore. This in turn gave rise to a Commission that was created in the 1840's and charged with the responsibility of investigating the state of Indian affairs. The Commission report which was tabled in 1845, and in part stated "that Manual Labour Schools should have government support", argued strongly in favour of increasing state involvement in the education of Aboriginal peoples.⁷ In 1846, Thomas Anderson, Chief Superintendent of the Indian Department, who convened a conference of Chiefs and Missionaries to discuss the education of Aboriginal children, also came out in support of increasing state commitment to Aboriginal schooling. In 1847, Dr. Egerton Ryerson, Chief Superintendent of Education for Upper Canada, tabled his report

³ E.R. Daniels, "The Legal Context of Indian Education in Canada", Ph.D. Dissertation, University of Alberta, 1973, p. 53.

⁴ J.R. Miller, Shingwauk's Vision: A History of Native Residential Schools, Toronto: University of Toronto Press, 1996, p. 39.

⁵ H. Maclean, "The Hidden Agenda: Methodist Attitudes to the Ojibwa and the Development of Indian Schooling in Upper Canada", MA thesis, University of Toronto, 1978, pp. 4 - 5.

⁶ E.R. Daniels, op. cit., pp. 57 -59.

⁷ H. Maclean, op. cit., p. 144.

on "the best method of establishing and conducting Industrial Schools for the benefit of the aboriginal Indian Tribes", which perhaps more than anything else solidified the role of the state in providing for the education of Aboriginal children.⁸

33. In 1867 through the British North America Act, governmental authority over Aboriginal affairs came to be firmly vested in the federal government. As a result it fell to the government of Sir John A. Macdonald to determine the direction of Aboriginal education in the Dominion of Canada. Macdonald's response was to charge Nicholas Davin with the responsibility of reporting on "the working of Industrial Schools for the education of Indians and mixed-bloods in the United States, and on advisability of establishing similar institutions in the North-West".⁹ Davin's Report not only provided the focus to the federal government's educational program for Aboriginal children but it also gave rise to what Miller has termed the government's "new industrial schools".¹⁰ The schools were to be both denominational and residential, they were to "impart a practical knowledge of the arts of husbandry and mechanics as well of the other useful industries" and they were to introduce a policy of "aggressive civilization".¹¹

⁸ See a copy of Ryerson's Report which was found in W.J. Wasylow, "History of the Battleford Industrial School for Indians", MEd. thesis, University of Saskatchewan, 1972, Appendix B.

⁹ Nicholas Flood Davin, Report on Industrial Schools for Indians and Half-Breeds, 1879, p. 1.

¹⁰ J.R. Miller, op. cit., p. 103.

¹¹ Nicholas Davin, op. cit., p. 1.

34. From the 1880's until 1910 the residential schools across Canada were managed by the various Churches that had become active participants in Aboriginal education and were funded by the federal government with money that had been taken from the "Indian School Fund" as well as by such special funding as had been voted upon by Parliament. Management of the schools fell to the Roman Catholic Church, the Church of England, the Methodist Church and the Presbyterian Church. The Indian School fund, which was created in 1848, was established with annuity monies while parliamentary funding would eventually come to be codified by an Order-In-Council in October of 1892. The Order-In-Council in effect made the school buildings a joint federal government - Church responsibility, the books and educational supplies a federal government responsibility and the operation costs associated with running the schools, initially a Church responsibility but with reimbursement from the federal government on a per capita basis.¹²

35. On November 8, 1910 the Superintendent of Indian Education, Duncan Campbell Scott, hosted a conference in Ottawa which set the stage for the future direction of residential schools. In attendance were representatives of the federal government and the Churches. According to H.J. Valley, the conference "resulted in plans for the more efficient management of the boarding schools".¹³ At the same time the conference established a framework of grants,

¹² See the discussion of the Order-In-Council in E.R. Daniels, *op. cit.*, p.162.

¹³ H.J. Valley, "A History of Indian Education in Canada", MA thesis, Queen's University, 1942, p. 44.

standards and inspection routines that would become the guiding principal of the twentieth century residential school.

36. Integral to all of this were the agreements or “contracts” that were signed by the Churches governing the operation of the boarding schools. Through the contracts the government agreed to increase grants made available to the Churches while the Churches agreed to operate the schools on the newly defined standards which would be maintained by closer government inspection.¹⁴ Cited by Miller in Shingwauk’s Vision “as a new stage in the residential school experiment of social engineering”, the post-1910 school acknowledged the failure of the industrial school and echoed the government’s policy shift to a “more modest academic and vocational” instructional program.¹⁵ The industrial or “manual labour” schools of the nineteenth century were slowly giving way to the residential schools of the twentieth century and by 1923 the Government had officially replaced the industrial school with the residential school across Canada.¹⁶

37. The decade of the 1920’s was also important in the evolution of Canada’s residential school program. In 1920 an amendment to Federal legislation, the Indian Act, not only helped to clarify the application of the Act to both residential and day schools but it also gave the Superintendent General of Indian Affairs the power to set “the standard for the buildings, equipment,

¹⁴ J. Pettit, “To Christianize and Civilize”, Ph.D. dissertation, University of Calgary, 1997, p. 349.

¹⁵ J.R. Miller, *op. cit.*, p. 140.

¹⁶ J. Pettit, *op. cit.*, p. 335.

teaching and discipline of and in all schools, and for the inspection of such schools".¹⁷ Stating that "Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school" and that Superintendent General shall have the power to "appoint any officer or person to be a truant officer to enforce attendance", the 1920 amendment also introduced compulsory attendance for Aboriginal children.¹⁸

38. While the residential school program continued to expand into the 1930's it was in many ways plagued by the economic realities of the time. John Milloy writes in his pivotal work A National Crime, the "weight of under funding that had pressed down on the Church and Department budgets and had driven the schools into debt".¹⁹ During the peak years of the Depression, residential school per capita grants had in fact been reduced by approximately fifteen percent.²⁰ It wasn't until after World War II, however, that the residential school program was revisited. The Special Joint Committee of the Senate and the House of Commons which was established in 1946 and tabled its' final report in 1947, was charged with the responsibility of investigating Indian Affairs and

¹⁷ Canada, Statutes of Canada, Geo. 10 - 11, 1919 - 1920, Chapter 50, Section 1, Clause 4, p. 307.

¹⁸ Ibid., p. 308.

¹⁹ John Milloy, A National Crime, The Canadian Government and the Residential School System, Winnipeg: The University of Manitoba Press, 1986, p. 75.

²⁰ J.R. Miller, op. cit., p. 384.

more specifically, the "Operation of Indian Day and Residential Schools".²¹ The final recommendations of the Joint Committee which would come to form the cornerstone of the post-World War II federal government's Aboriginal education program clearly indicated a change of direction for the schooling initiative. In concluding "that wherever and whenever possible Indian children should be educated in association with other children", the Joint Committee recommended an end to the segregation inherent in the residential school system and the encouragement of the greater integration of Aboriginal children into the public system of education.²² As a result and as is maintained by Miller in the paper "The Irony of the Residential Schooling", "the general approach to Indian education shifted after World War II from an emphasis on segregation and isolation to a policy of so called integration".²³ Integration as a policy, however, was never adequately developed or implemented by the federal government. Indeed in many ways integration was an attempt by the federal government to off-load the responsibility and the costs for the education of Aboriginal children to the provinces.

39. The decade of the 1950's also saw further amendment to the Indian Act by the federal government which brought about increased emphasis on secondary education for Aboriginal children, the beginning of parental school

²¹ Canada, Special Joint Committee of the Senate and the House of Commons, appointed to Continue and Complete the Examination of the Indian Act, Minutes and Proceeding of Evidence, No. 1, February 13, 1947, p. 2.

²² Ibid., pp. 186 - 190.

²³ J.R. Miller, "The Irony of Residential Schooling", Canadian Journal of Native Education, No. 2, 1987, p. 9.

committees, the adoption of a government salary system for teachers in government run schools and the adoption of a government budget system for government owned schools. All of this was intended to help facilitate the integration process and, as is summarized in Volume 1 of the Report of the Royal Commission on Aboriginal Peoples, the eventual closure of residential schools.²⁴

This would happen slowly over the course of the next three decades. Indeed, in the post 1950 era the residential school system in Canada was composed of everything from the so-called "classic residential school" to combined residential/day schools to student residences at provincial schools.²⁵

40. Five important reports of the 1960's helped to expedite the closure of Canada's residential schools. In 1961 a Joint Committee of the Senate the House of Commons in its report on education and human resources, put forward recommendations for the greater integration of Aboriginal students into the provincial school system.²⁶ A report prepared by George Caldwell of the Canadian Welfare Council entitled Indian Residential Schools, concluded in 1967 amongst other things that residential schools "prepared children poorly for adjustment to the outside world, and were inadequately funded".²⁷ The Hawthorn Report which was published in 1967 as A Survey of the Contemporary Indians of

²⁴ Canada, Report of the Royal Commission on Aboriginal Peoples, Vol. 1, 1996, p. 349.

²⁵ Ibid., p. 348.

²⁶ See a discussion of the activity of the Joint Committee in D. Hoffman, A Summary of Findings from Departmental Files and Selected Secondary Sources, Ottawa, 1993, p. 47.

²⁷ J.R. Miller, Shingwauk's Vision, op. cit., p. 400.

Canada and which spoke to the economic, political and social needs of the Aboriginal community, recommended that “Denominational boarding schools should be converted into full-time hostels and cease to operate as schools”.²⁸ R.F. Davey, Director of Educational Services, in his 1968 Report which was entitled Residential Schools Past and Future, wrote that those who administered the residential school system did not appear “to have any real understanding of the needs of the children”.²⁹ Finally in 1969, the federal government issued its Statement of the Government of Canada on Indian Policy, or what has become known more familiarly as the “White Paper”. The White Paper not only attempted to set out an overall policy direction for the federal government’s Department of Indian Affairs, a policy direction which was intended to provide for the complete integration of the Aboriginal community within the larger Canadian community, but it also attempted to provide for the full and complete integration of Aboriginal students into the public school system.³⁰

41. On April 1, 1969 the federal government officially concluded its partnership relationship with the Churches and in the words of John Milloy, fully “secularized this element of Aboriginal education”.³¹ This also meant that as of April 1969, the federal government had acquired full and complete control of all

²⁸ H.B. Hawthorn (ed), A Survey of the Contemporary Indians of Canada, Vol. II, Ottawa: Indian Affairs Branch, 1967, p. 15.

²⁹ Canada, Report of the Royal Commission on Aboriginal Peoples, Vol. 1, “Looking Backward, Looking Forward”, 1996, p. 361.

³⁰ Canada, Statement of the Government of Canada on Indian Policy, Ottawa, 1969, p. 3.

³¹ John Milloy, A National Crime, *op. cit.*, p. 234.

aspects of the residential school system. This in turn allowed the federal government the opportunity to wind down its residential school program. Over the course of the 1970's, the number of schools would drop dramatically from fifty-two in 1969 to twelve in 1979. Eventually in 1983 when the last of the government run schools, the Christie Roman Catholic School in Tofino, British Columbia was closed, the Federal Government had completed the closure process.³²

42. The following is a selective yearly sampling of Residential Schools in Canada.

<u>Year</u>	<u>Number of Schools</u>	<u>Number of Students Enrolled</u>
1890	16	700
1891	29	1022
1897	49	2602
1904	64	
1907	77	
1910	74	3841
1923	71	5347
1927	77	6641
1931	80	
1939	79	9027
1942		7831
1948	72	9368
1969	52	7704
1979	12	1899
1983	1	

³³

³² Assembly of First Nations' Health Secretariat, Residential School Update, March 1998, p. 6.

³³ This table has been customized from several sources, see for example: Canada, Report of the Royal Commission On Aboriginal Peoples, Canada, Sessional Papers, J.R. Miller, Shingwauk's Vision, John Milloy, A National Crime, Assembly of First Nations' Health Secretariat, Residential School Update.

ROLE OF THE CROWN IN THE RESIDENTIAL SCHOOL SYSTEM

THE CROWN'S RELATIONSHIP TO INDIAN CHILDREN IN THE RESIDENTIAL SCHOOLS

43. The mandate of the residential school program as defined in 1881 by then Prime Minister and Minister of the Interior responsible for Indian affairs, J.A. Macdonald, was to provide "for the establishment more generally of institutions, wherein Indian children, besides being instructed in the usual branch of education, will be lodged, fed, clothed, kept separate from home influences, taught trades and instructed in agriculture...." Clearly an integral component of what has come to be defined as the "civilizing strategy" of the federal government, residential schooling also meant that the federal government accepted the obligation to provide for the well-being of the children within its' care.³⁴

44. As was suggested by Nicholas Davin in his report to the federal government, the residential school system was intended to provide the children with the "care of a mother" and it was the responsibility of the federal government when it accepted the challenges of the residential school system to ensure that the children were not only instructed in the usual branch of education but also that they were well cared for.³⁵

³⁴ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 333.

³⁵ Nicholas Davin, Report of Industrial School for Indians and Half-Breeds, Ottawa, 1879, p. 12.

45. The residential school system, as it evolved in Canada, was guided by a well defined fiduciary responsibility that the federal Crown and the agents of the Crown had accepted to administer to the needs of the Aboriginal community. Described in the paper "The Crown's Fiduciary Relationship with Aboriginal Peoples" as a relationship wherein "someone in a position of trust has rights and powers which he is bound to exercise for the benefit of another", this relationship meant that the federal government in Canada assumed the responsibility of acting on behalf of the Aboriginal community.³⁶

46. Seen as early as the eighteenth century in the Royal Proclamation of 1763, codified through the nineteenth century in an Act for the Better Protection of Indians in Upper Canada from Imposition and Property Occupied or Enjoyed by them from Trespass or an Act for the Gradual Enfranchisement of Indians and the Better Management of Indian Affairs and eventually applied through the twentieth century in the *Guerin* decision, the *Adams* decision and the *Sparrow* decision, the federal government in Canada has readily accepted:

"...the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship".³⁷

³⁶ Mary C. Hurley, "The Crown's Fiduciary Relationship With Aboriginal Peoples", Ottawa: The Parliamentary Research Branch, 2000, p. 2.

³⁷ *Ibid.*, p. 3.

47. Constitutionally, this fiduciary responsibility was initially vested in the "Legislative Authority of the Parliament of Canada" through Section 91 of the British North America Act (BNA Act).³⁸ As is argued by Long and Dickason, the BNA Act effectively established Aboriginal Peoples as "wards of the federal government, eligible for federally sponsored schooling, health care, and other services".³⁹ The repatriated version of 1982, in Part II, Section 35, which spoke to the "Rights of Aboriginal Peoples of Canada", re-affirmed the fiduciary relationship when it underscored the "existing aboriginal and treaty rights of the aboriginal peoples of Canada" as the basis of the relationship.⁴⁰

48. As it evolved, the fiduciary relationship also came to be part of the Treaty process. Whether through Treaty 3 which stated that "Her Majesty agrees to maintain schools for instruction in such reserves as made as to Her Government of Her Dominion of Canada may seem advisable" or through Treaty 9 which stipulated that "His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem a dvisable to His Majesty's government of Canada", the fiduciary responsibility was inherent in the various treaty agreements that were entered into by the Crown and the Aboriginal

³⁸ See Section 91 of the British North America Act 30 & 31 Vic., Chapter 3, 1867.

³⁹ D. Long and O. Dickason, Visions of the Heart, Toronto: Harcourt, Brace and Company, 1996, p. 275.

⁴⁰ See Section 35 of the Constitution Act, 1982.

community.⁴¹ Indeed, cited as a “trust relationship” by Dianne Longboat in the paper “First Nations Control of Education: The Path to Our Survival as Nations”, the fiduciary responsibility meant that the Crown or agents of the Crown were “obligated to act in the utmost good faith” when it came to meeting its Treaty defined, educational responsibilities in providing for the educational needs of the Aboriginal community.⁴²

FUNDING OF THE RESIDENTIAL SCHOOL SYSTEM

49. The Federal Government was the principle source of funding for all residential schools across Canada in the Class Period. This responsibility was first formalized by Orders-in-Council published in 1892 and 1894 “initiating a general financial system for the school”. The Orders established a per-capita funding system for the whole industrial school system (as they were known at the time) with the object of imposing fiscal responsibility on the operation of the schools. The rates established were intentionally set below the actual cost of providing for a student in the expectation that costs would be brought down to the match funds provided and any excess borne by the church operating the school.⁴³

⁴¹ See Treaty No. 3 Between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle of the Lake of the Woods with Adhesions and The James Bay Treaty, Treaty No. 9.

⁴² Dianne Longboat, “First Nations Control of Education: The Path to Our Survival as Nations” in J. Barman *et. al.* (eds) Indian Education in Canada, Vol. 2, Vancouver: University of British Columbia, 1987, p. 34.

⁴³ J. Milloy, A National Crime, *op. cit.*, p.62.

50. In addition to establishing a funding formula, the Orders-in-Council consolidated Departmental control of the schools and precipitated a flood of Directives from the Department to the Principals on all aspects of the operation of the schools. This arrangement continued until 1911 when, as a result of protracted negotiations with the Churches, new contracts for funding and operating the schools were drafted and signed by the representatives of the federal government and the churches. New and higher per-capita rates were established with variations for different regions of the country – generally allowing for higher expenses in operating schools in the west and far north. Milloy describes the contracts constituting: “the structure of the relationship between the churches and the Department for the next three decades”. He goes on to point out that by accepting government funding the churches were required to operate and maintain the schools to standards set by the Department which would control all aspects of the management of the institutions and the education provided to the students who resided there.⁴⁴

51. In addition to the per-capita grants and in return for overriding control over the school system “the government was bound: to provide medicine, schools books, stationery and school appliances, and to maintain in good repair and sanitary condition those schools buildings that it owned”.⁴⁵

52. The per-capita grant, for example, which in 1938 was \$180 per student was not only much lower than other institutional grants, i.e. the School for

⁴⁴ Ibid, pp. 73 –74.

⁴⁵ Ibid., p. 74.

the Deaf which received per capita funding of \$642, or the School for Boys which received \$550, or even the St. Norbert's Orphanage which received \$294, but Department officials were well aware of the funding disparity.⁴⁶ So too were the churches, the staff of the schools and even the Aboriginal community. D.C. Scott, Deputy Superintendent General, Department of Indian Affairs clearly spoke to this inadequacy when in correspondence he maintained that the "financial ills of the system lay in underfunding".⁴⁷

53. In 1941 there were 8,774 residential school students at a per-capita cost of \$159.⁴⁸

SUPERVISION OF THE RESIDENTIAL SCHOOL SYSTEM

54. The federal government was principally responsible for the overall supervision of the residential school system and for the supervision of the individual schools within the system.

55. Government supervision of residential schools in Canada during the Class Period relied upon the yearly reports that were required to be submitted by the Principals of the schools, the occasional reports that were submitted by the local Indian Agent or Superintendent, special investigations or enquiries that reported on the specifics of a particular school and the

⁴⁶ Canada, Report of the Royal Commission on Aboriginal Peoples, Vol. 1, "Looking Backward, Looking Forward", 1996, pp. 355 - 356.

⁴⁷ Ibid., p. 354.

⁴⁸ Ibid., p. 193.

correspondence that filtered into the Department of Indian Affairs from either the school or the community.

56. Beginning in the 1860's with reports that were submitted to the Secretary of State and the Superintendent General of Indian Affairs through to the 1970's when reports were submitted to the Department of Indian Affairs and Northern Development, the school principals' through their Annual reports, offered the government a window on the activity of the residential schools. It was at best an overview filtered through the eyes of the principal which offered a perception of the activity of the residential school.⁴⁹ Indeed, the reports at various times are described in the government record as having "been received in summarized form" or as having been "periodically received by the Department".⁵⁰

57. What is spoken to in the reports ranges from "Conduct and Discipline" which is more often than not described as "very satisfactory" to "Class-room Work" in which "progress has been satisfactory" or "Health and Sanitation" which is usually seen as "excellent".⁵¹ Perhaps more than anything else this may speak to what the Royal Commission on Aboriginal Peoples refers

⁴⁹ See, for example, the Departmental report by William Spraggue, Department Superintendent, which begins with "It will be perceived from the School Reports, that agriculture is being taught at the Mount Elgin Institution together with other industrial pursuits", in Canada, 35 Vic., 1872, Sessional Papers, N. 22, p. 36.

⁵⁰ See summarized reporting in Canada, 59 Vic., 1896, Sessional Papers, N. 14, p. XXX, and periodically received reports Canada, 49 Vic., 1886, Sessional Papers, N. 4, p. 166.

