

November 20, 2005

**CANADA, as represented by The Honourable  
Frank Iacobucci**

**- and -**

**PLAINTIFFS, as represented by the National Consortium,  
Merchant Law Group, and other legal counsel as undersigned**

**- and -**

**THE ASSEMBLY OF FIRST NATIONS**

**- and -**

**THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,  
THE PRESBYTERIAN CHURCH IN CANADA,  
THE UNITED CHURCH OF CANADA AND  
ROMAN CATHOLIC ENTITIES**

**AGREEMENT IN PRINCIPLE**

**WHEREAS** Canada and certain religious entities operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

**AND WHEREAS** the parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

**AND WHEREAS** the parties further desire the promotion of healing and reconciliation;

**AND WHEREAS** the parties agree that this Agreement in Principle should form the basis of a comprehensive settlement package that the Honourable Frank Iacobucci will recommend to Canada;

**AND WHEREAS** the parties agree that the comprehensive settlement will not be effective anywhere until approved by every court as set out herein;

**AND WHEREAS** the Federal Representative has recommended that an advance payment on the Common Experience Payment will be made to certain elderly former students;

**THEREFORE**, in consideration of the mutual covenants set out herein, the parties have entered into this Agreement in Principle.

## **I. DEFINITIONS**

**“Church” or “Church organization”** means any one or more of the entities listed in Schedule “A” hereof (the “Roman Catholic entities”), the General Synod of the Anglican Church of Canada<sup>1</sup>, the United Church of Canada, the Presbyterian Church in Canada;

**“Common Experience Payment”** means the lump sum payment described herein ;

**“Designated Amount”** means \$1,900,000,000.00;

**“DR Model”** means the dispute resolution model offered by Canada since November 2003;

**“Eligible CEP Recipient”** means all former students who resided at Indian Residential Schools.

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

**“Federal Representative”** means the Honourable Frank Iacobucci;

**“Independent Assessment Process” (“IAP”)** means the process for the determination of individual abuse claims attached hereto as Schedule “B”;

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<sup>1</sup> It is understood that General Synod of the Anglican Church of Canada agrees to be bound by these provisions and to recommend them to all Dioceses and the Missionary Society.

**“Indian Residential Schools”** means the following:

1. Institutions listed on List “A” to IRSRC’s Dispute Resolution Process attached as Schedule “C” (Whitehorse Baptist Mission to be re-added);
2. Institutions listed in Schedule “D” (“Additional Residential Schools”) which may be amended from time to time; and,
3. any institution which is determined to meet the following criteria:
  - (a) The child was placed in a residence away from the family home by or under the authority of the federal government for the purposes of education; and,
  - (b) The federal government was jointly or solely responsible for the operation of the residence and care of the children resident there.
  - (c) Indicators that the residence was federal in nature include, but are not limited to, whether:
    - (i) The institution was federally owned;
    - (ii) The federal government stood as the parent to the child;
    - (iii) The federal government was at least partially responsible for the administration of the institution;
    - (iv) The federal government inspected or had a right to inspect the institution; or,
    - (v) The federal government did or did not stipulate that the institution was an IRS.

**“NAC”** means the national administration committee as described herein.

## **II. COMPENSATION TO ELIGIBLE CEP RECIPIENTS**

1. Canada will make a Common Experience Payment to every Eligible CEP Recipient who was alive on May 30, 2005.
2. The amount of the Common Experience Payment will be:
  - (a) \$10,000 to every Eligible CEP Recipient who attended an Indian Residential School for one school year or part thereof.
  - (b) \$3,000 for each school year (or part thereof) thereafter that an Eligible CEP Recipient attended a residential school.
  - (c) An Eligible CEP Recipient who accepts the Common Experience Payment will be deemed pursuant to the court orders contemplated by this Agreement in Principle

to have released Canada and the Church Organizations for all claims arising out of his or her residential School experience or attendance but will retain the right to pursue a claim in accordance with the terms and conditions of the Individual Assessment Process set forth below.