⁵¹ See any one of a number of principals' reports in the Sessional Papers.

to as the “duplicity” or “deception” of school administrators to “make the most favourable impression”.⁵²

58. The role of the Indian Agent or Superintendent in the supervision of the residential school program appears to have been nominal. There were, however, occasions where the Agent or Superintendent reported on the circumstances of particular schools and thereby provided the Department of Indian Affairs with the opportunity to address and/or investigate residential school concerns. In 1922, for example, when Frank Edwards, Indian Agent in the Kenora District, reported to the Assistant Deputy and Secretary of the Department of Indian Affairs on the complaints of students at St. Marys' with the recommendation that the principal be replaced as he “may be the cause of the trouble”, he gave the Department cause for intervention.⁵³ Similarly, when Indian Agent, Dr. Hamilton reporting from Moose Fort in 1930, informed the Department that “boarding schools in this locality are not really meeting the need” of the local population he was essentially recommending a course of action that the Department in its' supervisory capacity follow.⁵⁴ H. Lariviere, Superintendent of the Abitibi Agency, when informing the Department in 1956 that the children at Moose Fort “went to [the] garbage can to get food”, was informing the Department that remedial steps needed to taken to ensure that dietary needs of

⁵² Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, pp. 358 - 359.

⁵³ N.A.C., RG 10, V. 6167, File 465 - 1, Part 1.

⁵⁴ N.A.C., RG 10, V. 6203, File 467 - 1, Part 1.

the children at the Moose Fort school were being met.⁵⁵ John Semmens, Inspector of Indian Agencies, when writing from Kenora concerning complaints that children at Cecilia Jeffrey had been "cruelly beaten", was not only making the Department aware of parental concerns but also was providing the Department with the information necessary to intercede.⁵⁶

59. The use of investigative committees or special enquiries as a means of overseeing the activity of the Department of Indian Affairs was seen very early on in the residential school program. From Ryerson to Davin in the nineteenth century through to Hawthorn and Penner in the twentieth century, Indian Affairs came to depend upon the special report for direction and decision making.⁵⁷ In many ways these special reports have not only provided a compass for action but they have also provided the government with a means of monitoring or supervising the activity of the Department. Here, for example, the Indian Mission Committee of the Synods of Manitoba and Saskatchewan, when it reported that the children attending Cecilia Jeffrey were "not warmly clad" or that "The Inspector found the building cold" provided the Department with the information necessary to implement remedial action.⁵⁸ When, for example, the Commission investigating the Moose Factory school reported that if the staff of

⁵⁵ John Milloy, A National Crime, *op. cit.*, fn 17, p. 369.

⁵⁶ N.A.C., RG 10, V. 6187, File 461 -1, Part 1.

⁵⁷ See: a copy of Ryerson's Report in W.J. Wasylow, "History of the Battleford Industrial School for Indians", *op. cit.*; Nicholas Davin, *op. cit.*; H.B. Hawthorn, *op. cit.*, and; Canada, The Report of the House of Commons Special Committee on Indian Self-government, Ottawa: 1983.

⁵⁸ N.A.C., RG 10, V. 6187, File 461 - 1, Part 1.

the school was "augmented by one Teacher and one Supervisor, [it] will probably be found to sufficient to handle the work", it recommended a course of action deemed necessary to provide for the needs of the children enrolled at the school.⁵⁹

60. In 1945 when the Nutritional Services of the Red Cross reported that not only was the "standard of all food preparation low" and that there was "a lack of cleanliness and sanitary care in the handling of the food" but that when "the demand of the body for these nutrients is greatest, the school diet is startlingly low in ascorbic acid and vitamin A and to a lesser degree is deficient in thiamine, calcium, and in niacin, and in calories for boys."⁶⁰ at St. Johns' school in Chapleau, it was making the Department aware of not only the dietary shortcomings of the school but also the sanitary shortcomings.

MAINTENANCE AND SUPPORT OF CURRICULUM AND INFRASTRUCTURE IN THE RESIDENTIAL SCHOOL SYSTEM

61. The maintenance and support of Canada's residential schools was a federal government responsibility. In 1920 an amendment to the Indian Act gave the Superintendent General of Indian Affairs the power to set "the standard for the buildings, equipment, teaching and discipline of and in all schools, and for the inspection of such schools".⁶¹ This responsibility meant that it was the obligation of government to ensure that the teachers employed at the various

⁵⁹ N.A.C., RG 10, V. 6203, File 467 - 5, Part 2.

⁶⁰ J. Milloy, *A National Crime*, *op. cit.*, pp. 263 - 264.

⁶¹ Canada, *Statutes of Canada*, Geo. 10 - 11, 1919 - 1920, Chapter 50, Section 1, Clause 4, p. 307.

) schools were qualified and capable of providing for the educational needs of the students under their care; that the curriculum of instruction not only met the mandate of the residential school program but that it also provided the students with the “skills and experience they needed to survive and prosper”; that the school house and its’ associated buildings - most notably the dormitories, provided a safe and healthy environment for the children enrolled in the residential school program and that the equipment of the boarding school adequately provided for the needs of the children.⁶²

62. When the federal government established the residential school system it committed itself to housing the children attending the schools. The housing, however, was according to the Report of the Royal Commission on Aboriginal Peoples, “badly built, poorly maintained and overcrowded”.⁶³ By 1968, the National Association of Principals and Administrators of Indian Residences, summarized the physical problems of the schools with the notation that many of the structures were “totally unsuitable and a disgrace to Indian Affairs”.⁶⁴

63. Class-room work as mandated by the federal government followed the “Program of Studies for Indian Schools” which defined the six standards or levels that were to be taught at all residential schools in Canada. Each standard or level included the instruction of thirteen subjects, ranging from English to Ethics. In Geography, for example, students in the third standard were to be

⁶² Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 340.

⁶³ Ibid., p. 356.

⁶⁴ J. Milloy, A National Crime, *op. cit.*, p. 272.

taught “geographical notions by reference to geographical features of neighbourhood” while in sixth standard Ethics, students were to be taught “Indian and white life, Patriotism, Evils of Indian isolation, Enfranchisement, Labour the law of life, Relations of the sexes as to labour and Home and public duties”.⁶⁵ Farm and garden instruction included “the care of the greenhouses and the management of a dairy of over thirty cows and the raising of pigs”.⁶⁶ Industries taught were described by the government record as “Carpentry and Painting” with the notation that “Under instructions the boys do all the work for the institution and farm”.⁶⁷ Girls work, was described in the superintendent’s report as an instructional period where the girls were “trained for domestic work”.⁶⁸ Further, through the instructional period, the girls made “all their own clothing and that of the boys”.⁶⁹ The final form of instruction, “Moral and Religious Training” included a daily routine of religious instruction, prayers and “divine service”.⁷⁰

⁶⁵ The “Program of Studies for Indian Schools” was introduced in 1897 and for the most part with minor revisions was followed through the tenure of the residential school program. See the program as it was introduced in Canada, 30 Victoria, 1897, N. 14, pp. 396 - 399.

⁶⁶ Canada, 4 - 5 Edward, op. cit., p. 305.

⁶⁷ Canada, 3 - 4 Edward, 1904, Sessional Papers, N. 27, p. 327.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Canada, 4 - 5 Edward, op. cit., p. 305.

SYSTEMIC NEGLECT - THE CROWN'S BREACHES OF DUTY

FAILURE TO FUND THE RESIDENTIAL SCHOOL SYSTEM

64. The record indicates that residential schools were never provided with the funds necessary to meet the needs of the Aboriginal population. Indeed, as pointed out in Jean Barmans' "The Legacy of Residential Schools", the schools were "underfunded when compared with provincial institutions or even with the bare basics of survival".⁷¹

65. According to the evidence presented to the Royal Commission on Aboriginal Peoples, senior church officials highlighted the funding conundrum through their constant lobbying of the federal government for both higher per capita rates and maximum grant monies.⁷² School administrators such as the Reverend J.O. Plourde of the McIntosh residential school or the Reverend Joseph Guy of the Albany school also addressed funding shortcomings in their yearly reports and ongoing correspondence with Departmental staff.⁷³ At the community level, when Chief Gardner of Wabigoon complained that his seventeen year old son who had spend ten years in the residential school program without learning how to read and write or when Chief Kejick of Shoal Lake argued that the children of his community are leaving residential schools

⁷¹ Jean Barman, "The Legacy of Residential Schools" in D.A. Long and O. Dickason (eds), Visions of the Heart, Toronto: Harcourt Bruce, 1996, p. 285.

⁷² Ibid., p. 357.

⁷³ N.A.C., RG 10, V. 6185, File 460 - 5, Part 1 and File 6220, File 472 - 5, Part 1.

with little to show for the time spent there, they are both speaking to an inadequately funded educational program.⁷⁴

66. The underfunded residential school program meant that the schools were poorly constructed and maintained, that institutional equipment was often faulty or non-existent, that the schools were short-staffed, often with poorly trained teachers, that the schools were overcrowded, that the quantity and quality of food was less than adequate, that health care was substandard, that clothing was in poor repair and often inappropriate (especially during the winter season) and that school inspection was irregular and haphazard. As was maintained in the Report of the Royal Commission on Aboriginal Peoples, the funding available for the residential school program was "inadequate for the needs of the children".⁷⁵ Inadequate not only for the children's educational needs but perhaps even more importantly, inadequate in providing for the general well-being of the children.

FAILURE TO PROPERLY SUPERVISE THE RESIDENTIAL SCHOOL SYSTEM

67. The system of supervision and oversight established and maintained by the federal government was at best a haphazard system of checks and balances that depended not only upon the integrity of the reporting agent but also upon the willingness of the agents' supervisor to oversee the reporting process. Even when working, as pointed out by Ian Getty in his thesis "The

⁷⁴ N.A.C., RG 10, V. 6187, File 461 - 1, Part 2.

⁷⁵ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 355.

Church Missionary Society”, the supervisory process “required only that the principal present a yearly report on the expenditures, attendance record and general conditions of the school”.⁷⁶

68. In many ways, the “persistently woeful conditions of the school system and the too often substandard care of the children” was as a result of “failure of the department to exercise adequate oversight and control of the schools”.⁷⁷ Indeed, as is maintained in the Report of the Royal Commission on Aboriginal Peoples, “Despite the department’s regulatory authority....there was no stern intervention on behalf of the children, so that even the most egregious neglect by church authorities and principals could drag on unresolved for years”.⁷⁸

69. The systemic nature of the failure to properly supervise the children attending schools is evident across the country. Whether it was Arthur Plint, a supervisor at the Alberni school in British Columbia, who would eventually be imprisoned for sexual assault or whether it was Hubert O’Connor a supervisor at St. Joseph’s school in Williams Lake, British Columbia who was also tried on charges of sexual assault or whether it was the case of Harold McIntee also of Williams Lake and who also was charged with assault, the federal government

⁷⁶ I. Getty, “The Church Missionary Society Among the Blackfoot Indians”, MA thesis, University of Calgary, 1970, p. 116.

⁷⁷ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 353.

⁷⁸ Ibid., p. 364.

failed to ensure that children attending the residential schools were safe and well protected.⁷⁹

FAILURE TO MAINTAIN AND SUPPORT CURRICULUM AND INFRASTRUCTURE IN THE RESIDENTIAL SCHOOL SYSTEM

70. In the end, as was described by R.F. Davey, Director of Educational Services in the 1968 report Residential Schools Past and Future, the training provided by the residential schools "contained very little of instructional value but consisted of mainly of the performance of repetitive, routine chores of little or no educational value".⁸⁰ Pointing out that the schools were "unable to attract qualified staff", that the schools "failed to keep pace with advances in the general field of education", that "language was a persistent problem" and that it was "virtually impossible for students to make significant progress", Davey clearly laid much of the fault for the inadequacies of the residential school system on the lack of program support and/or maintenance.⁸¹

71. Davey, in his departmental study of the residential school system, found that as recently as the 1950's, "over 40 per cent of the teaching staff had no professional training. Indeed, some had not even graduated from high school".⁸²

⁷⁹ J.R. Miller, Shingwauk's Vision, *op. cit.*, pp. 328 – 329.

⁸⁰ Davey's report can be found in N.A.C., RG 10, File 601/25 - 2, Vol. 2.

⁸¹ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, pp. 344 - 345.

⁸² Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 345.

72. Poorly qualified teachers together with what has been called "the large turnover in staff" and the fact that many of the teachers hired to teach in the residential school system were "not interested in teaching", combined to produce a less than favourable learning environment.⁸³ As a direct and predictable result, the children attending the schools were confronted with situations such as the one at the Moose Fort school where in 1940 a registered nurse from the hospital with no teacher training was asked to take on teaching responsibilities or at Cecilia Jeffrey where, in 1928 according to Chief Gardner of the Wabigoon band, all that the children had been taught at the school was to pray or at Lebret in Saskatchewan where a woman was offered a teaching position even though her previous teaching experience was not "fully satisfactory" or at St. Margaret's in Fort Frances where "one of the oldest Indian Boys" was asked to teach the junior level or at St. John's in Chapleau where the principal's fifteen year old daughter taught classes or at Pelican Falls in Sioux Lookout where in the 1960's one teacher accepted a teaching position upon graduation from high school because "his mother suggested that he would like the work" and another because he had "attended a private boarding school".⁸⁴ Given these circumstances it is not so surprising to note, as R.F. Davey has in his "Memorandum on Education", that

⁸³ See the discussion of the large turnover in staff in I. Getty, "The Church Missionary Society Among the Blackfoot Indians", op. cit., p. 120 and the lack of interest in teaching in J.R. Miller, Shingwauk's Vision, op. cit., p. 177.

⁸⁴ See: the Moose Fort example in J.R. Miller, Shingwauk's Visions, op. cit., p. 177; the Cecilia Jeffrey example in N.A.C., RG 10, V. 6187, File 461 - 1, Part 1; the Lebret example in J.R. Miller, Shingwauk's Vision, op. cit., 177; the St. Margaret's example in J.R. Miller, Shingwauk's Vision, op. cit., pp. 175 - 176; the St. John's example in N.A.C., RG 10, V. 6191, File 462 - 1, Part 1, and; the Pelican's Falls example in J.R. Miller, Shingwauk's Vision, op. cit., p. 319.

in 1945, only “slightly over 100 students” out of a total residential school population of 9,149 were enrolled in grades beyond grade eight and further, that by 1969 that number had risen to only 10% of the total student population.⁸⁵

73. In the final Report of the Royal Commission on Aboriginal Peoples, it was suggested that the “most fundamental impediment” to the education of students within Canada’s residential schools was “the curriculum and the pedagogy, which were not in any way appropriate to the culture of the students [thereby making] it difficult for the children to learn”.⁸⁶ Including everything from teaching methodology to the time lines of instruction to the heavy emphasis on a European based curriculum, the program delivered in the schools clearly did not address the educational needs of the students in the program. It was in fact and, in many ways, a program designed for “educational failure”.⁸⁷

74. As is pointed out by Jean Barman in the paper “Aboriginal Education at the Crossroads”, “the Department of Indian Affairs was ensuring the failure of aboriginal peoples to compete socially or intellectually with their white neighbours”.⁸⁸ Not only did the government ensure the failure of the educational program but according to the government record, the government was also well aware of the curriculum/pedagogical shortcomings of the residential school

⁸⁵ As cited in Canada, Report of the Royal Commission on Aboriginal Peoples, op. cit., p. 345.

⁸⁶ Canada, Report of the Royal Commission on Aboriginal Peoples, op. cit., p. 345.

⁸⁷ J. Milloy, A National Crime, op. cit., p. 161.

⁸⁸ J. Barman, “Aboriginal Education at the Crossroads” in D. Long and O. Dickason (eds) Visions of the Heart, Toronto: Harcourt Bruce, 1996, p. 281.

program. Indeed, as is maintained by John Milloy in A National Crime, from the 1920's onward, Indian Affairs' officials regularly received commentary on the poor quality of education provided by the residential school program.⁸⁹

75. As problematic as the curriculum used in the classroom was the curriculum used outside the classroom. Captured within the "half-day" system or what came to be called by the Department of Indian Affairs the "outing system" of education, industrial instruction would come to form an integral component of the residential school program.⁹⁰ First proposed by Egerton Ryerson in his report on industrial schools, the outing system was initially introduced as means of not only providing the students of the residential school system with industrial training but also training in "practical skills" such as carpentry for the boys and cooking for the girls.⁹¹ As it was proposed by Ryerson, students were to be "occupied in labour from 8 to 12 hours a day during the summer, and instruction from 2 to 4 hours, and that during the winter the amount of labour should be lessened, and that of study increased."⁹²

76. The half-day system meant that students were expected to spend half the day in the classroom and half the day in what Miller has called "instructive work that would impart the skills they would need later to earn a

⁸⁹ J. Milloy, A National Crime, op. cit., p. 157.

⁹⁰ Ibid., p. XXXIX.

⁹¹ Canada, Report of the Royal Commission on Aboriginal Peoples, op. cit., p. 339.

⁹² E. Ryerson, op. cit., p. 75.

living”.⁹³ The reality of the half-day system, however, was that students more often than not spent full days participating in industrial training. Examples such as the Pelican Falls account where students appeared to spend about twenty-five percent of their time in the classroom, appear to be more of the norm than the exception.⁹⁴ The curriculum of skill instruction was seemingly defined by the school but in most cases it did include sewing, dressmaking and fencing as well as carpentry, tinsmithing, blacksmithing and shoemaking.

77. As the half-day or outing system came to be applied by the Department of Indian Affairs it was defined by Hayter Reed, Deputy Superintendent General of Indian Affairs, in the following manner: “The outing system is one of the marked features of industrial institutions. This is, in a few words, the hiring out of children, both male and female (and while they are retained on the rolls) in any direction in which employment can be found.”⁹⁵

78. It became in many ways an apprentice program which over time was used to supplement the income of the school, to help to provide for the self-sufficiency of the school, to maintain school facilities and to establish a pool of inexpensive labourers for the local community. At Chapleau, the boys from St. John's regularly sold cords of firewood to local residents with the money generated going back to the school.⁹⁶ At the Mohawk Institute it was reported by

⁹³ J.R. Miller, Shingwauk's Vision, *op. cit.*, p. 83.

⁹⁴ Ibid., p. 172.

⁹⁵ Canada, 60 Vic., 1897, Sessional Papers, N. 14, p. XXXIV.

⁹⁶ N.A.C., RG 10, V. 6191, File 462 -1, Part 1.

the principal that. "Dairying, and in connection therewith, hog-raising, are the paying branches of farming at present".⁹⁷ At Wikwemikong, the "farm is [was] managed with a view to supplying the mission and the school with meat, vegetables, milk and butter".⁹⁸ At the Shingwauk school, the boys were apprenticed to local craftsmen, for "the whole day" from 7:00 am to 6:00 pm.⁹⁹

79. In the opinion of W. Graham in correspondence with D.C. Scott, the residential school was becoming more like a "workhouse" than a school.¹⁰⁰ Indeed, Jacqueline Kennedy in her thesis on the Qu'Appelle industrial school, quotes from the 1928 publication, The Problems of Indian Administration, to suggest even more emphatically that: "The labour of children as carried on in Indian boarding schools, would constitute a violation of child labour laws....the outing system today is not so much a preparation for homemaking as an apprenticeship for domestic service."¹⁰¹

80. Even in terms of providing marketable skills or creating employment opportunities, the industrial training of the outing system did little to meet the needs of the students in the residential school program. Indeed, as maintained by Miller in Shingwauk's Vision, the industrial training offered in the residential schools was in effect "rudimentary vocational training" which in fact

⁹⁷ Canada, 1 - 2 Edward VII, 1902, Sessional Papers, N. 27, p. 299.

⁹⁸ Ibid., p. 306.

⁹⁹ J.R. Miller, Shingwauk's Vision, op. cit., p. 256.

¹⁰⁰ As cited in J. Milloy, A National Crime, op. cit., p. 171.

¹⁰¹ Jacqueline Kennedy, "Qu'Appelle Industrial School", MA thesis, Carleton University, 1970, pp. 246 - 247.

"disadvantaged" the students in learning "a work-related skill".¹⁰² There were few if any jobs for the graduates of the residential school program.¹⁰³

81. Lodging, according to the Report of the Royal Commission on Aboriginal Peoples, was "Badly built, poorly maintained and overcrowded". The physical condition of the buildings was in fact further described by the Report as "a dreadful weight that pressed down on the thousands of children who attended them".¹⁰⁴ A dreadful weight that was viewed by the Superintendent General of Indian Affairs as "undoubtedly chargeable with a very high death rate among the pupils".¹⁰⁵ The government record suggests that not only had government erected buildings "been put up without due regard for the purpose for which they would be required, hurriedly constructed of poor materials, badly laid out without due provision for lighting, heating or ventilation", but also that the churches had constructed buildings on "very primitive plans", causing considerable apprehension within government for the safety of the schools.¹⁰⁶ The schools for the most part were overcrowded, cold in the winter, poorly ventilated, lacking in

¹⁰² See J.R. Miller, Shingwauk's Vision, *op. cit.*, pp. 158 - 159 and 418.

¹⁰³ Ibid, p 136.

¹⁰⁴ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 356.

¹⁰⁵ D.C. Scott in a memorandum to Arthur Meighan not only spoke to the inadequacy of the physical structures but he also made the connection between the physical structure and the health of the children enrolled in the residential school program. For a discussion of the same see, Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 356.

¹⁰⁶ See the government erected schools in N.A.C., RG 10, V. 6039, File 160 -1 and the church constructed schools in N.A.C., RG 10, V. 7185, File 1/25 - 1 -7 - 1.

washroom and/or toilet facilities and generally provided for an unhealthy living environment. According to E. McColl, Superintendent and Inspector of Agencies, the problem with the schools was that they were "generally inferior structures and that many of them were provided with unsuitable furniture".¹⁰⁷

82. By the 1950s the so-called "roll call of problems", particularly the "emergency nature of the physical plant of schools", included "design, hygiene, heating and ventilation" as well as fire escapes, windows and doors and wiring.¹⁰⁸ By 1968 the National Association of Principals and Administrators of Indian Residences, summarized the physical problems of the schools with the notation that many of the structures were "totally unsuitable and a disgrace to Indian Affairs".¹⁰⁹

83. Reverend S.H. Soper of the Mount Elgin school in writing to the Secretary of the Department of Indian Affairs in 1945, for example, captured the sense of the principals' concern when he maintained: "There are a great many things about conditions around this building, and conditions under which little children have to live, which if printed and publicized would cause such a furore of indignation that someone would have to take cognizance of it, and immediately."¹¹⁰

¹⁰⁷ Canada, 55 Vic., 1892, Sessional Papers, N. 14, p. 179.

¹⁰⁸ J. Milloy, A National Crime, *op. cit.*, p. 261.

¹⁰⁹ Ibid., p. 272.

¹¹⁰ Elizabeth Graham, The Mush Hole: Life at Two Indian Residential Schools, Waterloo: Heffle Publishing, 1997, p. 339.

84. Perhaps, however, the most telling example of the structural problems associated with the residential schools and the less than favourable response of government and/or the churches occurred at Shingwauk. Condemned in 1931, the Shingwauk Home would continue to operate as a residential school for Aboriginal children well into the post World War II era.¹¹¹ Whether at Shingwauk, or one of many similar facilities across Canada, it was often the “buildings themselves [that] frequently endangered the students in a variety of ways”.¹¹²

85. School facilities could also be seen to include educational equipment/supplies and while for the most part the government record suggests that all schools were well out-fitted with the necessary teaching tools, the financial statements of the schools and the ongoing demands of the school principals for “an increased grant towards the maintenance” of the various institutions, indicate otherwise.¹¹³ In other words, even though school administrators acknowledged the “new cooking ranges, and school desks for the junior school”, “desks of the latest design and a wall blackboard extending around two sides of the room” or “automatic desks, large wall maps, globes and necessary school material”, the reality according to recorded budget information

¹¹¹ Ibid., p. 104.

¹¹² J.R. Miller, Shingwauk’s Vision, op. cit., p. 307.

¹¹³ See for example the request of Edward Wilson, principal of Shingwauk and Wawanosh Homes in Canada, 50 Vic., 1887, Sessional Papers, N. 6, p. 19.

was that expenditures on the necessary school material was extremely limited.¹¹⁴ At no point (where residential school "Financial Statements" are available) was more than five percent of the yearly budget spent on "School requisites", "School apparatus, books, etc." or "School Furniture".¹¹⁵

THE LEGACY OF THE SYSTEMIC NEGLECT BY THE GOVERNMENT

ABUSE

86. While it is painfully clear from the record that abuse was very much a part of the residential school experience of Aboriginal children, some commentators are of the view that efforts "...to arrange various forms of abuse into some sort of theoretical continuum from mildest and least offensive to extremely violent and most destructive are bound to fail. The victims of abuse each have their own experience with abuse and their own feelings regarding that abuse".¹¹⁶

87. Nonetheless, several recent studies have attempted to develop a "theoretical continuum" as a means of providing a context for the understanding

¹¹⁴ See the cooking ranges and new desks at Shingwauk in Canada, 61 Vic., 1898, Sessional Papers, N. 14, p. 229, the desks and wall blackboard in Canada, 62 Vic., 1899, Sessional Papers, N. 14, p. and, the automatic desks in Canada, 3 - 4 Edward VII, 1904, Sessional Papers, N. 27, p. 331.

¹¹⁵ The largest percentage spent on school supplies located in the government record was at the Mohawk Institute where 3.2 % of the yearly budget was allocated to school apparatus and furniture. See anyone of a number of the yearly reports in the Annual Reports of the Department of Indian Affairs.

¹¹⁶ Indian Residential Schools: The Nuu-chah-nulth Experience, Report of the Nuu-chah-nulth Tribal Council, 1996, p. 56.

of the residential school experience of Aboriginal children. At the same time, however, most of these studies acknowledge that there was no single or homogeneous residential school experience and that every effort must be made to provide as “honest and respectful” account of the “complex system of abuses” as possible.¹¹⁷

88. In discussing “how First Nations children were wounded during their time at residential school”, the Assembly of First Nations (AFN) publication, Breaking the Silence, speaks to four aspects of abuse: emotional, mental, physical and spiritual.¹¹⁸ Maintaining that it is the balance of mind, body, emotion and spirit that provides for well-being, the discussion notes further that by neglecting “any of these aspects create an imbalance in ourselves, which in some teachings denotes illness”.¹¹⁹ The outcome of the emotional, mental, physical and spiritual abuse suffered by the children who attended the residential schools was described by the AFN document as a “long list of losses”.¹²⁰

89. A somewhat different perspective of the abuses suffered by the children attending the residential school was presented in the Nuu-chah-nulth Tribal Council study Indian Residential Schools: The Nuu-chah-nulth Experience. In chronicling the residential school experience of approximately 5,000 Nuu-

¹¹⁷ Ibid., p. 57.

¹¹⁸ Assembly of First Nations, Breaking the Silence: An Interpretive Study of Residential School Impact and Healing as Illustrated by the Stories of First Nations Individuals, Ottawa: First Nations Health Commission, 1994, p. 37.

¹¹⁹ Ibid.

¹²⁰ Ibid., p. 167.

chah-nulth children, the Tribal Council's study spoke to the emotional, physical, sexual and spiritual abuses suffered by the children.¹²¹ The work also, however, under the heading of "Key Issues", considered "Separation from family and home", "Physical Conditions", "Loss of Native Language", "Child Labour", "Loss of Native Culture", "Loss of Self-Respect", "What was Learning in Residential School", "Going Back Home" and "Alcohol And Other Drug Abuse", as part and parcel of the residential school experience.¹²² These too, could be considered "abusive actions, the consequences of actions.[or the] failure to act or care", all of which would also constitute a form of abuse.¹²³

90. In her study of the Mohawk Institute and the Mount Elgin Residential School, Elizabeth Graham considers six forms of abuse that the children attending the two schools were subjected to: punishment, emotional, cultural, sexual, bullying and physical living conditions.¹²⁴ She does so, however, with the preface that the changing of a culture "could be thought of as the major form of abuse".¹²⁵ Arguing further that "It was a racist destructive policy that is

¹²¹ Indian Residential Schools: The Nuuchah-nulth Experience, pp. 54 - 114.

¹²² Ibid., pp. 10 - 12.

¹²³ "Abusive action", "consequences of action" and "failure to act" are discussed in Elizabeth Graham, The Mush Hole: Life at Two Indian Residential Schools, Waterloo: Heffle Publishing, 1997, p. 35.

¹²⁴ Elizabeth Graham, The Mush Hole, pp. 35 - 37.

¹²⁵ Ibid., p. 35.

seen today as 'cultural genocide', depriving people of their culture, identity, and self-respect".¹²⁶

91. Graham's study, like that of Grant, Claes and Clifton and, Annett, focuses on the notion of intentional genocide as both the objective of the schools as well as the most abusive component of the school program.

92. In 1997 in a discussion paper mandated by the Minister of Justice of Canada to investigate the issues associated with "Institutional Child Abuse", the Law Commission of Canada was charged with the responsibility of examining processes necessary "for addressing the harms caused by physical and sexual abuse of children in government-run, government-funded or government-sponsored institutions".¹²⁷

93. Through the course of the investigation it was determined that in order to properly address the needs of the children effected by institutional child abuse, the study would by necessity need to consider "...all the related types of abuse to which children may have been subjected in institutions, including emotional, psychological, cultural and spiritual abuse".¹²⁸ Pointing out that "many children suffered terribly and endured lasting harm in places ostensibly intended to educate or protect them", the Law Commission concluded that the various forms of institutional child abuse identified as having occurred within institutions like the residential schools, were part of a larger institutional process of

¹²⁶ Ibid.

¹²⁷ "Minister's Reference on Institutional Child Abuse", A Discussion Paper Prepared by the Law Commission of Canada, 1999, p. 1.

¹²⁸ Ibid.

disconnection, powerlessness and degradation. All of this, the report maintains, was undertaken in an effort to "deny these children the very essence of who they were".¹²⁹

94. Linda Bull, Kimberly McFarlane and Yvonne Halkow in recently completed graduate work have also attempted to document the process of abuse in the residential schools. Bull in her thesis, "Indian Residential Schooling" considers "cultural discontinuities related to language, food, cultural barriers...." as well as family discontinuities related to the lack of care and nurturing within the schools as significant components of the abuse suffered by the children attending residential schools.¹³⁰

95. McFarlane in the paper "Educating First Nation Children in Canada" frames her discussion of the abuses around physical, sexual, emotional abuse as well as the process of cultural deprivation.¹³¹ Finally, Yvonne Hlakow in "Personal Impact of Residential School Experience on First Nation People" speaks to the physical, the sexual, and the emotional abuse as well as the general level of neglect experienced by the children attending the schools as being integral to the understanding of the experience itself.¹³²

¹²⁹ Ibid., p. 15.

¹³⁰ Linda Bull, "Indian Residential Schooling: The Native Perspective", Masters of Education, University of Alberta, 1991, pp. 81 - 82.

¹³¹ Kimberly McFarlane, "Educating First Nation Children in Canada: The Rise and Fall of Residential Schooling", MA thesis, Queen's University, 1999, p. 51.

¹³² Yvonne Halkow, "Personal Impact of Residential School Experiences on First Nations People", MSc thesis, University of Alberta, 1996, pp. 3 - 4.

96. Perhaps the most extensive and/or thorough treatment of the abuse issue can be found in the work of Roland Chrisjohn, Sherri Young and Michael Maraun, entitled The Circle Game. Originally written as a submission to the Royal Commission on Aboriginal Peoples, the published version of the report was undertaken in part as a response to the “style....over substance” post-Commission era of the Aboriginal - non-Aboriginal relationship.¹³³ Pointedly arguing the case of “ideological misrepresentation”, the authors maintain that not only was the residential school program a tool of genocide but that the post-1994 era of “partners in healing and reconciliation” is also example genocidal activity.¹³⁴ Nonetheless, in an effort to provide “some artificial structure to the catalogue of abuses” the authors frame their discussion around the headings of “Actions” and “Omissions of Action”.¹³⁵ Abusive actions are described as threefold; physical, psychological/emotional and enforcing unsuitable living conditions while abuse through the omissions of action itemizes church inaction and governmental inaction.

PHYSICAL ABUSE

97. The litany of physical abuses inflicted upon the students of the residential schools is large and wide ranging. It includes everything from the use

¹³³ See the authors comments in the “Preface” of Roland Chrisjohn, Sherri Young and Michael Maraun, The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada, Penticton: Theytus Books, 1997.

¹³⁴ See the notion of “ideological misrepresentation” in Ibid., pp. 255 - 258 and “partners in healing and reconciliation” in Ibid., p. 20.

¹³⁵ Ibid., pp. 31 - 33.

of an “electric chair” as both a means of entertainment and punishment at St. Anne’s residential school in Fort Albany through to the use of the “lock-up” or “jail” at Shingwauk. Children were beaten, strapped, confined and isolated in enclosures, burned, chained, shocked, kicked, pushed down stairs, had their heads shaved, denied food or were given an extremely limited diet, forced to eat their own vomit, had needles inserted to different parts of their anatomy, left exposed to inclement weather, denied medical care and/or attention, had their faces rubbed in human excrement, forced to stand and/or kneel for long periods of time in uncomfortable positions and had their hair pulled to the point where in many cases the children experienced permanent hair loss.¹³⁶

98. The list of so-called “implements” used to inflict abuse included leather and rubber straps, straps with tacks, nails or wires embedded in them, boxing gloves, wooden boards, studded belts, sticks and pointers, whips, iron bars, switches, knotted rawhide, knotted horse harness straps and a cat - o’ - nine tails.¹³⁷

¹³⁶ The disturbingly long list of physical abuses suffered by the children attending the residential schools can be found in a number of sources ranging from R. Chrisjohn *et. al.*’s The Circle Game to the Report of the Royal Commission on Aboriginal Peoples. Evidence of the abuse can also be found in the government record, see for example: the charges against the Reverend George Prewer at St. John’s in Chapleau in N.A.C., RG 10, V. 6191, File 462 -1, Part 1 or those against Father Perrault at St. Margaret’s in Fort Frances in N.A.C., RG 10, V6194, File 463 - 1, Part 1.

¹³⁷ Rhonda Claes and Deborah Clifton, op. cit., p. 27.

99. The abusers ranged from school principals through to the custodial staff.¹³⁸ It also included what one former teacher from the Alberni school in British Columbia referred to as "The Dignitaries Club", "important men....church officials, government people, cops and judges".¹³⁹ The list included physicians as well. In evidence that was presented before a task force of the Ontario College of Physicians Surgeons it was maintained by former students that "Native women have been raped, fondled and abused mentally, physically and spiritually by doctors at residential schools".¹⁴⁰

100. Abusers also included the children themselves.¹⁴¹ As has been argued elsewhere, learned behaviour has become one of the many legacies of the residential school program.¹⁴² According to the study Indian Residential Schools, what was learned in residential schools "...had to do with power, power, who had power and how to exercise power....How to discipline, and the use of

¹³⁸ Examples include the Principal of Mount Elgin's confession that he had beaten a girl for running away, the Christian Brothers of the Spanish school who were accused of undressing a boy and "whipping him naked until he became unconscious", Principal Ashton's "Twelve - Hour Trial" and consequent fine for having "too severely punished" girls at the Mohawk Institute. See: Mount Elgin in J.R. Miller, Shingwauk's Vision, *op. cit.*, p. 323; Spanish in J. Milloy, A National Crime, p. 150, and the Mohawk Institute in Elizabeth Graham, *op. cit.*, pp. 110 - 116.

¹³⁹ K. Annett, Hidden From History: The Canadian Holocaust, Vancouver: The Truth Commission into Genocide in Canada, 2001, p. 47.

¹⁴⁰ Paul Taylor, "Travelling Doctors Abused Native Girls, Task Force Told", The Globe and Mail, Wednesday, February 20, 1991, pp. 1 - 2.

¹⁴¹ See for example the case of the Sioux Lookout school where "several girls....were both sexually and physically molested by other girls" in J.R. Miller, Shingwauk's Vision, p. 336.

¹⁴² This is spoken to in a number of studies of the residential school experience. See for example, the "Minister's Reference on Institutional Child Abuse", *op. cit.*, p. 27.

power to take control of another person and punish them, and perhaps one of the most damaging lessons learned in Residential schools is punishment how to punish other people....They learned that brute force can help one survive....They learned that by physical force, you could have your way in many, many ways."¹⁴³

101. The evidence that speaks to the physical abuse inflicted upon the children attending residential schools is wide ranging and quite conclusive. In 1922 a report was received by the Department of Indian Affairs which spoke to the case of a young boy who attended St. John's residential school in Chapleau wherein the principal "dragged him out of bed, took him off to the store - room and beat him with a stick until he was black and blue over his whole body".¹⁴⁴ In 1923, The Toronto Sunday World reported that three young girls had their hair cut off and "were shut up in the 'dark room', or 'cell', as some called it, and fed on bread and water" by the superintendent of the Mohawk Institute, Nelles Ashton.¹⁴⁵ Also at the Mohawk Institute, students reported as having "seen Indian children having their faces rubbed in excrement....the normal punishment for bedwetters...was to have his face rubbed in his own urine".¹⁴⁶ In 1924 the Department of Indian Affairs was informed that the Christian Brothers who ran the Spanish residential school had undressed a boy, "whipping him naked until

¹⁴³ Indian Residential Schools: The Nuu - Chah - Nulth Experience, *op. cit.*, pp. 151 - 153.

¹⁴⁴ N.A.C., RG 10, V. 6191, File 462 - 1, Part 1.

¹⁴⁵ As cited in E. Graham, The Mush Hole, *op. cit.*, p. 142.

¹⁴⁶ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 373.

he became unconscious".¹⁴⁷ Also in 1924, the Deputy Superintendent of Indian Affairs, D.C. Scott was informed that four girls at the St. Margaret's school in Kenora were "whipped and beaten by the Priest and then then (sic) their hands were tied together and their feet tied together and four of them put in the cellar and kept there for 4 hours".¹⁴⁸

102. In 1929 Indian Agent A. Spencer in writing to the Department of Indian Affairs concerning the conditions of the Fort Francis school, spoke to the fact that "the children were not being properly fed and clothed and were also freezing".¹⁴⁹ In 1943 parents of children attending Mount Elgin residential school testified under oath that when the Reverend Oliver Strapp "would punish the girls he would raise their skirts when whipping them".¹⁵⁰ In the late 1940's at the Sioux Lookout school it was reported that the principal not only administered punishment of one hundred blows from a strap to a young student but that he also "had her hair cut off with garden shears...[and then] her head was shaved".¹⁵¹

103. At Shubenacadie school in Nova Scotia a Sister of Charity was reported as having forced a boy attending the school to first eat an overly salted

¹⁴⁷ J. Milloy, A National Crime, *op. cit.*, p. 150.

¹⁴⁸ N.A.C., RG 10, V. 6197, File 465 - 1, Part 1.

¹⁴⁹ N.A.C., RG 10, V. 6194, File 463 - 1, Part 1.

¹⁵⁰ E. Graham, The Mush Hole, *op. cit.*, p. 332.

¹⁵¹ J.R. Miller, Shingwauk's Vision, *op. cit.*, p. 325.

bowl of porridge and then when he vomited into the bowl, she forced him to eat what remained in the bowl.¹⁵²

104. A particularly violent male supervisor was responsible for a wide range of physical abuse at St. Philips residential in Saskatchewan during the 1960s. These ranged from “whipping with five belts” to the burning of the children’s flesh with hot metal.¹⁵³

SEXUAL ABUSE

105. The Assembly of First Nations in the publication Breaking the Silence, noted: “The most profound form of physical wounding occurred through sexual violations....Reported sexual violations vary, with incidents of fondling, intercourse, ritualistic washing of genitals and, rape, and some instances of pregnancy and forced abortion. The offenders comprised a variety of people. Some were nuns and priests, others lay supervisors, and some were other children within the school”.¹⁵⁴

106. The Anglican Church of Canada in its’ brief submitted to the Royal Commission on Aboriginal Peoples similarly noted: “The experiences of abuse range from voyeurism to fondling, to oral sex, to forced vaginal or anal penetration, and from one-time experiences to multiple experiences repeated

¹⁵² Ibid., p. 325.

¹⁵³ Ibid., p. 327.

¹⁵⁴ Assembly of First Nations, Breaking the Silence, op. cit., pp. 51 - 52.

over long periods some survivors were abused by more than one person on different occasions.”¹⁵⁵

107. The sexual abuse suffered by the children who attended the residential schools has been described as fivefold: “Sexual assault, including forced sexual intercourse between men or women in authority and girls and/or boys in their charge; Forced oral-genital or masturbatory contact between men or women in authority and girls and/or boys in their charge; Sexual touching by men or women in authority of girls and/or boys in their charge; Performing private pseudo-official inspection of genitalia of girls and boys; Arranging or inducing abortions in female children impregnated by men in authority”.¹⁵⁶

108. Former students themselves speak to the horrendous nature of the sexual abuse that they suffered while attending the residential schools. Danny Watts, for example, remembers the experience that many of the boys were subjected to at the Alberni Indian Residential School in British Columbia when he recounted that this “man used to make little boys carry him around on their back, while he had an erection, you know. That was his way of satisfying his needs”. He described further, one incident where “....he immediately took me to my room and said before I fix your teeth, I want you to do something for me. Standing their naked with an erection and trying to force his prick into my mouth” or on another occasion, “....then he proceeded to take my pants off, and then he, and his own

¹⁵⁵ As cited in R. Chrisjohn, *et. al.*, The Circle Game, *op. cit.*, p. 34.