3. To effectuate the distribution of the Common Experience Payments, Canada will transfer the Designated Amount to Service Canada and will develop application procedures for Eligible CEP Recipients that will reflect the need for simplicity of form, expedition of payments, and an appropriate form of audit verification in consultation with all parties.
4. The Federal Representative will recommend to the Deputy Prime Minister that the Minister of Finance designate that the Designated Amount be entitled to earn interest pursuant to Canada's policy applicable thereto; any interest would be added to the Designated Amount.
5. In the event that the Designated Amount is insufficient to pay all Eligible CEP Recipients the Common Experience Payments to which they are entitled, Canada agrees to add a sufficient amount to remedy any deficiency in this respect.
6. In the event the Designated Amount proves to be in excess by more than \$40,000,000 of the total amount required to pay all Eligible CEP Recipients their Common Experience Payments, Canada agrees to cause Service Canada to credit each Eligible Recipient with an amount up to \$3,000 for each Eligible CEP Recipient for Personal Healing (the "Personalized Healing Amount") services from a list of healing entities or groups jointly approved by Canada and the AFN pursuant to terms and conditions to be developed by Canada and the AFN with input from all the parties that will reflect ease of access to any genuine programmes for healing among other factors. A similar set of terms and conditions will be developed by Canada and Inuit organizations for Eligible CEP Recipients who are Inuit. If the excess after payment of the Common Experience Payments is less than \$40,000,000, such lesser amount will be paid to the Aboriginal Healing Foundation.
7. In the further event that the Designated Amount proves to be in excess of the amount required to pay the Personalized Healing Amounts, Canada agrees that Service Canada will transfer any such excess to the Aboriginal Healing Foundation.
8. It is agreed that Canada will assume the costs of verifying claims for the Common Experience Payments and administrative expenses relating to their distribution.

### **III. SETTLEMENT AGREEMENT PROVISIONS FOR THE INDEPENDENT ASSESSMENT PROCESS**

1. The parties agree that the only IRS claims which may be pursued by former students of Indian Residential Schools and the compensation to be paid for such claims when proven, are as set out at pages 2-6 of the IAP attached as Schedule "B".
2. The parties further agree that the Instructions set out at pages 29-35 of the IAP are approved, subject to minor wording changes consistent with the intended meaning.

3. The parties further agree that the remaining standards for the IAP shall be substantially as set out in Schedule "B".
4. No limitations defence will be advanced in any continuing claim diverted by the Chief Adjudicator to the courts. Canada will rely on Crown immunity in such claims where applicable.
5. It is agreed that Canada will provide sufficient resources to permit, after a 6 month lead-in period, the resolution of no fewer than 2500 continuing claims per year, and to maintain the current standard of offering an IAP hearing, or to resolve an IAP claim, within nine months of an application having been screened in, provided the delay is not the responsibility of the claimant. Where these goals are not achieved the NAC may request that the government provide additional resources for claims processing, or may apply to the court for an order making changes to the IAP process sufficient to permit the realization of these goals.

#### **IV. TRUTH AND RECONCILIATION**

A Truth and Reconciliation process will be established substantially in the form attached hereto as Schedule "E".

#### **V. COMMEMORATION**

1. Canada will provide funding for commemoration initiatives, events, projects and memorials with respect to Indian Residential Schools at both the national and community level.
2. Such funding will be approximately \$20 million covering both national commemorative and community-based activities and projects including funding already authorized.

#### **VI. HEALING**

1. Canada will provide one hundred and twenty-five million dollars (\$125,000,000) as an endowment to the Aboriginal Healing Foundation to fund healing programmes over a five year period to address the legacy of harms including the physical and sexual abuse suffered in Indian Residential Schools.
2. In the fourth year after the court orders approving the settlement package, Canada agrees to have an evaluation of the healing initiatives and programmes undertaken by the Aboriginal Healing Foundation to determine the efficacy of such initiatives and programmes and to recommend whether and to what extent funding should continue.

#### **VII. INUIT AND INUVIALUIT**

For greater certainty, all Inuit and Inuvialuit students who attended institutions listed on Schedule "C" while such schools operated as residential schools or Schedule "D" are eligible for the CEP and will have access to the IAP in accordance with its terms.

The government will continue to research institutions from the list attached as Schedule "F" and provide a determination before December 1, 2005.