¹⁵⁶ R. Chrisjohn, *et. al.*, The Circle Game, *op. cit.*, pp. 31 - 32.

pants, and he again would have an erection, and he'd lay behind me. And simulate sex, you know. and he would have a climax and all that".¹⁵⁷

109. Irene Starr too recalled the experiences of many of the girls who attended residential schools when she recounted from her tenure at the Alberni school that "Many girls got pregnant....The fathers were the staff, teachers, the ones who raped them. We never knew what happened to the babies, but they were always disappearing."¹⁵⁸

110. At the Moose Fort residential school former student and Cree leader Billy Diamond in the biography Chief: The Fearless Vision of Billy Diamond recalled both male and female school administrators as having subjected the children attending the school to various forms of sexual abuse. Male teachers, for example, not only took "uncommon delight in spanking the bare bottoms of young Crees while the rest of the class stared" but "male supervisors showed an abiding interest in the young Cree boys, enticing them to their rooms".¹⁵⁹ One female staff member was remembered as having taken "her showers with the younger Cree boys, ordering them to scrub her breasts and pubic area while she moaned".¹⁶⁰ At Cecilia Jeffrey, female students reported to the assistant matron that on various occasions the principal had students "put

¹⁵⁷ See the testimony of Danny Watts in Indian Residential Schools, op. cit., pp. 92 - 94.

¹⁵⁸ K. Annett, Hidden for History, op. cit., p. 22.

¹⁵⁹ R. MacGregor, Chief: The Fearless Vision of Billy Diamond, Markham: Viking Publishing, 1989, p. 24.

¹⁶⁰ Ibid.

their hands under his clothing and [play] with his breasts” and that “he was in the habit of kissing the old girls”.¹⁶¹ At the first reunion of the St. Annes residential school survivors which eventually gave rise to Peetateck Keway Keykwywin Association, former female students spoke to being “gaged, tied and raped” while former male students spoke to having “been violated by both an Oblate brother, who performed fellatio.... and a layman who attempted to fondle and kiss” students.¹⁶² At the Sioux Lookout residential school, girls were reported to be sexually molested by a “ring of bigger girls”.¹⁶³ At the Mohawk Institute as well, sexual abuse was reported as recently as the 1960s.¹⁶⁴

PSYCHOLOGICAL & EMOTIONAL ABUSE – INTERGENERATIONAL HARM

111. The psychological abuse suffered by the children attending residential schools is now often captured by the catch-all diagnosis, “Residential School Syndrome”. As is discussed in the Assembly of First Nations’ Health Secretariat’s Residential School Update, the residential school syndrome is based upon the belief “...that those who attended residential schools lost their ability to parent, and their identity as Aboriginal people. This psychological wound has been passed on to subsequent generations of children. The long term cumulative effects of the schooling upon those who suffered has been termed

¹⁶¹ J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 330.

¹⁶² See the girls’ and a portion of the boys’ story in Darcy Henton, “Crees Remember School with Bitterness and Tears”, Toronto Star, Saturday, January 22, 1994 as well as a portion of the boys’ story in J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 332.

¹⁶³ J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 336.

¹⁶⁴ E. Graham, The Mush Hole, *op. cit.*, p. 38.

'residential school syndrome'.¹⁶⁵ Cited by Chrisjohn, Young and Maraun as a "psychological disorder", the residential school syndrome has come to be regarded in the literature as the precipitating cause of many of the contemporary problems encountered in the Aboriginal community.¹⁶⁶

112. From alcohol abuse to low self-esteem, the Aboriginal community across Canada traces the root cause of many of the issues confronting the community to the residential school system. As stated in the Report of the Royal Commission on Aboriginal Peoples, "The Impact of the system was felt not only by the children who attended schools but by the families and communities that were deprived of their children and had to deal subsequently with children who returned damaged from the schools. In that sense, communities, parents and, indeed, children later born to former students of the residential schools were all 'enrolled'".¹⁶⁷

113. While the notion of a residential school syndrome may in some ways provide for an understanding of the psychological abuse suffered by the children attending the schools, it has also become a tool through which those responsible for and/or involved in, the residential school system have been able to deflect responsibility for their actions. The abuse itself has in many ways become secondary to the healing process. As is maintained by Schissel and

¹⁶⁵ "Questions and Answers Regarding Residential Schools", Residential School Update, *op. cit.*, p. 4.

¹⁶⁶ R. Chrisjohn *et. al.*, *op. cit.*, p. 35.

¹⁶⁷ Canada, Report of the Royal Commission on Aboriginal Peoples, Vol. 1, "Looking Backwards, Looking Forward", 1996, p. 389.

Wotherspoon in the recently published The Legacy of School for Aboriginal People, the “Residential School Syndrome became the mantra of a society hoping to gain political absolution by treating its victims as sick and in need of care and therapy....The syndrome mentality shuts down other explanation; it prevents us, at least at the political level, considering more structural/political sources of damage and victimization....”¹⁶⁸ Put even more succinctly by Chrisjohn, Young and Maraun in their book The Circle Game, the residential school syndrome could be seen as part of a larger “tactic”, “....the tactic of pathologizing these individuals, studying their condition, and offering “therapy” to them and their communities [which] must be seen as another rhetorical maneuver designed to obscure (to the world at large, to Aboriginal Peoples, and to Canadians themselves) the moral and financial accountability of Eurocanadian society....”¹⁶⁹

114. Residential school syndrome, the psychological disorder so readily associated with residential school survivors and their communities, may well be more pointedly described as an “act of contrition” as opposed to a means of providing for an understanding of the residential school experience and further, a method of meeting the needs of those who suffered the psychological abuse of the residential school system.¹⁷⁰


¹⁶⁸ B. Schissel and T. Wotherspoon, The Legacy of School for Aboriginal People, Toronto: Oxford University Press, 2003, p. 62.

¹⁶⁹ R. Chrisjohn, et. al., op. cit., p. 4.

¹⁷⁰ Ibid., p. 2.

115. The psychological abuse experienced by the children attending residential schools has been defined by Rhonda Claes and Deborah Clifton in the report, "Institutional Child Abuse", as "Psychological/Emotional Abuses" and has been described as the: "Administration of beatings to naked or partially naked children before their fellow students and/or institutional officials; Public, individually directed verbal abuse; belittling, and threatening; Public, race-based vilification of all aspects of Aboriginal forms of life;. Racism; Performing public strip searches and genital inspections of children; Removal of children from their homes; families, and people; Cutting children's hair or shaving heads (as policy); Withholding presents, letters and other personal property of children;. Locking children in closets (as punishment); Segregation of the sexes; Proscription of the use of Aboriginal languages; Proscription of the following of Aboriginal religious or spiritual practices; Eliminating any avenue by which to bring grievances, inform parents, or notify external authorities of abuse; Forced labour; Proscription of contact between siblings; Forcing children to participate in the beating of their peers; Forcing children to clean up the aftermath (blood and vomit) of beatings they had witnessed; Forced sexual acts between children, while authority figures watched; Forcing bedwetters to parade in public wearing soiled bedsheets over their heads (extremely common); Denying young women sanitary pads at night, then beating and/or publicly humiliating those who bled on their sheets; Deliberate destruction of children's personal property."¹⁷¹

¹⁷¹ Rhonda Claes and Deborah Clifton, "Institutional Child Abuse", *op. cit.*, pp. 26 - 27.



116. As described in the Assembly of First Nations report, Breaking the Silence, the psychological abuse suffered by the children attending the schools left them feeling “humiliated”, “belittled”, “ridiculed”, “shamed”, “discouraged”, “disconnected”, “disoriented”, “alienated”, “confused”, “frightened”, “isolated”, “estranged”, “ostracized”, “scared”, “abandoned”, and made to feel “ashamed” of their identity.¹⁷² The residential school system in fact facilitated “the silencing of their native world”.¹⁷³ In the process and based upon the testimony of the children, “four common themes persisted: feeling lost, being silenced, coping, and being alone”.¹⁷⁴

117. According to the Assembly of First Nations’ study, Breaking the Silence, “A child becomes wounded emotionally when the expression of feelings is suppressed, discouraged, or belittled. Wounding emotionally is also effected by withholding nurturance. Finally, emotional wounding occurs through shaming and humiliation, ridiculing and ‘putting down’ children.”¹⁷⁵

118. Linda Bull in her paper “Indian Residential Schooling: The Native Perspective”, states that all of this was designed to facilitate a “....break in the continuity of maintaining family ties and the care and nurturance that is vital in the development of fragile and complex interpersonal bonds between the child

¹⁷² All of this is presented in two sections of Breaking the Silence, “The Wounded Children (Part I)” and “The Wounded Children (Part II). See; Assembly of First Nations, Breaking the Silence, *op. cit.*, pp. 21 - 47.

¹⁷³ Ibid., p. 30.

¹⁷⁴ Ibid., p. 34.

¹⁷⁵ Assembly of First Nations, Breaking the Silence, *op. cit.*, p. 38.

and parent, in essence, the physical and psychological (emotional) needs of the child".¹⁷⁶

119. The first scars of emotional abuse appeared in many cases long before the children arrived at the residential school. The separation from family and community when the children were removed from their homes has been described as the "first type of [emotional] wounding" inflicted by the residential school system.¹⁷⁷ Not only did the children have to deal with the sadness, the loneliness and the uncertainty of leaving home, in many cases at the early age of four or five, but they also found themselves in a situation where the expression of sadness, loneliness and uncertainty was discouraged. Lacking the emotional support within the residential school system the children became withdrawn and isolated, "hunched in their wretchedness and misery in the corner" as Johnston so vividly recounted.¹⁷⁸

120. This emotional dislocation often leads school officials to conclude that the children were "not interested...They are sullen, irresponsible won't speak up like white children and many others".¹⁷⁹ The turmoil of dislocation was further exacerbated upon arrival when, based on age and gender, siblings were separated from each other. As a result, brothers and sisters were not "allowed to

¹⁷⁶ Linda Bull, "Indian Residential Schooling: The Native Perspective", Canadian Journal of Native Education, V. 18, 1991, Supplement, p. 58.

¹⁷⁷ Assembly of First Nations, Breaking the Silence, *op. cit.*, p. 38.

¹⁷⁸ B. Johnston, Indian School Days, *op. cit.*, p. 60.

¹⁷⁹ J. Milloy, A National Crime, *op. cit.*, p. 179.

comfort, care for and have regular contact” with one another.¹⁸⁰ The fact is that siblings were discouraged from communicating with one another. Indeed, stories abound of clandestine meetings in the evening “near a hedge just to visit” or “furtive meetings over the fence” where siblings attempted to maintain a family connection and further, provide emotional support for one another.¹⁸¹

121. Neglect as well can be described as a component of the emotional abuse inflicted upon the children attending residential schools. As is suggested in the study Indian Residential Schools, when “supervisors neglected the suffering of children in their care, they were guilty of emotional abuse”.¹⁸²

122. Clothing and/or the lack of adequate clothing as part of the emotional stress felt by the children can be seen in numerous situations wherein the children were “insufficiently clad, resulting in much suffering and some cases of frozen limbs”, through to other situations wherein the children were forced to wear “objectionable” underwear, sometimes made from Robin Hood flour bags.¹⁸³

123. Fear too was very much a part of the emotional distress experienced by the children attending the residential school. The testimony of many of the children upon leaving the schools speaks to “being afraid most of the

¹⁸⁰ Assembly of First Nations, Breaking the Silence, *op. cit.*, p. 41.

¹⁸¹ See the reference to hedge visits in J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 219 and fence visits in Elizabeth Graham, The Mush Hole, *op. cit.*, p. 36.

¹⁸² Indian Residential Schools, *op. cit.*, p. 57.

¹⁸³ See the frozen limbs in N.A.C., RG 10, V. 6191, File 462 - 1, Part 1 and flour bag underwear in J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 299.

time”.¹⁸⁴ Linda Bull in her paper “Indian Residential Schooling: The Native Perspective”, suggests that this fear was “initially of the unknown” but it became a “fear that developed and that was instilled in their hearts and minds as little children”.¹⁸⁵ The fear was compounded by what is described in the Assembly of First Nation’s report Breaking the Silence as the “disorienting” effect of the school, wherein the children encountered - many for the first time, “big long hall ways and lots of big room (sic) and lots of doors.... And water coming out of the walls for washing yourself....”¹⁸⁶

SUPPRESSION OF SPIRITUAL PRACTICES

124. The spiritual component of the residential school program was from the beginning a founding objective of the program. Nicholas Davin in his report that was tabled with the federal government in 1879 and which became the blueprint for the residential school program spoke to not only the necessity of including a spiritual component in the school program but also the necessity of altering the belief structure of the children attending residential schools. Davin concluded that: “The importance of denominational schools at the outset for the Indians must be obvious. One of the earliest things an attempt to assimilate them does is to take away their simple Indian mythology....to disturb this faith, without supplying a better, would be a curious process to enlist the sanction of civilized

¹⁸⁴ Indian Residential Schools, *op. cit.*, p. 58.

¹⁸⁵ Linda Bull, “Indian Residential Schooling: The Native Perspective”, Canadian Journal of Native Education, V. 18, 1991, p. 41.

¹⁸⁶ Assembly of First Nations, Breaking the Silence, *op. cit.*, p. 23.

racés whose whole civilization, like all civilizations with which we are acquainted, is based on religion".¹⁸⁷

125. Referred to elsewhere as "cultural replacement", "resocialization", "spiritual readjustment" and perhaps most pointedly, "spiritual violence", the intent was, "eradicating traditional Indian religion and cultural practices".¹⁸⁸ The churches were clearly committed to the "eradicating of traditional Indian religion" as is perhaps most vividly seen in the "échelle de Lacombe" or Lacombe's ladder. Depicting two paths leading from Creation to Judgement Day, Father Lacombe's graphic showed that the "Voie du Bien" (the way of good) or the path to heaven was the Christian path and the "Voie du Mal" (the way of evil) or the path to hell was the Aboriginal path.¹⁸⁹ Interpreted further by Miller in Shingwauk's Vision, "Lacombe's ladder was simply the graphic expression of an ethos in which all things Indian were pagan, evil and unacceptable".¹⁹⁰ According to a former student of the Blue Quills school in Alberta, the message was clear; "if you stay Indian you'll end up in hell".¹⁹¹

¹⁸⁷ Nicholas Davin, Report on Industrial Schools, op. cit., p. 14.

¹⁸⁸ See "cultural replacement" in J.S. Milloy, A National Crime, op. cit., p. 36, "resocialization" in Ibid., p. 37, "spiritual readjustment" in W. Stevenson, "The Red River Indian Mission School", Native Studies Review, V. 4, Nos. 1 & 2, 1988, p. 145, "spiritual violence" in J. Pettit, "To Christianize and Civilize", op. cit., p. 279 and "eradicating traditional Indian religion and cultural practices" in J.R. Miller, "Owen Glendower, Hotspur, and Canadian Indian Policy" in J.R. Miller (ed) Sweet Promises, Toronto: University of Toronto Press, 1992, p. 334.

¹⁸⁹ See a reproduction of Lacombe's ladder in J.R. Miller, Shingwauk's Vision, op. cit., p. 192.

¹⁹⁰ Op. cit., p. 191.

¹⁹¹ Op. cit.

126. The federal government, like the churches was also committed to the goal of spiritual adjustment. Superintendent General of Indian Affairs, Edger Dewdney, for example in suggesting that Aboriginal “mythology” be replaced by “one spiritual training” was speaking to the same sense of righteousness as Lacombe.¹⁹² Dewdney, however, in the Departmental Annual Reports, was far more emphatic in his support for what he called the “emancipation” of the Aboriginal community. According to the Superintendent General, the spiritual awakening “reclaims” the child from “the uncivilized state” and it rescues the child from “the present state of ignorance, superstition and helplessness”.¹⁹³

127. The perspective presented by Dewdney and Lacombe is vividly captured in the Catholic Church’s publication, The Indian Missionary Record. Here, for example, in 1938, the Reverend G.L. Laviolette of the Qu’Appelle residential school, criticizes what he calls “Indian religion”, as being “overburdened with superstitious rites and magic”.¹⁹⁴ In subsequent issues, Laviolette makes the case that these “evils must be counteracted by the spreading of the truth” and further, that it is through religious instruction as was provided in the residential schools that the so-called “truth” will prevail.¹⁹⁵ For the

¹⁹² J.S. Milloy, A National Crime, *op. cit.*, p. 37.

¹⁹³ Canada, 52 Vic., 1889, Sessional Papers, N. 16, pp. XI - X, Canada, 53 Vic., 1890, Sessional Papers, N. 12, 1890, p. XI

¹⁹⁴ As cited in Linda Bull, Indian Residential Schooling: The Indian Perspective, *op. cit.*, pp. 31 - 32.

¹⁹⁵ Ibid., p. 31.

Catholic Church, spiritual readjustment was apparently more than a spiritual awakening.

128. It is the consensus of investigators and commentators that residential schools across Canada were intended to provide for the spiritual readjustment of the children. From the founding premise of the residential school program to the curriculum taught in the schools through to the extra-curricular activities enforced upon the children, the schools bombarded the children with the *voie du bien*. At the same time, the children were denied the opportunity to practice their own traditions and custom and lost the right to exercise their own spirituality in their own way. The Assembly of First Nations has called this "the wounding of the spirit".¹⁹⁶ It was a process whereby total "immersion into a different culture with radically different spiritual concepts, was perhaps the most severe wounding experience for First Nations children. The teachings from home were no longer acceptable....The process of taking away the basic identification of spirit created total confusion and disorientation for the children about themselves and their way of life."¹⁹⁷

129. When the Report on Industrial Schools recommended the elimination of the children's "simple Indian mythology" or when the curriculum as was provided for in the "Programme of studies" was forced upon the children or when "Scripture Reading", "The Ten Commandments" or the "Lord's Prayer" became part of the classroom experience or when the administrators of schools

¹⁹⁶ Assembly of First Nations, Breaking the Silence, *op. cit.*, p. 58.

¹⁹⁷ Ibid., p. 57.

such as Shingwauk demanded student participation in activities such as the "Onward and Upward Club" with its' stated objective of assisting "young educated Indians to practice in their lives their christian profession, and to engage in those higher and more intellectual pursuits to which, as members of a christian and civilized community, they are both admitted and called", the schools and those that were administering the schools were providing an environment whereby the children in attendance were being "spiritually wounded."¹⁹⁸ The children were in fact being forced to change their value system and to alter of their belief structure.

130. Linda Bull in her paper "Indian Residential Schooling: The Native Perspective", writes that the children "...who were supposedly 'Christianized, civilized and educated' in a system that was neither of their undertaking nor of their choice at the time struggled to survive in an environment that created a great deal of individual and societal, turmoil, and confusion."¹⁹⁹ The turmoil and the confusion were but another example of the abuse inflicted upon the children attending the residential school.

131. One very vivid example of not only the turmoil and the confusion inflicted upon the children attending the residential school but also the spiritual violence inherent in the process was the cutting of hair. Agnes Grant in No End

¹⁹⁸ See "Indian mythology" in Nicholas Davin, op. cit., p. 14, the "Programme of studies" in Canada, 60 Vic., 1897, Sessional Papers, N. 14, pp. 396 - 399, the "Onward and Upward Club" in Canada, 53 Vic., 1890, Sessional Papers, N. 12, pp. 22 - 28 and "spiritually wounded" in the Assembly of First Nations, Breaking the Silence, op. cit., p. 56.

¹⁹⁹ Linda Bull, "Indian Residential Schooling: The Native Perspective", op. cit., p. 52.

of Grief, states: "Native people were highly spiritual and believed that hair was part of the human spirit. When Europeans insisted on cutting hair, they were attacking the culture at its core."²⁰⁰ The stories of "close haircuts", "cutting off the child's hair", "head shavings" and having "hair cut off with garden shears" abound in the testimony of former residential school students.²⁰¹ As is articulated by Arlene Greyeyes in her thesis "St. Michael's Indian Boarding School", the cutting of hair meant a "cutting into an Indian belief system".²⁰² This is further captured by Grant when she states; "Of profound spiritual significance was the braid, which signified mind, body and spirit. It was believed that without all three components no person could be whole. The three strands, braided together, signified the strength of united action. When the hair of Residential school children was cut, the sanctity of the braid was destroyed on a physical, visible plane; cutting the braid also represented the destruction of Native spirituality."²⁰³ In fact, again according to Grant's findings, "cutting hair is a key part of rituals of cross-cultural domination".²⁰⁴

²⁰⁰ Agnes Grant, No End of Grief, *op. cit.*, p. 18.

²⁰¹ See for example, the "close haircuts" and the "cutting off of the child's hair" in J. Milloy, A National Crime, *op. cit.*, p. 112 and the "head shavings" and "garden shears" in J.R. Miller, Shingwauk's Vision, *op. cit.*, p. 324.

²⁰² Arlene Greyeyes, "St. Michael's Indian Residential School", MSW thesis, Carleton University, 1995, p. 65.

²⁰³ Agnes Grant, *op. cit.*, p. 19.

²⁰⁴ Ibid., p. 1.

APPREHENSION AND CONFINEMENT

132. The children involved in the residential program were taken from their home community, often against their will by agents of the crown - most notably, Royal Canadian Mounted Police officers or Indian Agents, placed on a boat, plane, train, truck or car, transported many kilometres in often a dangerous and uncomfortable position, with no or limited travel provisions, arriving at the school frightened, fatigued, hungry and in some cases, physically injured.

133. Trucks were one form of transport used by the residential school to bring the children to the schools. They were often described in the testimony of the children who attended the schools as "a huge truck", a "great big truck" or a "flat bed truck".²⁰⁵ They had rails or a rack around the outside edge and seats for the children to sit upon. The trucks were apparently open vehicles as some of the children remembered being soaked by rainfall during the course of the "long trip".²⁰⁶ Cars too were employed for road assessable communities.²⁰⁷ School officials also used "a boat", "a steamer", a "police boat" or what one former student referred to as a "gunboat" when she described how the "Mounties crammed us into the hold" to transport them to the Alberni residential school on

²⁰⁵ See the truck stories in Behind Closed Doors, Secwepemc Cultural Education Society, pp. 35 - 47.

²⁰⁶ Ibid., p. 47.

²⁰⁷ Ibid., p. 61.

Vancouver Island.²⁰⁸ Planes and trains were used apparently when warranted by distance.²⁰⁹ Indeed in some cases, such as the experience of a nine year old Mohawk boy, young children travelled several hundred kilometres by train as they were transported from their home communities to a residential school.²¹⁰

134. The children were, according to Miller, “captured during the fall round-up” in preparation for the commencement of the fall term.²¹¹ The so-called “round-up” was described most vividly in Doreen Jensen and Cheryl Brooks’ In Celebration of Our Survival as it relates to the Manitoba experience in the following manner; “... the Indian agents and RCMP constable approached the house of an Indian family, bang on the door and loudly demand the parents give up their children to them. The parents have barricaded the door and refuse to answer. The Indian agent instructs the RCMP constable to break down the door. They rush into the house, pry the frightened, screaming children from their parents arms and rush them to a holding area outside. The constable and agent go the next house....”²¹²

²⁰⁸ See the “boat” in Indian Residential Schools, *op. cit.*, p. 14, the “steamer” in Behind Closed Doors, *op. cit.*, p. 25, the “police boat” in Indian Residential Schools, *op. cit.*, p. 18 and the “gunboat” in K. Annett, Hidden from History, *op. cit.*, p. 83.

²⁰⁹ See, for example, the use of the plane as means of transporting children in Indian Residential Schools, *op. cit.*, p. 22 and the train in J. R. Miller, Shingwauk’s Vision, *op. cit.*, p. 410.

²¹⁰ As cited in J. R. Miller, Shingwauk’s Vision, *op. cit.*, p. 311.

²¹¹ Ibid., p. 289.

²¹² Doreen Jensen and Cheryl Brooks (eds), In Celebration of Our Survival, Vancouver: University of British Columbia Press, 1991, p. 151.

135. From the holding area the children were “loaded” or “crammed” into the vehicle of choice and transported to the residential school.²¹³ They were seldom “allowed to mix with the general public” and often travelled without any provisions such as food or water.²¹⁴

136. The children who were transported from their home communities to the residential schools were not only physically removed from their communities and their culture - many times forcibly, but as a result of their relocation they also became spiritually, emotionally and mentally disconnected from their communities. Although in some cases the children were sent to the schools by their families in the hope that they would acquire the skills and knowledge necessary to participate in a changing world, in other cases, children were clearly taken against their will and the will of their families. Indeed, in the testimony of many former residential school students, the leaving home experience is described as a “kidnapping”.²¹⁵

137. Voluntary or otherwise, the children were separated from their families, they were denied sustenance and the basic essentials of life such as protection from inclement weather and, they were placed in dangerous and at times life threatening situations. All the children attending residential schools were transported to the institution by one means or another. Some times the

²¹³ See the loading of the children in Behind Closed Doors, *op. cit.*, p. 50 and the cramming of the children in K. Annett, Hidden from History, *op. cit.*, p. 83.

²¹⁴ See the “general public” in Behind Closed Doors, *op. cit.*, p. 25 and the lack of provisions in K. Annett, Hidden from History, *op. cit.*, p. 83.

²¹⁵ See, for example, the “kidnapping” experiences as described in K. Annett, Hidden from History, pp. 83 - 86.

journey involved more than one means of transportation, as was often the case with train travel as the children had to be taken to and from the train station. In the case of the residential student population of Walpole Island, for example, of those interviewed by Miller and Danziger, roughly sixty-six percent of the children travelled the approximately 1,000 miles to attend Shingwauk in Sault Ste. Marie, fourteen percent the 60 miles to attend Mount Elgin in Munceytown, thirteen percent the 240 miles to attend the Mohawk Institute in Brantford, three percent the 1200 miles to St. John's in Chapleau and the 2,800 miles to attend the Brandon School in Brandon and one percent travelled the approximately 200 miles to the Mount Pleasant School in Mount Pleasant, Michigan.²¹⁶

138. When they finally arrived at the schools, the children were confined there. In describing the general appearance of the residential school, Agnes Grant in her book No End of Grief, provides not only a fairly graphic picture of the physical structure but she also offers what appears to be an insightful perspective of the children's perception of the school. Based on the testimony of "hundreds of people" Grant concluded that the "...building complex, often containing numerous outbuildings, would be surrounded by a chain link fence. The main entrance was accessible to the public, a feature which created the impression of freedom; once the children entered the front door, however, they were imprisoned as surely as if they had been incarcerated in jail. For many

²¹⁶ J.R. Miller and E. Danziger, "In the Care of Strangers", *op. cit.*, p. 76.

children this was a tremendous shock as their individual freedom was curtailed.²¹⁷

139. Incarcerated in jail or enrolled in a residential school, the “confinement became imprisonment” a “confinement...akin to slavery”.²¹⁸ From their arrival, the children attending the residential school were confronted with the lock and key philosophy of the residential school program. In this regard not only were they gated within the school compound but within the school itself the children were confined to “gymnasiums, dormitories, playrooms, woodsheds, cubbyholes, closets” and even “benches” and “beds”.²¹⁹ All of this took place under lock and key. Stories abound where children were “locked in a room”, where they were “locked in a cold dark room”, where they were “locked up temporarily” or “for as long as 12 days”, or of “dorms being locked up”.²²⁰

140. More shocking, however, are the stories that speak to the use of chains or shackles to confine the students in the schools. Not only were “boys chained to benches” or children shackled “to the bed” but according to the Report

²¹⁷ Agnes Grant, op. cit., p. 112.

²¹⁸ See “imprisonment” in J. Milloy, A National Crime, op. cit., p. 138 and “slavery” in Indian Residential Schools, op. cit., p. 29.

²¹⁹ See the confinement to “gymnasiums, dormitories...” in Indian Residential Schools, op. cit., p. 29, confinement to “benches” in J. Milloy, A National Crime, op. cit., p. 139 and confinement to “beds” in Canada, Report of the Royal Commission On Aboriginal Peoples, op. cit., p. 337.

²²⁰ See “locked in a room” and “locked in a cold dark room in J. Milloy, A National Crime, op. cit., p. 288 and p. 143, “locked up temporarily” in L. Bull, “Indian Residential Schooling”, op. cit., p. 46, “for as long as 12 days” in Canada, Report of the Royal Commission on Aboriginal Peoples, op. cit., p. 368 and “dorms being locked up” in Indian Residential Schools, op. cit., p. 38.

of the Royal Commission on Aboriginal Peoples, government officials were well aware of the chaining and/or shackling of the children attending the residential schools.²²¹ Indeed, in 1943, R. Hoey, Superintendent of Welfare and Training, actually took receipt of a set of shackles that had been used to chain children to the beds at St. George's school in British Columbia.²²² Some of the schools also apparently used a designated room as confinement space. Shingwauk, for example, maintained a separate "lock-up" or "jail" for students who in the opinion of school principal, E.F. Wilson required special consideration. In Wilson's monthly publication, Our Forest Children, there is a brief description of the lock-up as was provided by a twelve year old "jailer" and the notation that "we have one boy in our jail".²²³

141. Not only was the jailing of children apparently an accepted practice at Shingwauk but according to the analysis of Sharon Wall in her thesis "To Train a Wild Bird", the use of jailers to maintain the lock-up revealed that "Wilson recognized the hegemonic value of distancing himself from the dispensing of justice."²²⁴ Not only were the children jailed and shackled but there is also evidence to suggest that other more life threatening measures were taken by the school administrators to ensure confinement. According to Elizabeth Graham in

²²¹ See "boys chained to benches" in J. Milloy, A National Crime, *op. cit.*, p. 139 and children shackled "to the bed" in Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 337.

²²² Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 337.

²²³ Sharon Wall, "To Train a Wild Bird", *op. cit.*, p. 40.

²²⁴ Ibid.

her study The Mush Hole, for example, at Mount Elgin it was reported by the local Indian Agent that "all the fire escapes [were] barred to prevent truancy".²²⁵

142. Truancy was clearly an issue at almost every single school as children "ran off constantly" but also in almost every single school, an issue was the fact that children were being held against their will.²²⁶ While it was perceived by school administrators as "important for a school to keep its enrolment up to the maximum" as "every student below this figure meant a loss of income", it was also, according to the record, difficult to "obtain entire possession of all Indian children".²²⁷ Recruitment and retention were part of the confinement issue but so too was the system of discipline as was employed in the residential school program. The record would seem to indicate that the two main reasons why in many cases "confinement became imprisonment", was the perceived necessity of maintaining enrolment figures and the disciplinary tactics employed by school administrators.²²⁸

143. The Report of the Royal Commission on Aboriginal Peoples has concluded that the "...pressure to keep schools full....led to bizarre recruitment techniques, including, local officials reported, 'bribing and kidnapping'".²²⁹ J.R.

²²⁵ Elizabeth Graham, The Mush Hole, *op. cit.*, p. 12.

²²⁶ J. Milloy, A National Crime, *op. cit.*, p. 284.

²²⁷ See the discussion of the relationship between enrolment and income in J.R. Miller, Shingwauk's Vision, *op. cit.*, p. 127 and the difficulty in obtaining "the entire possession of all Indian children" in J. Milloy, A National Crime, *op. cit.*, p. 7.

²²⁸ J. Milloy, A National Crime, *op. cit.*, p. 138.

²²⁹ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 357.

Miller in Shingwauk's Vision also writes of the "denominational rivalry" between the various schools and further, documents bribes ranging from new clothing to "financial inducements" that were used to recruit and maintain student populations.²³⁰ Also used, were the Royal Canadian Mounted Police (RCMP) who by the early 1930's "were explicitly made truant officers", the Indian Agent who, like the RCMP officer, regularly assumed the authority of truant officer, the Family Allowance Act which "contained clauses that required school attendance" and most importantly the Indian Act itself which through amendment in 1920 stated: "Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be assigned by the Superintendent General...The Superintendent General may appoint any officer or person to be a truant officer to enforce attendance of Indian children at school, and for such purpose a truant officer shall....have authority to enter any place where he has reason to believe there are Indian children between the ages of seven and fifteen...."²³¹

144. Confinement as a form of punishment was in part related to enforced attendance as often students who were considered "runaways" were punished upon their return to the institution with confinement but it was also used

²³⁰ J.R. Miller, Shingwauk's Vision, *op. cit.*, pp. 354 - 355.

²³¹ See the discussion of the RCMP and the Family Allowance Act in J.R. Miller, Shingwauk's Vision, *op. cit.*, p. 170, the Indian Agent in J. Milloy, A National Crime, *op. cit.*, p. 68 the Indian Act itself, Canada, Statutes of Canada, Geo. 10 - 11, 1919 - 1920, Chapter 50, Section 1, Clause 10, p. 308.

by school administrators as a regular disciplinary measure.²³² In this regard, schools used "confinement during recreation", "solitary confinement for such time as the offence warranted" or children were "shut up in a room for serious faults" or "they were being held as a punishment when they were confined".²³³ According to the Report of the Royal Commission, as recently as 1962, confinement "continued to be commonly applied" as a form of punishment.²³⁴

145. The buildings in which the children were confined often caused or contributed to significant health problems in the student population. "It all began with the building", argues John Milloy in A National Crime.²³⁵ They were "erected on very primitive plans", "...put up without due consideration for the purpose for which they would be required, hurriedly constructed of poor building materials, badly laid out without provision for lighting, heating or ventilating".²³⁶ They were also poorly sited. According to the government record they were often constructed on sites "where drainage [was] nigh impossible and without any

²³² In the case of the twelve boys who ran away from the Fort Frances residential school in 1963, not only were they confined when returned to the school, they were confined in the Atikokan jail until they were "retrieved" by social workers. See a discussion of this and other cases of children escaping the schools in J. Milloy, A National Crime, *op. cit.*, pp. 284 - 293.

²³³ See "confinement during recreation", "solitary confinement" and "serious faults" in J. Milloy, A National Crime, *op. cit.*, pp. 44, 45 and 143 and confinement as "punishment" in Indian Residential Schools, *op. cit.*, p. 29.

²³⁴ Canada, Report of the Royal Commission on Aboriginal Peoples, *op. cit.*, p. 372.

²³⁵ J. Milloy, A National Crime, *op. cit.*, p. 78.

²³⁶ J. Milloy, A National Crime, *op. cit.*, p. 78.

consideration being had for ordinary sanitary laws, and in the most exposed position".²³⁷

146. Whether in consideration of inadequate drainage, poor building materials or inadequate ventilation, the residential school system provided a dangerous, unhealthy and inappropriate living environment for the children enrolled in the residential school program. The end result was that children got sick, children were hurt and many children died. This in fact was acknowledged by the federal government in a briefing note prepared by Duncan Campbell Scott when he stated that the buildings "were unsanitary and...were undoubtedly chargeable with a very high death rate among the pupils".²³⁸

CULTURAL DEPRIVATION

147. When Aboriginal children were taken into the residential school system, it was their world view, their way of being, that came under attack. They were in effect, denied the opportunity of continuing to practice their way of being. They were forced to abandon their world view. They were deprived of the right to maintain their culture and their cultural traditions. Residential schools were a system of "resocialization", of "cultural replacement", of "cultural disruption", "the road to acculturation", "the ontological revolution", "a form of cultural invasion", or the "Resetting of the child's cultural clock".²³⁹

²³⁷ Ibid., p. 81.

²³⁸ As cited in J. Milloy, A National Crime, op. cit., p. 94.

²³⁹ See "resocialization" in J. Milloy, A National Crime, op. cit., p. 39, "cultural replacement" in R. Ing, "Effects of Residential Schooling", op. cit., p. 75, "cultural

148. The Report of the Royal Commission on Aboriginal Peoples, summarized the “radical re-socialization” by arguing that the “....children were not only to imbibe those values, and a new faith they were to live them....it required a concerted attack on the ontology, on the basic cultural patterning of the children and on their world view”.²⁴⁰

149. The record shows that cultural deprivation as experienced by the children attending residential school system, included attempts to eliminate and/or replace the so-called “tribal system” of community that had formed the basis of community since time immemorial, the communal method of land holding, the spatial orientation of the children, the land based activities, the seasonal time frame so integral to the well-being of the community, the pattern of family and family relations which extended well beyond blood ties, the wisdom and the council of the Elders, language, traditional foods and what has been referred to as a “food culture”, gender relations, clothing and the customs and practices of the community.²⁴¹

disruption” in R. Chrisjohn et. al., op. cit., p. 239, “road to acculturation” in J. Milloy, A National Crime, op. cit., p. 38, the “ontological revolution”, p. 39, “cultural invasion” in M.-E. Kelm, “A Scandalous Procession”, Native Studies Review, V. 11, No. 2, 1996, p. 53 and the “Resetting of the child’s cultural clock” in J. Milloy, A National Crime, op. cit., p. 36.

²⁴⁰ Canada, Report of the Royal Commission on Aboriginal Peoples, op. cit., pp. 340 - 341.

²⁴¹ See the discussion of the tribal system in J. Milloy, A National Crime, op. cit., p. 6, land holding, p. 16, spatial orientation in J.R. Miller, Shingwauk’s Vision, op. cit., p. 193, land based activities in J. Milloy, op. cit., p. 53, seasonal time frame in Ibid., p. 36, family and family relations in Ibid., p. 23, Elders in Ibid., p. 38, language in Ibid., p. 39, “food culture” in Ibid., p. 276, gender relations in J.R. Miller, Shingwauk’s Vision, op. cit., p. 159, clothing in Indian Residential Schools, op. cit., p. 132 and the customs and practices of the community in J.R. Miller, Shingwauk’s Vision, op. cit., p. 186.

150. The children were punished for speaking their language. They were divorced from their families and their communities. They were fed foods that were of another cultural and that were prepared to meet the dietary needs of that culture. They were disciplined and forced to pay deference to those in a position of authority. They were told that their ways were "savage" and that they were "heathens".²⁴² Their clothing which not only provided warmth and protection but also spoke to their identity, was discarded in favour of standard school uniforms. They were shepherded into gender defined roles that were representative of Euro - Canadian gender relations as opposed to those of the Aboriginal community. They were forced to participate in activities such as hockey or baseball and although many of the children may have had fond memories of the sporting events, sports were being used to indoctrinate them into the Euro - Canadian society.

151. As early as 1895 the Department of Indian Affairs proclaimed that the Aboriginal community would be "permanently disabled" if it was allowed to maintain its "native tongue".²⁴³ English and/or French were seen to carry the "culture of civilization" and as result, from the turn of the century, language became the "critical issue" in the educational program of the residential school.²⁴⁴ It was through language instruction that not only were the children going to

²⁴² See for example the reference to "savage" in J. Milloy, A National Crime, *op. cit.*, p. 36 and "heathens" in J.R. Miller and E. Danziger, "In the Care of Strangers", *op. cit.*, p. 73.

²⁴³ As cited in J. Milloy, A National Crime, *op. cit.*, p. 38.

²⁴⁴ Ibid.

acquire the “core concepts of European culture” but it was also through language instruction that children would become more and more distant from their own cultural roots.²⁴⁵ The language instruction policy, as was enforced in the schools by the Department, stipulated that the “use of English in preference to the Indian dialect must be insisted upon”.²⁴⁶ While as suggested by Miller in Shingwauk’s Vision, there are numerous examples where the children were able to maintain their first language during their tenure at the residential school, this was usually done in secrecy and often with severe consequences if discovered.²⁴⁷ “By far the more common experience”, according to Miller, was that students were “sternly forbidden to speak their language”.²⁴⁸ As is succinctly stated by Miller: “An overwhelming body of evidence indicates, however, that children who did not experience cultural alienation over language policy were decidedly in the minority”.²⁴⁹ Indeed as was the case, for example, at the Lejac school in British Columbia, where if the children were caught speaking their language the sisters took down their “drawers” and strapped them on the “backside”, more often not the children were punished for speaking their language.²⁵⁰

²⁴⁵ Ibid.

²⁴⁶ Ibid., p. 39.

²⁴⁷ J.R. Miller, Shingwauk’s Vision, *op. cit.*, pp. 200 - 204.

²⁴⁸ Ibid., p. 204.

²⁴⁹ Ibid.

²⁵⁰ J. Milloy, A National Crime, *op. cit.*, p. 143.

152. The fact is that in "...in any discussion of residential schools, loss of language, experienced by individual students and as well, experienced by whole communities, is a major issue and a source of much anger."²⁵¹

153. The children who attended the residential school were often removed from their families and their communities at the age of five or six and many remained at the schools (with the occasional summer visit home) until they were fifteen or sixteen years of age. During their ten month yearly tenure at the residential school the children were deprived of the opportunity of participating in the traditional activities of their home community. This included everything from the teachings of the Elders to hunting and fishing. As a result, not only did the children become "forcibly disconnected" from their family and their community but they also lost the knowledge base that was integral to the well-being of their community.²⁵²

154. The children were denied access to the lessons inherent in the stories told by the grandmothers. They were unable to learn the ways of the caribou from their fathers. They did not have the opportunity to pick up the skills of net mending or trap setting. The knowledge of plants and herbs that was so important to healthy, functioning community was not acquired. They lost the special relationship that their family and/or community had with the land and specific sites on the land. Many of the children also lost the sense of family and community.

²⁵¹ Indian Residential Schools, op. cit., p. 43.

²⁵² B. Schissel and T. Wotherspoon, The Legacy of School for Aboriginal People, op. cit., p. 54.

155. Celia Haig-Brown in her study Resistance and Renewal and based upon the testimony of former students of the Kamloops Indian Residential School, concludes that the residential school system was largely responsible for many of the so-called family “deficiencies” encountered in the Aboriginal community.²⁵³ Parenting skills, for example, which are acquired by children through “the way they are parented”, were not developed by the children because they “had limited experience as family members”.²⁵⁴ By the 1960's, according to George Caldwell's findings in the report, A Research Study of the Child Care Program at Nine Residential Schools in Saskatchewan, many former students were in fact “abrogating their responsibility as parents” because they had been deprived of the opportunity of living in a family situation.²⁵⁵

156. In the study Indian Residential Schools and based upon the testimony of 110 former residential school students of the Nuu-chah-nulth First Nation in British Columbia, the authors maintain that “diet is another piece of the combined forces which bring about loss of culture”.²⁵⁶ This theme was also present in Milloy's A National Crime, when he writes that: “The dining room table was every bit as much a site of cultural struggle as was the classroom desk....The dining rooms were the domain of the Canada's Food Rules, of the

²⁵³ Celia Haig - Brown, Resistance and Renewal, *op. cit.*, p. 122.

²⁵⁴ *Ibid.*, pp. 122 - 123.

²⁵⁵ George Caldwell, A Research Study for the Child Care Program at Nine Residential Schools in Saskatchewan, A Report Prepared for the Department of Indian Affairs by Canadian Welfare Council, Ottawa, 1967, p. 21.

²⁵⁶ Indian Residential Schools, *op. cit.*, p. 129.

sacred four food groups, based not upon the old Aboriginal economy but upon western science."²⁵⁷

157. Although the food served to the children often left much to be desired in terms of quality and quantity, the children were also fed food that was not to their liking and certainly not of the "comfort foods of home".²⁵⁸ The foods the children were fed were also not necessarily the most appropriate foods for their dietary needs. On at least one occasion, for example, the connection had been made between the health of the children and "Aboriginal food culture".²⁵⁹ The children were fed vegetables which they were not used to, cheese and other dairy products which they were not fond of and meat products such as bologna which became the staple of many of the schools and which was also a less than favoured menu item. What was liked was the "comfort foods of home"; moose meat, beaver, duck, goose, fish and bannock. Unfortunately for the children, according to the school dietician at the Norway House Mission school in northern Manitoba, the "game laws prevent[ed] them from enjoying such delicacies often."²⁶⁰

158. In response to a letter dated March 5, 1931, for example, from E. Byers, principal of Cecilia Jeffrey School, in which the Department of Indian Affairs was asked whether or not it would be possible to "periodically" provide

²⁵⁷ J. Milloy, A National Crime, *op. cit.*, pp. 275 - 277.

²⁵⁸ Ibid., p. 276.

²⁵⁹ Ibid., p. 122.

²⁶⁰ Ibid., p. 277.

deer meat as the children have “always been accustomed to having the meat”, government policy was articulated in the following manner: “The present provisions of the Ontario Game and Fisheries Act contains no authority under which venison or moose meat could be purchased for the purpose of serving the Indian children attending this school”.²⁶¹

159. Agnes Grant in citing Basil Johnston, maintained that Aboriginal education was traditionally based upon the “principles of respect, humility, sharing, caring, healing, generosity, cooperation, patience, humour, and a willingness to help others”.²⁶² Miller, in further summarizing what he called the “Traditional Education of Indigenous Peoples”, referred to it as the “three L’s”; looking, listening and learning.²⁶³ It was the means of shaping behaviour “...by positive example in the home, the provision of subtle guidance towards desired forms of behaviour through the use of games, a heavy reliance on the use of stories for didactic purposes, and, as the child neared early adulthood, the utilization of more formal and ritualized ceremonies to impart rite-of-passage lessons with due solemnity”.²⁶⁴

160. The exercise of authority and the use of discipline that came to be the cornerstone of the residential school program was in many ways diametrically opposite to the traditions of the Aboriginal community. Not only did the

²⁶¹ See the initial letter and the response in N.A.C., RG 10, V. 6187, File 461 -1, Part 1.

²⁶² Agnes Grant, No End of Grief, *op. cit.*, p. 35.

²⁶³ J.R. Miller, Shingwauk’s Vision, *op. cit.*, pp. 15 - 16.

²⁶⁴ Ibid., p. 17.

enforcement of behavioural standards contradict the lessons of the Aboriginal community but as was shown in the study, The Legacy of School for Aboriginal Peoples, "The dignity of Aboriginal culture was lost initially through forms of discipline in residential schools that attacked the implicit sense of autonomy in Aboriginal cultures."²⁶⁵ This implicit sense of autonomy was based upon a well established ethic of non-interference. Discussed in some detail in Rupert Ross' Dances With a Ghost, the author cites Clare Brant when he argues that it was the "one of the oldest and one of the most pervasive of all the ethics" of the Aboriginal community and that the use of any form of discipline to modify or enhance behaviour was strictly "forbidden".²⁶⁶ The residential school program, however, did attempt to modify or enhance behaviour and in the process, not only were the children strapped, whipped, beaten and confined but "essence" of their culture came under attack.²⁶⁷

161. In the Assembly of First Nations' study, Breaking the Silence, the authors observe that the children attending residential schools "were in training to become civilized Christian people".²⁶⁸ Through the course of their "training", they were expected to renounce their traditional spiritual practices and accept the teachings of the Christian bible. In the process, the children were constantly told

²⁶⁵ B. Schissel and T. Wotherspoon, The Legacy of School for Aboriginal People, op. cit., p. 39.

²⁶⁶ R. Ross, Dancing With a Ghost: Exploring Indian Reality, Markham: Octopus Publishing, 1992, p. 12.

²⁶⁷ B.Schissel and T. Wotherspoon, op. cit., p. 39.

²⁶⁸ Assembly of First Nations, Breaking the Silence, op. cit., p. 39.

that they were “pagans” and that “Indian ceremonies, or ways of worship, were evil and the work of the devil”.²⁶⁹ Government and church officials fully believed that the “key” to the success of the residential school program was the role of religion in cultural replacement.²⁷⁰ What this in effect meant was that the recognition of Sunday as a special day of worship or the celebration of Christmas or Easter with pageants or parades was meant to replace the seasonal celebration of the Sun Dance or traditional practices such as smudging or the pipe ceremony as the anchor of the children’s spirituality.

162. As narrated by former students, the end result was that the children became confused and uncertain in their spiritual beliefs. A particularly telling example of the conundrum encountered by the children revolves around the notion of good and evil. The concepts of sin, evil and the devil as were presented to the children in the schools were Christian concepts that were not only new to the children but also very frightening. The concept of sin in fact “was contradictory to many First Nations beliefs about children”.²⁷¹ Children were a gift. They were seen to represent the “purity of life”.²⁷²

163. The so-called “ultimate reflection of the civilizing process was the uniformity of grooming and dress”.²⁷³ More often than not, suits for the boys and

²⁶⁹ Ibid., p. 26.

²⁷⁰ J. Milloy, A National Crime, op. cit., p. 36.

²⁷¹ Assembly of First Nations, Breaking the Silence, op. cit., p. 59.

²⁷² Ibid.

²⁷³ Ibid., p. 195.

dresses for the girls, the common uniform and the perception presented by children attired in the common uniform, according to government officials, spoke to the "success of acculturation".²⁷⁴ Although the children may have seldom worn the suits and dresses and their daily school clothing may have been cast-offs or school made garments, their clothing from home was immediately discarded upon their arrival at the residential school.²⁷⁵ Clothing represented another form of cultural loss. It was in fact, another form of acculturation. the success of which was captured in numerous "before and after tuition" photos of the children attending the residential schools.²⁷⁶

164. From Thomas Moore (a young plains boy who was sent to the Regina school) to Quewich and his children (who were sent to the Qu'Appelle school), the photos attempted to contrast what were perceived to be "the symbols of the past" (the traditional clothing) with the vision for the "future" (European styled clothing).²⁷⁷ As is maintained by John Milloy, "The images are a cogent expression of what federal policy had been since Confederation and what it would remain for many decades. It was a policy of assimilation, a policy designed to move Aboriginal communities from their savage state to that of civilization."

²⁷⁴ Ibid.

²⁷⁵ See the discussion of clothing in Indian Residential Schools, op. cit., pp. 132 - 134.

²⁷⁶ J. Milloy, A National Crime, op. cit., p. 3.

²⁷⁷ See the various photographs and the discussion in both J. Milloy, A National Crime, op. cit., pp. 3 - 5 and 28 - 29 and J.R. Miller, Shingwauk's Vision, op. cit., pp. 196 - 199.

165. In the case of the Thomas Moore image, which has become one of the most cited symbols of acculturation, the young man is shown in the first photograph in what might be considered traditional plains clothing complete with beaded dress and moccasins and in the second in what might be considered a typical European costume of the time, a suit and boots with a “Glengarry cap” strategically placed on a background table.²⁷⁸ The photo, according to Miller, “epitomized the remaking of Indian children” as was the intention of the residential school program.²⁷⁹

166. Gender and gender relations was also part of the “remaking equation” as was applied through the residential school system. Indeed, as concluded by Miller, “A particular instance of the cultural impact has been the way in which the schools inculcated Euro-Canadian notions of gender identity and proper behaviour for the two sexes.”²⁸⁰ Not only did the schools enforce “Euro-Canadian norms for what constituted proper female and male behaviour”, they also “tended to replicate the separate spheres’ ideology of Euro-Canadian society”.²⁸¹ The children were neither familiar, nor comfortable with, rigorously enforced gender roles or the so-called “separate spheres’ ideology”. The girls were expected to learn the skills of “domestic science” while the boys toiled with

²⁷⁸ J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 199.

²⁷⁹ Ibid.

²⁸⁰ Ibid., p. 420.

²⁸¹ See the discussion of “what constituted proper female and male behaviour” in J.R. Miller, Shingwauk’s Vision, *op. cit.*, p. 248 and the “separate spheres’ ideology”, p. 421.

"industrial training".²⁸² The girls were expected to perform the indoor chores while the boys the outdoor chores. Girls were expected to spend their leisure time (such as it was) in quiet play with dolls and kitchens toys while the boys were expected to make use of (where available) hockey sticks or baseball bats in more aggressive, outdoor games. Girls were expected to participate in the "religious sodalities" while the boys were encouraged to become involved in the cadets.²⁸³ At the same time, the schools enforced the gender based segregation of the children. This happened not only in the dormitories but in the playrooms, at the tables in the refectory, the pews in the church, the classrooms and even in the playground where the boys play area was often separate from the girls play area.²⁸⁴ As Georgina Gregory recalled of her days at the File Hills Residential School in Saskatchewan, the "boys and girls never mixed in boarding schools. There was always a side for the boys and a side for the girls in everything. We weren't allowed to speak at the table or to our brothers...."²⁸⁵

167. All of this was foreign to the children. While in the Aboriginal community there were gender distinctions made - i.e. women's teaching and men's teachings, for the most part boys and girls were treated the same and as equals. The residential school system not only deconstructed gender but it also radically re-engineered gender relations. As the girls were taught to be weak and

²⁸² Ibid., p. 220.

²⁸³ Ibid., 226.

²⁸⁴ Ibid., p. 219.

²⁸⁵ Constance Deiter, From Our Mother's Arms, op. cit., p. 63.

vulnerable (subservient) and the boys strong and assertive (controlling) the gender partnership of equity and respect that had existed since time immemorial no longer formed the basis of the community.

168. Sport and recreation was used as a tool of social control within the schools but it was also used as a means of indoctrinating the children into the ways of Euro-Canadian society and further, of dismantling the traditional ways of the Aboriginal community. From cricket to hockey, from brass bands to theatre groups, from Boy Scouts to Canadian Girls in Training all the way to movie nights with films such "Loyola the Soldier Saint", "Joan of Arc" or "Rulers of the Sea", the leisure time activities provided by the school system were part and parcel of the cultural replacement strategy pursued by the residential school program.²⁸⁶

169. The introduction of the scouting movement into the residential schools is a good example of the application of the replacement strategy at work. As it was introduced, it was designed to "promote concepts of British - Canadian citizenship" and further, "turn out good citizens".²⁸⁷ Not only did the children learn of the virtues of the monarchy through the scouting program but they were also taught deference to authority, obedience and routine. At the Alert Bay school on Vancouver Island the principal provided for the establishment of the Britannic Cadet movement.²⁸⁸ Never, whether through Boy Scouts, movie nights or

²⁸⁶ See a very general discussion of leisure time activities in J.R. Miller, Shingwauk's Vision, op. cit., pp. 271 - 288.

²⁸⁷ See the "concepts of British - Canadian citizenship" in J.R. Miller, Shingwauk's Vision, op. cit., p. 277 and "good citizens" p. 157.

²⁸⁸ J.R. Miller, Shingwauk's Vision, op. cit., p. 157.

hockey practice, were the children taught the traditional activities of their community. There was no formal, organized effort to teach the children baggataway or kutepuchkunuputuk nor was there any effort to introduce story telling as part of the residential school program.

170. The recreational activities of the residential school, such as they were, were based on Euro - Canadian traditions and they were introduced to the children with the very specific purpose of transforming one way of life into another. In the process, the children whose way of life was being transformed, were denied the opportunity of participating in and, enjoying, their traditional activities. This too was cultural deprivation.

SUMMARY

171. Based on my review of the material and information described above, my experience, training and education as a Professor and my careful analysis of this material I have formed the following opinions about the Crown's conduct in respect of the operation of Residential Schools in Canada during the Class Period.

172. The principle purpose and goal of the Residential School System was to eliminate what the federal government believed to be an "Indian Problem" through the assimilation of Aboriginal children into Euro-Canadian society by means of forced separation from their families and communities and the suppression and if possible the obliteration of their Native languages, traditions, customs and culture.

173. The Crown's standards, practices, procedures and funding formulas were conceived for and applied to Residential Schools across Canada on a systemic basis which varied remarkably little between regions of the Country and between individual institutions. This national or systemic approach by the Crown to the Residential Schools was evident throughout the Class Period.

174. The living conditions and pedagogical methods which students experienced in Residential Schools across Canada were similar from region to region at any given time throughout the Class Period and were principally determined by the Crown through the level of funding provided for the operation of the schools and by the Orders, Regulations and Directives issued from time to time with respect to the management and operation of the schools.

175. The problem of sexual, physical, psychological and emotional abuse and the suppression of cultural and spiritual practices is well documented across the Residential School System during the Class Period and in my opinion, represented a persistent problem of National scope and importance.

176. The Residential Schools as conceived and operated by the Crown were not 'schools' within the meaning generally contemplated by educators nor, in my view, could they have been considered the sorts of schools contemplated by the parties to the Treaties listed in the Fresh as Amended Statement of Claim by reason of the obvious and documented failures to teach the children and the effort to suppress and obliterate the languages, traditions, customs and culture of the Aboriginal children who attended the schools.

Exhibit A
(insert tab here)

Exhibit "A" referred to in the ⁰¹⁴²⁰
affidavit of Robert Robson

Curriculum Vitae

Sworn before me this 25th day
of July A.D. 19 2003

Robert S. Robson

Robert S. Robson
A Commissioner, etc.

Present Position:

- Associate Professor

Degrees:

- Doctor of Philosophy Degree - History (April 1986)
University of Guelph
- Master of Arts Degree - History (April 1980)
University of Manitoba
- Bachelor of Arts Degree (Honours) - History (April 1977)
University of Guelph

Employment History:

- Associate Professor, 2001 -
- Associate Professor and Chair, 1998 - 2001
- Assistant Professor and Chair, 1997 - 1998
- Assistant Professor, 1994 - 1997
Department of Indigenous Learning,
Lakehead University.
- Chair, 2000 -
Northern Studies Program,
Lakehead University.
- Adjunct Professor, 1999 -
Department of History,
Lakehead University.
- Lecturer, 1994
Department of History,
University of Manitoba.
- Lecturer, 1993 - 1994
Canadian Studies Program/Department of History,
University of Winnipeg/University of Manitoba.
- Assistant Professor, 1992 - 1993,
Department of History,
Brandon University.

- Assistant Professor, 1991 - 1992,
Department of History,
University of Manitoba.
- Assistant Professor, 1990 - 1991,
Canadian Studies Program/Department of History,
University of Winnipeg.
- Research Fellow, 1986 - 1989,
Institute of Urban Studies,
University of Winnipeg.

Honours:

- University of Guelph Graduate Scholarship, 1982 - 1985.

Scholarly and Professional Activity:

- Board Member, Association of Canadian Universities for Northern Studies,
2001 -
- Book Review Editor, Manitoba History, 1990 - 1995.
- Council Member, University of the Arctic, 2002 -
- Member, Editorial Committee, Canadian Journal of Urban Research, 1993 -
1996.

Graduate Supervision:

- Mark Solomon, "Shingwauk Residential School", MA thesis, Department of
History, Lakehead University, 2001 -

Undergraduate and Graduate Courses Taught (1995 - 2003):

- Indigenous Learning 1100 - Introduction to Indigenous Learning, 2002 - 2003.
 - Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous
Learning, 2002.
 - Indigenous Learning 3312 - Shelter in Native Communities, 2003.
 - Indigenous Learning 4111 - Honours Project I, 2002.
 - Indigenous Learning 4112 - Honours Project II, 2003.
 - Northern Studies 3001 - Issues in Northern Studies, 2002 - 2003.
 - History 5901 - Master's Research, 2002 -2003.
-
- Indigenous Learning 1100 - Introduction to Indigenous Learning, 2001 -2002.
 - Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous
Learning, 2001.
 - Indigenous Learning 2311 - Native Peoples and Newcomers, 2002.
 - Indigenous Learning 3312 - Shelter in the Native Community, 2002.
 - Indigenous Learning 3435 - Native Peoples and the Land, 2002.
 - Indigenous Learning 4111 - Honours Project I, 2001.

- Indigenous Learning 4112 - Honours Project II, 2002.
 - History 4001 - Special Topics, 2001 - 2002.
-
- Indigenous Learning 1100 - Introduction to Indigenous Learning, 2000 - 2001.
 - Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous Learning, 2000.
 - Indigenous Learning 2313 - Native Peoples and the Urban Community, 2001.
 - Indigenous Learning 4111 - Honours Project I, 2000.
 - Indigenous Learning 4112 - Honours Project II, 2002.
 - Indigenous Learning 4301 - Special Topics, 2000 - 2001.
 - History 4001 - Special Topics, 2000 - 2001.
-
- Indigenous Learning 1100 - Introduction to Indigenous Learning, 1999 - 2000.
 - Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous Learning, 1999.
 - Indigenous Learning 3437 - Native People and the Issues, 2000.
 - Indigenous Learning 4111 - Honours Project I, 1999.
 - Indigenous Learning 4112 - Honours Project II, 2000.
 - Indigenous Learning 4301 - Special Topics, 1999 - 2000.
-
- Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous Learning, 1998.
 - Indigenous Learning 2433 - Native People and the Government, 1998.
 - Indigenous Learning 2433 - Native People and the Government, 1999.
 - Indigenous Learning 3435 - Native People and the Land, 1999.
 - Indigenous Learning 4111 - Honours Project I, 1998.
 - Indigenous Learning 4112 - Honours Project II, 1999.
 - Indigenous Learning 4301 - Special Topics, 1998 - 1999.
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- Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous Learning, 1997.
 - Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous Learning, 1998.
 - Indigenous Learning 2312 - Native People and the North, 1998.
 - Indigenous Learning 2313 - Native People and the Urban Community, 1998.
 - Indigenous Learning 2313 - Native People and the Urban Community, 1998.
 - Indigenous Learning 4111 - Honours Project I, 1997.
 - Indigenous Learning 4112 - Honours Project II, 1998.
-
- Indigenous Learning 1310 - Methods and Approaches Applied to Indigenous Learning, 1996.
 - Indigenous Learning 2312 - Native People and the North, 1997.
 - Indigenous Learning 2433 - Native People and the Government, 1997.
 - Indigenous Learning 3435 - Native People and the Land, 1996.

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Research Funding:

- Social Science and Humanities Research Council, Aid to Small Universities Grant, "Hinterland Regions and the New Economy", 2002 -2005.
- Social Science and Humanities Research Council, Aid to Small Universities Grant, "Community Well-Being Project", 1995 - 1996.
- Social Science and Humanities Research Council, Internal Research Grant, "Treaty Three Oral History Project", 1994 - 1995.
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Publications:

- i) Summary; 3 books, 2 chapters in books, 12 papers in scholarly journals, 2 invited papers, 3 technical reports, 17 papers read at scholarly meetings and 9 review articles.
- ii) Details;
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- "Building Resource Towns: A Decade of Government Intervention", Image and Reality: Perspectives on Mining and Community in Northern Ontario", the Second Annual Institute of Northern Ontario Research and Development Conference, Laurentian University, Sudbury, October 19 - 21, 1990.
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Exhibit B
(insert tab here)

EXHIBIT - D "referred to in the ⁰¹⁴²⁸
affidavit of Robert Robson
Sworn before me this 25th day

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(to Affidavit of Robert Robson)

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ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CHARLES BAXTER SR., ELIJAH BAXTER,
LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the
Executor of the estate of Agnes Mary Fontaine, deceased, JAMES FONTAINE in his
personal capacity and in his capacity as the Executor of the Estate of Agnes Mary
Fontaine, deceased, FRED KELLY, VINCENT BRADLEY FONTAINE, NATIONAL
INDIAN BROTHERHOOD also known as ASSEMBLY OF FIRST NATIONS,
NORMAN PAUCHEY, ALVIN BARNEY SAULTEAUX, EARL KENNETH COTE,
KEITH DIETER, ALVIN GERALD STRAIGHTNOSE, KENNETH SPARVIER,
DENNIS SMOKEYDAY, RHONDA BUFFALO, CLIFFORD HOUSE, JIM
CHEWANISH, SIMON SCIPIO, MARIE GAGNON, CORNELIUS McCOMBER,
EDWARD TAPIATIC, ELIZABETH SCIPIO-KOOKASH, HELEN WINDERMAN,
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AMMAQ, BLANDINA TULUGARJUK, ROSEMARIE KUPTANA, DONALD
BELCOURT, THERESA LAROCQUE and ELIZABETH KUSIAK**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA, 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 ATHBASCA, THE SYNOD OF THE
DIOCESE OF BRANDON, THE SYNOD OF THE DIOCESE OF BRITISH
COLOMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE DIOCESE OF
THE SYNOD OF CARIBOO, THE INCORPORATED SYNOD OF THE DIOCESE OF
HURON, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE DIOCESE OF
MOOSONEE, THE SYNOD OF THE DIOCESE OF WESTMINSTER, THE SYNOD
OF THE DIOCESE OF QU'APPELLE, THE DIOCESE OF SASKATCHEWAN, THE
SYNOD OF THE DIOCESE OF YUKON, THE COMPANY FOR THE
PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW
ENGLAND COMPANY), THE PRESBYTERIAN CHURCH IN CANADA, THE
TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE
FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, BOARD OF
HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH**

IN CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH IN CANADA, THE UNITED CHURCH IN CANADA, THE BOARD OF THE HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (also known as THE METHODIST MISSIONARY SOCIETY OF CANADA), THE CANADIAN CONFERENCE OF CATHOLIC BISHOPS, THE ROMAN CATHOLIC BISHOP OF THE DIOCESE OF CALGARY, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS, THE ROMAN CATHOLIC BISHOP OF THUNDER BAY, THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER, THE ROMAN CATHOLIC BISHOP OF VICTORIA, THE ROMAN CATHOLIC BISHOP OF NELSON, THE CATHOLIC EPISCOPAL CORPORATION OF WHITEHORSE, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD-McLENNAN, THE CATHOLIC ARCHDIOCESE OF EDMONTON, LA DIOCESE DE SAINT-PAUL, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF MacKENZIE, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, THE ROMAN CATHOLIC ARCHIEPISCOPAL CORPORATION OF WINNIPEG, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE SAINT-BONIFACE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF SAULT STE. MARIE, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, THE ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH COLUMBIA, THE MISSIONARY OBLATES OF MARY IMMACULATE-GRANDIN PROVINCE, LES PERES MONTFORTAINS (also known as THE COMPANY OF MARY), JESUIT FATHERS OF UPPER CANADA, THE MISSIONARY OBLATES OF MARY IMMACULATE-PROVINCE OF ST. JOSEPH, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (also known as LES REVERENDS PERES OBLATS DE L'IMMACULEE CONCEPTION DE MARIE), THE OBLATS OF MARY IMMACULATE, ST. PETER'S PROVINCE, LES REVERENDS PERES OBLATS DE MARIE IMMACULEE DES TERRITOIRES DU NORD OUEST, LES MISSIONAIRES OBLATS DE MARIE IMMACULEE (PROVINCE DU CANADA-EST), THE SISTERS OF SAINT ANNE, THE SISTERS OF INSTRUCTION OF THE CHILD JESUS (also known as THE SISTERS OF THE CHILD JESUS), THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, THE SISTERS OF CHARITY (GREY NUNS) OF ST. ALBERT (also known as THE SISTERS OF CHARITY (GREY NUNS) OF ST, ALBERTA), THE SISTERS OF CHARITY (GREY NUNS) OF THE NORTHWEST TERRITORIES, THE SISTERS OF CHARITY (GREY NUNS) ON MONTREAL (also known as LES SOEURS DE LA CHARITÉ (SOEURS GRISES) DE L'HÔPITAL GÉNÉRAL DE MONTREAL), THE GREY SISTERS NICOLET, THE GREY NUNS OF MANITOBA INC. (also known as LES SOEURS GRISES DU MANITOBA INC.), THE SISTERS OF

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ST. JOSEPH OF SAULT STE. MARIE, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYACINTHE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE NICOLET AND THE SISTERS OF ASSUMPTION, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE DE L'ALBERTA, THE DAUGHTERS OF THE HEART OF MARY (also known as LA SOCIETE DES FILLES DE COEUR DE MARIE and THE DAUGHTERS OF THE IMMACULATE HEART OF MARY), MISSIONARY OBLATE SISTERS OF SAINT-BONIFACE (also known as MISSIONARY OBLATES OF THE SACRED HEARTS AND MARY IMMACULATE or LES MISSIONAIRES OBLATS DE SAINT-BONIFACE), LES SOEURS DE LA CHARITE D'OTTAWA (SOEURS GRISES DE LA CROIX) (also known as SISTERS OF CHARITY OF OTTAWA – GREY NUNS OF THE CROSS), SISTERS OF THE HOLY NAMES OF JESUS AND MARY (also known as THE RELIGIOUS ORDERS OF JESUS AND MARY and LES SOEURS DE JESUS-MARIE), THE SISTERS OF THE CHARITY OF ST. VINCENT DE PAUL OF HALIFAX (also known as THE SISTERS OF CHARITY OF HALIFAX), LES SOEURS DE NOTRE DAME AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, SISTERS OF THE PRESENTATION OF MARY (SOEURS DE LA PRESENTATION DE MARIE), THE BENEDICTINE SISTERS, INSTITUT DES SOEURS DU BON CONSEIL, IMPACT NORTH MINISTRIES and THE BAPTIST CHURCH IN CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF
(sworn July 25, 2006)**

I, David Russell, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a Senior Advisor to the Director General of the Office of Indian Residential Schools Resolution Canada (“OIRSRC”). As an employee of the federal government, I have been involved with the Indian Residential School matter since November 1997 in various capacities and have held the position of Senior Advisor to the Director General since November 2002 and have been involved in the development and implementation of OIRSRC’s policies and alternative dispute resolution procedures relating to Indian Residential Schools. As such, I have personal knowledge of the matters to which I depose to below,

except where the facts are based on information and belief, in which case I have stated the source of the information and I believe such facts to be true.

Purpose of Affidavit

2. This affidavit is intended to provide the Honourable Court with background respecting Canada's response to Indian Residential Schools litigation sine 1988.

3. On November 20, 2005, an Agreement in Principle was signed, a copy of which is attached as exhibit "F" to the Affidavit of Frank Iacobucci.

4. On June 15, 2006, Canada signed the Settlement Agreement, which is attached as exhibit "G" to the Affidavit of Frank Iacobucci.

5. The signing of the Agreement in Principle and the Settlement Agreement were the result of the culmination of many years of effort by all parties to achieve a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools. It represents the Government's commitment to working in consultation with Aboriginal people, the churches and other parties, to resolve claims related to Indian Residential Schools in as sensitive and appropriate a manner as possible.

6. In the paragraphs that follow, I intend to describe the various actions, policies and responses undertaken by the Government over the years to address the legacy of Indian Residential Schools.

Canada's Involvement in Indian Residential Schools

7. The federal government began to play a role in the development and administration of Indian Residential Schools as early as 1874. The schools were located in every province and territory, except Newfoundland, New Brunswick and Prince Edward Island. Of the 130 schools that existed from time to time, nearly all were operated jointly with various religious organizations.

Initial Government Response to Indian Residential Schools Abuse Claims

8. It was not until 1988 that the first claims alleging abuse at Indian Residential Schools were served on the Attorney General. Prior to that time no legal action had been taken against the Government in relation to alleged abuses at Indian Residential Schools.

9. On August 26, 1991, not long after the first claims were received, the Royal Commission on Aboriginal Peoples was established with a mandate to investigate the evolution of the relationship among Aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole. It was charged with proposing specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront Aboriginal peoples to this day.

10. Although the Royal Commission was not established as a direct result of the Indian Residential Schools abuse claims that had been filed, it did, as part of its larger mandate, investigate and report on Indian Residential Schools. The Royal Commission's Report, released in October 1996, recognized the impacts of the Indian Residential School system on Aboriginal people.

11. The number of Indian Residential School abuse claims increased following the release of the Royal Commission Report.

12. Prompted to some extent by the release of the Royal Commission report, and the increasing number of claims, which had reached approximately 200 by 1996, a Residential Schools unit was created within the Department of Indian and Northern Development in 1996. The unit was specifically designed to address the increasing number of claims relating to Indian Residential Schools.

13. Notably, the last remaining federally-run Indian Residential School, the Gordon's Indian Residential School, closed in 1996. It was located on the Gordon's First Nation, north of Regina, Saskatchewan.

14. Following the release of the Royal Commission Report, the Government set to work developing a new approach to govern its interactions with Aboriginal Peoples. On January 7, 1998, Canada announced *Gathering Strength - Canada's Aboriginal Action Plan* its response to the Report of the Royal Commission on Aboriginal Peoples. It called for a renewed partnership with Aboriginal people based on recognizing past mistakes and injustices, the advancement of reconciliation, healing and renewal, and the building of a joint plan for the future.

15. *Canada's Aboriginal Action Plan* consisted of a four part strategy to restore Canada's relationship with Aboriginal Peoples concerning the abuse suffered at Indian Residential Schools: an apology, a healing strategy, a litigation strategy, and dispute resolution strategy.

16. As the first step in implementing *Canada's Aboriginal Action Plan*, the Government offered an apology in the form of the *Statement of Reconciliation*, on January 7, 1998, which acknowledged its role in the development and administration of Indian Residential Schools and expressed that it was deeply sorry to those who suffered physical and sexual abuse at those schools.

17. Also in 1998, the Government committed \$350 million dollars in support of a community-based healing strategy to address the healing needs of individuals, families and communities arising from the legacy of physical and sexual abuse at Indian Residential Schools. *Canada's Aboriginal Action Plan* recognized that it was in everyone's interest to support these individuals, families and communities in their efforts to start the healing process.

18. As a result of this commitment, the Aboriginal Healing Foundation was formally launched on May 4, 1998. The Foundation was created to design, implement and manage the healing strategy, including providing financial support to eligible community-based healing initiatives that complement existing Aboriginal and government programs. The Aboriginal Healing Foundation is an Aboriginally-run, non-profit corporation which operates at arm's length from the Government and funds proposals from First Nations, Inuit and Métis affected by the legacy of physical and sexual abuse in the residential school system.

19. Acting on the partnership approach announced in *Canada's Aboriginal Action Plan*, over the course of 1998 and 1999, the Government of Canada, the Anglican, United, Presbyterian and Roman Catholic Churches, and the Assembly of First Nations engaged in a process of listening, learning and sharing in a series of meetings across the country to discuss

Indian Residential School issues. These exploratory dialogues involved Indian Residential School claimants, Aboriginal healers and leaders, lawyers, church leaders and senior government officials. Participants considered the impacts of Indian Residential Schools on former students, their families and communities. The purpose of the exploratory dialogues was to explore a range of approaches that could be used to address the legacy of Indian Residential Schools. One focus of the exploratory dialogues was to explore ways to resolve the Indian Residential Schools claims in a safe, reliable and timely manner that would also be sensitive to the needs of the former students.

20. The exploratory dialogues had a number of positive results. For the first time, former students, government and churches came together to talk constructively. The exploratory dialogues highlighted the enormity of the impacts of Indian Residential Schools on individuals, families and communities and demonstrated the desire to heal and reconcile. Perhaps most importantly, the exploratory dialogues heightened awareness of the problems associated with addressing Indian Residential Schools abuse claims through the litigation process. The exploratory dialogues provided the initial focus for efforts to seek the resolution of Indian Residential School claims outside the court process.

21. Informal discussions between the Government and the churches with respect to the apportionment of compensation between them had begun during the exploratory dialogues in 1998, intensifying in September 2000 when the Deputy Prime Minister was given the responsibility of coordinating all such initiatives on behalf of the Government of Canada.

Pilot Projects

22. Up to 1999, pursuing litigation in the courts was the only means of redress for Indian Residential School claims. However, the exploratory dialogues resulted in the development and implementation of a series of eleven alternative dispute resolution pilot projects (“ADR Pilot Projects”) beginning in 1999. The ADR Pilot Projects were set up to explore the kinds of mechanisms for claims resolution that survivors of physical and sexual abuse at Indian residential schools would consider most appropriate, recognizing the deeply emotional nature of the issues, the need to assist in healing, the need to protect the privacy of the individuals, and the need to provide a streamlined process that was responsive to individual needs.

23. The pilot projects did not address claims for injury to language and culture or other claims based essentially on attendance at an Indian Residential School. It was Canada’s position that such claims had not achieved legal recognition and that persons advancing them would have to do so through litigation. At the same time, Canada’s support for initiatives such as the Aboriginal Healing Foundation was seen as providing a programmatic response to the issues raised by such claims.

24. While the pilot projects approach ultimately proved insufficient to address the number and scope of residential school claims, it provided useful insight into the claims and the lessons learned from the projects assisted in the development of the Government’s further responses to the IRS legacy.

25. The ADR Pilot Projects were implemented in the Northwest Territories, British Columbia, Saskatchewan, Manitoba, Ontario, and New Brunswick and involved over 400

former Indian Residential School Students and resulted in the settlement of 311 claims for physical and sexual abuse at Indian Residential Schools.

26. As a result of the growing caseload and increased profile of the Indian Residential Schools file, the Office of Indian Residential Schools Resolution Canada (“OIRSRC”) was established on June 4, 2001 as a separate department from the Department of Indian Affairs and Northern Development. The new department was to focus the federal government’s efforts on addressing the legacy of Indian Residential Schools. OIRSRC was given the mandate to achieve a fair and equitable resolution of abuse claims, to develop and implement means of reliably validating claims in a safe, fair, appropriate and timely fashion, and to carry out negotiations between government and Church organizations. At the same time, the Deputy Prime Minister was designated as the Minister responsible for the Indian Residential Schools file.

27. In an effort to include all the responsible parties in the resolution of Indian Residential School claims, OIRSRC commenced formal negotiations with the Anglican Church of Canada, Roman Catholic Church entities, Presbyterian Church in Canada and the United Church of Canada in June 2001 to reach agreement on the financial apportionment of compensation of residential school claims. Initial attempts to reach a collective settlement with all four churches were unsuccessful.

28. In an effort to accelerate the settlement of abuse claims with former residential school students, the Government announced its 70/30 initiative in October, 2001. That initiative was based on the Government’s firmly held position that the churches should be held responsible for their role in Indian Residential Schools and should contribute to individual compensation

accordingly. Under the 70/30 initiative, Canada paid 70 per cent of agreed-upon compensation to plaintiffs with validated claims of recognized causes of action in instances where both the Government of Canada and a church organization were involved in the school. The remaining 30 per cent of agreed-upon compensation was attributed to the churches. In cases where there was no church involvement, Canada paid 100 per cent of the agreed-upon compensation. The Government initiated this process to ensure that claimants' needs and interests were not set aside during negotiations between the Government and the churches on the apportionment of compensation between them.

29. As with the pilot projects, this initiative addressed validated claims of physical and sexual abuse but did not extend to language and culture claims or those based essentially on attendance at the schools.

30. An Agreement in Principle was reached with the Anglican Church of Canada on November 20, 2002 and finalized in a final settlement agreement on March 11, 2003 wherein the Anglican Church of Canada agreed to pay 30 per cent of estimated liability for individuals abused at Anglican operated Indian Residential Schools to a maximum of \$25 Million dollars. The Federal Government agreed to pay the remaining 70 per cent up to the \$25 Million dollar cap and to pay 100 per cent in the event the cap was exceeded.

31. A similar agreement was reached on February 13, 2003 with the Presbyterian Church in Canada wherein they agreed to pay \$2.1 Million dollars to individuals abused at Presbyterian operated Indian residential schools to cover 30% of the estimated liability. The Federal Government agreed to pay the remaining 70%.

32. Although a formal agreement was not reached with either the United Church of Canada or all the appropriate Roman Catholic Church entities, prior to the Agreement in Principle, dated November 20, 2005 and the Final Settlement Agreement of May 8, 2006, there were formal arrangements for contributions between Canada and a very limited number of Roman Catholic entities, as well as an informal arrangement for contributions between Canada and the United Church of Canada.

Resolution Framework

33. The ADR Pilot Projects continued during the negotiations with the churches and in 2002 an independent evaluation of the ADR Pilot Projects was conducted by Kaufman Thomas and Associates.

34. Announced in December 2002, the Resolution Framework was the product of the experience gained from years of addressing the legacy of Indian residential schools. Based on considerable research, consultation and discussion with former students, their communities, legal counsel, the churches, other government departments and advice from a variety of experts, the Resolution Framework built on the government's experience gained through the ADR Pilot Projects and the resolution of claims through the litigation process.

35. In developing the Resolution Framework, consideration was given to the lessons learned from other Canadian experiences of institutional abuse such as those at the Mount Cashel orphanage in Newfoundland, the Grandview Training School for Girls in Ontario, and the report by Justice Fred Kaufmann on the handling of claims for youth institutions in Nova

Scotia, along with trials, out-of-court settlements and group dispute resolution projects. Abroad, the Irish government's plan for a similar compensation process for large numbers of former residential schools students with abuse claims was reviewed in the context of Indian Residential Schools.

36. The ADR component of the Resolution Framework (“ADR Process”) was specifically developed to address claims of sexual and/or physical abuse as well as claims of wrongful confinement as a result of the student’s experiences at Indian residential schools.

37. The Resolution Framework was a response to former students' needs for a timely and effective approach to address the legacy of Indian residential schools and to help facilitate healing and reconciliation as well as settlement of legal issues.

38. Beyond simply providing compensation for physical and sexual abuse, the Resolution Framework also supported a variety of initiatives intended to provide counselling support to those who were dealing with their experiences at a residential school, which in turn could help former students and their communities learn more about their history and to honour and pay tribute to one another through commemoration.

39. On June 27, 2003, the Federal Government announced that the Honourable Ted Hughes, former judge of the Court of Queen's Bench of Saskatchewan, former Deputy Attorney-General of British Columbia, and the Commissioner of Conflict of Interest and Ethics Counsellor to the Public Service of the Northwest Territories, had been selected as the Chief Adjudicator for the ADR Process, and that he would be supported by a team of 32 full-time independent adjudicators.

40. In early 2004 the Government of Canada began receiving applications for participation in the ADR Process. The process offers former students the option of resolving their abuse claims out of court - claims are decided by an independent decision-maker who is not a government employee. The ADR Process was designed to ensure that all claims are verified, without cross-examination.

41. The ADR process is comprised of two streams: Model A and Model B. The Model A process is designed for claims of sexual abuse or serious physical abuse while the Model B process is designed for claims of physical abuse or claims of wrongful confinement. Priority is given to elderly claimants who are 60 years and older and those failing in health.

42. As of July 17, 2006, there had been 4,935 applications to the ADR process and decisions have been rendered by the independent adjudicators on 1135 of the applications.

Litigation

43. Throughout this time the number of litigation claims against Canada continued to increase and the scope of the claims became broader. In addition to claims of physical and sexual abuse there were allegations that Indian Residential School students were wrongfully confined by being placed in the schools, that they received inadequate care and education and that their language and culture were injured. The following table sets out the current litigation, excluding class actions, by province as at July 14, 2006.

Active Litigation and Plaintiffs	Statement of Claims	Plaintiffs
Alberta	1432	3950
British Columbia	313	830
Manitoba	289	1157
New Brunswick	1	1
NWT	20	29
Nova Scotia	1	582
Nunavut	6	191
Ontario	101	657
Quebec	16	89
Saskatchewan	2112	2949
Yukon	46	103
Total Active	4337	10538

44. In addition to individual claims, class actions on behalf of residential school students were launched commencing with Cloud, a claim on behalf of the students who attended the Mohawk Institute and their families filed in 1998. Following Cloud, 10 additional class actions were filed against Canada up to the date of the appointment of the federal representative on May 30, 2005.

45. Canada devoted significant resources to respond to this litigation. For example, Baxter, Cloud, Blackwater and the Alberta Test Cases called for extensive historical, archival and legal research to locate and produce documents, respond to interrogatories, prepare for Examinations for Discovery of representatives of Canada, respond to undertakings and

conduct Examinations for Discovery of Plaintiffs, prepare for trial and in the case of Blackwater conduct lengthy trial proceedings over a period of three years.

46. Throughout the course of the litigation, counsel and senior representatives of Canada met with Plaintiffs' counsel including National Consortium representatives on a number of occasions to discuss possible approaches to resolution of the litigation; however, Plaintiffs' counsel were unwilling to accept Canada's programmatic approach to resolution of claims that did not involve physical or sexual abuse.

47. Since the implementation of the ADR process a substantial number of applications to pursue claims through the ADR have been received. However this has not significantly affected the volume of claims being pursued through litigation.

48. In total, including claims in the ADR Process and individual court actions, some 17097 claimants have initiated abuse claims in 10,982 separate claims. Approximately 4134 had been resolved as of July 17, 2006.

Impetus to Settle

49. Since being implemented in November 2003, the ADR Process has been the subject of critical analysis by a number of groups including the Assembly of First Nations ("AFN") and the Canadian Bar Association.

50. In November 2004, the AFN released its report entitled "*Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*" ("AFN Report"). A central criticism levied in that report was the narrow scope of the ADR Process – its failure to recognize the impacts of the Indian Residential Schools

experience itself, such as separation from family and community, impacts on personal identity, emotional abuse and the loss of language and culture.

51. The key recommendation of the AFN Report was that a lump sum payment be made to each former Indian Residential School student in recognition of his or her experience in the Indian Residential School System. The report recommended the retention of a modified ADR Process to deal with abuse claims, but also urged the implementation of truth-telling, healing and reconciliation initiatives.

52. In February 2005, the Canadian Bar Association released its report entitled "*The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors*". The report supported the main findings and recommendations of the AFN Report, calling for a reconciliation payment to all former students.

53. Also in February of 2005, the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development issued a report which was very critical of the ADR Process. The Committee's report was approved by the House of Commons on April 12, 2005. It included recommendations to terminate the ADR Process, set-up court-supervised negotiations to settle the claims, and expedite settlement of claims for physical and sexual abuse in a separate process.

54. In addition to the growing political pressure to resolve the Indian Residential Schools Legacy, there were also important developments in the litigation which were also creating pressure to find a new approach to deal with the approximately 13,500 individual claims and eleven class actions which had been filed prior to 2005.

55. A very significant development on the litigation front was the May 12, 2005 decision of the Supreme Court of Canada in the *Cloud* action which dismissed the Crown's application for leave to appeal from the December 3, 2004 decision of the Ontario Court of Appeal certifying the class action.

56. The *Cloud* action sought compensation for sexual, physical and psychological abuse, cultural loss, child labour and inadequate living conditions relating to the Mohawk Institute in Ontario. The proposed classes include all students that attended that particular Indian Residential School between 1922 and 1969, as well as their children, spouses, parents and siblings. Certification was denied at first instance by the Ontario Superior Court of Justice and on appeal to the Ontario Divisional Court. On further appeal to the Ontario Court of Appeal, the action was certified on the basic issue of whether the respondents owed legal obligations to the class members that were breached by the way the respondents ran the school.

57. The dismissal of the application for leave to appeal meant that *Cloud* would become the first class action arising from Indian Residential Schools that will proceed to trial. It also meant that the Court of Appeal's certification decision would stand.

58. Certification of the *Cloud* class action by the Court of Appeal immediately impacted on the ability of OIRSRC to continue to offer its ADR process to members of the classes identified in that action, given the legislative requirement for Court approval of any settlement of the class action claims with any member of the class. Similarly, the decision had an immediate impact on the ability of OIRSRC to communicate with the class in the context of ADR.

59. Immediately following the decision in *Cloud* counsel for Baxter moved to have an application set down seeking certification of a class proceeding on behalf of all residential school students across Canada and their families.

60. Also in April, 2005, a trial date was assigned for the hearing of the Alberta test cases. The trial was scheduled to commence in January, 2006, and would be the first Indian Residential Schools case in Canada to directly adjudicate claims of intentional injury to language and culture, wrongful confinement, institutional mistreatment, inadequate care, conditions and education and systemic negligence.

Settlement Discussions

61. The *Cloud* decision, the Federal Government's ongoing commitment to achieving a fair, just and lasting resolution of the Indian Residential Schools legacy, and the intense scrutiny from many sources, brought into focus the need for the Government to re-evaluate its approach to resolving the Indian Residential Schools legacy. All these factors culminated in the May 30, 2005 appointment of the Honourable Frank Iacobucci as the Federal Government's Representative to lead discussions toward a fair and lasting resolution of the legacy of Indian residential Schools.

62. The Appointment of the Honourable Frank Iacobucci was accompanied by the signing of the May 30, 2005 Political Agreement with the Assembly of First Nations which set out the basis on which the Government of Canada would work with the Assembly of First Nations toward the resolution of the Indian residential schools legacy in the discussions led by the Honourable Frank Iacobucci.

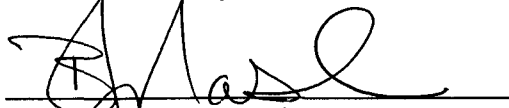
63. As Federal Representative, the Honourable Frank Iacobucci was given an assignment to lead discussions towards a fair and lasting resolution of the residential school legacy with legal counsel for former students, the Assembly of First Nations, and legal counsel for Church entities. In addition to exploring ways to recognize the residential school experience so that true reconciliation can be achieved, these discussions were to focus on ensuring that former students had options for pursuing their claims of sexual and serious physical abuse, and on finding ways to support continued healing.

64. The discussions lead by the Honourable Frank Iacobucci resulted in the signing of an Agreement in Principle (“AIP”) dated November 20, 2005 and, ultimately, the Indian Residential Schools Settlement Agreement (“SA”), dated May 8, 2006.

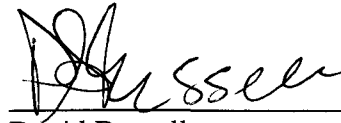
65. The SA is the result of the enormous efforts and years of consultation and negotiation that the Government and the parties have dedicated to creating a fair, comprehensive and lasting resolution to the legacy of Indian Residential Schools.

66. I make this affidavit in support of a motion for certification and settlement of the within action.

SWORN BEFORE ME at the City of Vancouver, at the Province of British Columbia on July 25, 2006.



Commissioner for Taking Affidavits
Brett J. Nash
Barrister & Solicitor, Notary Public
900, 840 Howe Street
Vancouver, BC V6Z 2S9



David Russell

L. Marchand, #1
Sworn July 27, 2006

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

I, Leonard S. Marchand, Barrister and Solicitor, of 248 Second Avenue, in the City of Kamloops, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

Purpose of Affidavit

1. The purpose of this Affidavit is to provide background to this Honourable Court with respect to the Independent Assessment Process ("IAP") which is Schedule D to the Indian Residential Schools Settlement Agreement.

Background

2. The law firm of Fulton & Company is a party to the Indian Residential Schools Settlement Agreement (the "Settlement Agreement"). I am a partner at Fulton & Company and as such, have personal knowledge of the matters hereinafter deposed and except where those statements are based on information and belief and wherever so stated I verily believe it to be true.

3. Since 1999, I have represented or advised well over 100 former residential school students. I have assisted a great number of these former students in resolving their individual abuse claims through litigation and, since 2004, through Canada's current Alternative Dispute Resolution ("ADR") process. In litigation, I have utilized all available means of resolving claims, including direct negotiations, judicial settlement conferences and mini trials.

4. I have been very active in the Province of British Columbia working with other counsel to expedite the resolution of IRS litigation files. In 2003, I assisted in developing a "Modified Litigation Plan" for British Columbia and the Yukon. That plan was designed, with the assistance of Crown counsel, Church counsel and other plaintiffs' counsel to match the extent of the Defendants' validation process to the monetary value of individual claims resulting in a streamlined process for more modest claims.

5. Since 2003, I have been the British Columbia member of the Plaintiffs' Counsel Advisory Network ("PCAN"). Canada consults with PCAN on a monthly basis on issues of national and mutual interest in the efficient and principled resolution of residential school claims.

6. Since 2005, I have participated in a working group with the Chief Adjudicator, Mr. Ted Hughes. Mr. Hughes has responsibility for the current Alternative Dispute Resolution process established by Canada in December, 2003. The working group (known as the Chief Adjudicator's Reference Group or "CARG") is made-up of representatives of Canada, plaintiffs' counsel, Church counsel and former students. The mandate of CARG is to assist Mr. Hughes in overseeing the efficient operation of the ADR process. Under the Settlement Agreement, CARG will be replaced by an Oversight Committee.

7. I was an active participant in the negotiations that resulted in the Agreement in Principle signed in Toronto on November 20, 2005 and the Settlement Agreement, attached as Exhibits "F" and "G", respectively, to the Affidavit of the Honourable Frank Iacobucci, Q.C.

8. Following the signing of the Agreement in Principle, an Independent Assessment Process Working Group was struck in order to finalize the terms of the IAP. The National Consortium, Merchant Law Group, the Assembly of First Nations, Inuit organizations, the Churches, Canada and Independent Counsel were all represented on the Working Group. I am the representative from Independent Counsel.

Shortcomings in the Litigation Process

9. Though many IRS Plaintiffs have benefited from the litigation process, there are obvious difficulties with that process. These difficulties include:

- (a) In decided cases in British Columbia the harms associated with the experience of attending residential school have actually been relied upon as a defence in the causation analysis/assessment of damages for individual abuse claims;
- (b) Plaintiffs are required to complete lengthy interrogatories, or to submit to lengthy Examinations for Discovery or both. This is difficult for many Plaintiffs who have had little or no experience with the litigation process;

- (c) Documentary disclosure, is difficult given the historic nature of the claims;
 - (d) The oral Examinations for Discovery, which may last up to several days, often focus on other (i.e. non-residential school) traumatic events in the Plaintiffs' lives;
 - (e) Some Plaintiffs must undergo expert psychiatric/psychological assessments and/or vocational assessments, often with one of each performed for the Plaintiff and for the Defendants;
 - (f) Despite the joint and several liability of the Defendants, Plaintiffs are often caught up in apportionment disputes between Canada and certain Church Defendants. A number of my clients have been faced with the choice of accepting a "70%" offer from Canada or running an apportionment trial. (Under a well publicized national policy, Canada is willing to pay former students 70% of a "fair" assessment of the Plaintiff's claim, leaving the Plaintiff free to pursue Church Defendants for the remaining 30%); and
 - (g) Plaintiffs often have to endure listening to lengthy legal arguments made about the most personal aspects of their lives in the context of judicial settlement conferences or mini-trials.
10. As the litigation process is rigorous, some Plaintiffs feel revictimized. Some Plaintiffs are required to speak about their painful experiences five or six different times.
11. Until an individual claim is resolved, the cost of litigation must be borne by either the Plaintiff or their counsel.
12. Even with the highest degree of diligence on the part of all parties, the litigation process often takes several years to complete. The Table set out in the affidavit of David Russell

sets out the current litigation, excluding class actions, by province as at July 14, 2006. That Table shows that there are roughly 10,538 claims as yet unresolved.

13. I am informed by research undertaken by the National Research and Analysis Directorate of IRSRC and do verily believe that for roughly 2,296 settled litigation claims it took an average of 3.2 years to settle each claim from commencement of the action. Thus far, the maximum time for settlement has been 6.8 years, although I am personally aware (through the assumption of conduct of files from other counsel) of actions that are unresolved after more than 8 years.

14. I am also advised by the National Research and Analysis Directorate and verily believe that of the 36 IRS trials conducted to date, only 13 resulted in judgments in favour of plaintiffs; 13 were dismissed and 10 are still awaiting judgment.

Advantages and Shortcomings in the ADR Process

15. By contrast, the most recent statistics available to me indicate that, since December 2003, nearly 5,000 claims have been made in the ADR process. I understand that over 1,500 claims have proceeded to a hearing and over 1,300 decisions have been rendered. I am informed that the usual range for the rendering of decisions is 4 to 11 months and that the average is about 9 months. That is consistent with my personal experience.

16. Model A of Canada's ADR process for persons with claims of sexual abuse or more serious physical abuse has many features that are preferable to litigation. These include:

- (a) The current ADR process is entirely voluntary;
- (b) It is a non-adversarial or "inquisitorial" approach where Claimants are only questioned by an independent adjudicator. Every adjudicator is chosen by the unanimous agreement of the four stakeholders; thus survivors and their counsel have enjoyed a veto in the initial adjudicator selection process, and individual

Claimants can be comfortable that the adjudicator who will hear their case has the appropriate expertise and sensitivity;

- (c) All adjudicators are trained according to a curriculum designed by the stakeholders and delivered in concert with all of them;
- (d) Claimants are allowed to tell their story in their own way at hearings;
- (e) Hearings are held in settings that are both comfortable and convenient to Claimants;
- (f) Support persons are permitted to be with Claimants at all stages of the process including while they give evidence. As well, travel costs are paid by Canada;
- (g) Hearings are private to the participants and parties and decisions are confidential to the extent desired by the Claimant;
- (h) A transparent and consistent mechanism for assessing compensation allows Claimants and their counsel a considerable degree of certainty as to the likely outcome if the Claimant is believed. This allows parties to make informed choices as to the procedural route to take and to avoid dashed expectations;
- (i) A faster process with reduced documentary disclosure requirements allows most Claimants to complete the process in under a year;
- (j) The process offers a relaxed evidentiary standard on causation and Canada contributes 15% of the total award made by the adjudicator to help off-set the Claimant's legal fees;

- (k) The compensation framework is designed to produce a financial outcome within the ranges of court awards in like cases;
- (l) Canada and participating Churches accept responsibility for the acts of a wider array of adult perpetrators than would be the case in litigation;
- (m) There is no appeal by Defendants and very limited power for Defendants to seek a review, based on narrowly-defined jurisdictional errors only;
- (n) By contrast, Claimants have the right of review for palpable and overriding errors of fact;
- (o) Claimants are not bound by the decision; they can walk away and resume or start litigation. Moreover, Canada pays for independent legal advice on whether to sign a release, whether or not the release is ultimately signed;
- (p) No limitations or laches defences are asserted although Crown Immunity does apply; and
- (q) There is significant investment in Claimant safety. The following are provided: crisis line; professional counseling services; resolution support workers at hearings; personal support persons permitted and facilitated; family supports welcome at hearings; cultural ceremonies permitted at hearings; hearings closed to public; no confrontation with alleged perpetrator; no cross examination by a party.

17. Though there are some individual exceptions, overall, Claimants find the ADR process much more humane, less confrontational and more positive than litigation.

18. In spite of its many benefits, Canada's current ADR process also has a number of shortcomings. These shortcomings make the ADR process unsuitable for a range of former students.

19. During the national negotiations, plaintiffs' counsel identified a number of these shortcomings, as follows:

- (a) Claimants who attended schools run by Catholic Church entities without contribution agreements with Canada receive only "70%" awards;
- (b) A number of schools considered by plaintiffs' counsel to be "Residential Schools" are excluded from the process;
- (c) In some cases, the compensation grid is low, particularly with respect to pecuniary losses;
- (d) There is one compensation grid for British Columbia, the Yukon and Ontario and a lower grid for the other Provinces and Territories;
- (e) The threshold for physical abuse excludes a number of serious claims by focusing only on physical harms resulting from discreet assaults and ignoring the consequences of persistent physical abuse which cumulatively exceeded any reasonable standard;
- (f) Limited administrative/adjudicative resources have resulted in the processing of fewer than one thousand ADR claims per year. With an increasing number of claims being submitted, there is a real concern that the process will be too slow to meet the objectives of the process;

- (g) A number of relatively common sexually abusive acts are excluded from the process;
- (h) A number of serious harms are excluded from the process;
- (i) Model B of the process is far too expensive to run in relation to the size of the awards available in that process;
- (j) The test for compensable student on student abuse exceeds the usual negligence standard; and
- (k) The application form is excessively long, detailed and complicated.

Advantages of the IAP

20. The Settlement Agreement retains the positive aspects of the ADR process, addresses a great number of the shortcomings in the process and makes other significant improvements. Improvements under the Settlement Agreement include:

- (a) All Claimants who successfully establish a claim will receive 100% compensation awards;
- (b) A larger number of schools will be recognized as "Residential Schools", particularly in the Northern Territories;
- (c) The compensation grid will be increased generally and particularly with respect to pecuniary losses. In certain cases, up to \$250,000.00 will be available for proven actual income loss;

- (d) **There will be one grid applicable for all Provinces and Territories. It will be the higher British Columbia/Yukon/Ontario grid;**
- (e) **A new category for persistent physical abuse has been added to the process;**
- (f) **A number of new categories of sexually abusive acts will be added to the process. Sexual abuse involving anal/vaginal penetration with an object, attempted anal/vaginal penetration (excluding attempted digital penetration) and any touching of a student by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student will be compensable under the IAP;**
- (g) **A number of additional harms will be compensable under the process, including pregnancy resulting from a defined sexual assault, the forced termination of such a pregnancy, being required to place for adoption a child resulting from such a pregnancy and a long term significantly disabling physical injury resulting from a defined sexual act. As well, the threshold for a number of the consequential harms at Harm Level 3 has been reduced from "extreme and consistent" to "lasting and significant";**
- (h) **After the first six months a minimum of 2,500 cases must be resolved or offered hearing dates within 9 months of screening-in each year, plus all cases screened-in as of the 18th month must be resolved or offered a hearing date within a further 9 months, unless the delays are the responsibility of the Claimant;**
- (i) **Model B of the ADR process has been eliminated;**
- (j) **The threshold for compensable student on student abuse has been reduced. In all cases, student abuse will be compensable where school officials knew or should have known of a pattern of student sexual abuse and failed to take reasonable**

steps to prevent it. For "exploitative" student sexual abuse there will be a reverse onus. In these cases, the Defendants will have to prove that there was a reasonable system of supervision in place to prevent the student abuse;

- (k) The IAP will compensate for student on student physical abuse and for "other wrongful acts" (i.e. acts which do not otherwise appear in the compensation rules) committed by adult employees or other adults lawfully on the premises which are proven to have caused serious psychological harms. Neither of these categories exists in the ADR process;
- (l) Class members who resolved their abuse claims earlier without a church contribution and who do not opt-out will be made whole if they received less than 100% of the assessed compensation;
- (m) Class members who resolved their claims in ADR after May 30, 2005 will automatically receive the benefit of the higher national compensation grid and may apply for increased awards in two other defined circumstances involving very serious student sexual assaults or high consequential loss of opportunity;
- (n) Notwithstanding the deemed release, claims for catastrophic physical injuries, large pecuniary claims or other complex claims may be advanced through the courts with the approval of the Chief Adjudicator, with no limits on compensation, and without the assertion of limitation defences (although Crown Immunity defences will apply);
- (o) Non-student invitees will be able to claim compensation for abuse they suffered up to age 21;
- (p) Application forms have been simplified;

- (q) Claims will be screened into the IAP process by a Secretariat reporting to an independent Chief Adjudicator;
- (r) Time limits are imposed on efforts to locate alleged perpetrators and give them an opportunity to testify;
- (s) A specialized track is created for the complex cases in order to ensure that the others can proceed quickly and to promote specialization among adjudicators;
- (t) Any case, regardless of the dollar value, may be settled in the standard track without a hearing where the parties agree. Cases in the complex track may also be settled provided there has been at least an initial meeting with the Claimant;
- (u) Claimants' rights of review are broadened;
- (v) Provision is made for Claimants to give evidence by video conference in some cases, and for preserving the Claimant's evidence in cases of failing health;
- (w) Provision is made to expedite the obtaining of expert evidence where needed;
- (x) Security of tenure for adjudicators is enhanced;
- (y) All claims filed in the 5 years following implementation must have been resolved or offered a hearing date within no more than a further year; and
- (z) The IAP is overseen ultimately by the National Administration Committee and the courts, not by the Government.

21. I believe that the changes to the ADR process now embodied in the IAP reflect a positive and advantageous feature of the entire Settlement Agreement and will be beneficial to former students who have compensable continuing claims of abuse.

22. I recognize that no settlement can completely address the harmful legacy of Indian Residential Schools for each and every former student. Nevertheless, the Settlement Agreement, including the IAP is a major step forward towards truth, healing and reconciliation. To that end, I believe that the Settlement Agreement as a whole, and more particularly, the IAP, constitutes a fair, just and reasonable alternative to protracted and complex litigation.

23. I make this Affidavit in support of the certification of this action and the implementation of the Settlement Agreement.

SWORN BEFORE ME at the City of)
Kamloops, in the Province of British)
Columbia, this 27 day of July, 2006.)
_____)
A Commissioner for taking Affidavits)
in the Province of British Columbia.)



LEONARD S. MARCHAND

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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 L. MARCHAND #1

FILE NO. 62986-1

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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

**JOINT MOTION RECORD
(Motion for Settlement Approval
returnable August 29, 30 and 31, 2006)**

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