### VIII. CHURCH PROVISIONS

The churches<sup>2</sup> and church entities agree that, as parties to the Settlement Agreement, they will:

1. Provide, at their own expense, assistance with witnesses and access to documents for the resolution of continuing claims on terms substantially similar to the following:
  - comply with all reasonable requests from Canada for information and assistance during the proceedings;
  - provide counsel for Canada and any researchers or experts retained by it, with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the defence of the continuing claim or claims for which the information was sought unless otherwise agreed in writing; and
  - in litigation, provide disclosure and production of relevant documents in their possession or control, provide witness statements on request, attend as appropriate at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within their employ.
2. Provide along with Canada for the provision of all relevant documents to and for the use of the Truth and Reconciliation Commission, subject only to overriding concerns about the privacy interests of an individual. In such cases, researchers for the Commission shall have access to such documents provided privacy is respected.
3. Refrain from advancing or relying upon any limitations or laches defence in any continuing claim for which the Chief Adjudicator authorizes recourse to the courts, and pay any judgement in such claims to which they are a party and in which the Crown is immune from liability, provided that the Crown has agreed to indemnify the Church.
4. The Crown may settle any continuing claims without a hearing, subject to any rights of consultation set out in an applicable Church/Crown agreement.
5. Binding financial and other commitments will be entered into with the Crown concerning the resolution of the IRS legacy on terms substantially similar to existing letters of understanding with the Crown and certain denominations and the Memorandum of Understanding between the Crown and the Catholic entities.

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<sup>2</sup> It is understood that General Synod of the Anglican Church of Canada agrees to be bound by these provisions and to recommend them to all Dioceses and the Missionary Society.

The Government confirms its commitment to renegotiate existing church agreements to give effect to the most favoured nation clauses found within them with a view to maintaining equity among the denominations.

#### **IX. ADDITIONAL INDIAN RESIDENTIAL SCHOOLS**

Any person or organization ("Requestor") may propose institutions to be added to Schedule "D" by submitting the name of the institution and any relevant information in their possession to the government;

The government will research the proposed institution and determine whether it meets the test set out in part 3 of the definition of Indian Residential Schools and advise the Requestor and the national administration committee and provide the reasons for the determination and all the information on which the decision was based within 60 days;

Should either the Requestor or the national administration committee dispute the government's determination, they may apply to the class action court in the jurisdiction where they reside or, if they reside outside Canada, the Ontario Court for a determination of the issue.

#### **X. IMPLEMENTATION**

The implementation of the final settlement judgment shall be accomplished substantially in the form attached hereto as Schedule "G".

#### **XI. SOCIAL BENEFITS OR SOCIAL ASSISTANCE BENEFITS**

Canada will use its best efforts to obtain agreement with provincial and territorial governments and any federal government departments to ensure that the receipt of any payments under the settlement agreement will not affect the amount, nature or duration of any social benefits or social assistance benefits available or payable to an Eligible CEP Recipient or Eligible IAP Claimant. The other parties also agree to use their best efforts to reach similar results.

#### **XII. LEGAL FEES**

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

1. Each lawyer who had a retainer agreement or a substantial solicitor-client relationship (a "Retainer Agreement") with an Eligible CEP Recipient as of May 30, 2005 (the date that the Federal Representative's appointment was announced) shall be paid an amount equal to the lesser of the amount of outstanding Work-in-Progress as of the date of the Agreement in Principle in respect of that Retainer Agreement or \$4,000, plus reasonable disbursements, and GST and PST, if applicable.

2. Each lawyer, other than lawyers representing the Churches, who attended the settlement negotiations beginning July 2005 leading to the Agreement in Principle shall be compensated for time spent up to the date of the Agreement in Principle in respect of the settlement negotiations at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable.
3. Each lawyer shall provide to the Federal Representative an affidavit or statutory declaration that attests to the number of Retainer Agreements he or she had with Eligible Recipients as of May 30, 2005 and the amount of outstanding Work-in-Progress in respect of each of those Retainer Agreements as docketed or determined by review. The Federal Representative shall rely on these affidavits to verify the amounts being paid to lawyers and shall engage in such further verification processes with individual lawyers as circumstances require with the consent of the lawyers involved, such consent not to be unreasonably withheld.
4. The National Consortium and the Merchant Law Group shall each be paid \$40,000,000 plus reasonable disbursements, and GST and PST, if applicable, in recognition of the substantial number of Eligible CEP Recipients each of them represents and the class action work they have done on behalf of Eligible CEP Recipients. Paragraphs 1, 2 and 3 above shall not apply to any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm or the Merchant Law Group.
5. The Federal Representative shall engage in such further verification processes with respect to the amounts payable to the Merchant Law Group and National Consortium as have been agreed to.
6. No lawyer or law firm that has taken part in these settlement negotiations or who accepts a payment for legal fees from the Canada shall charge an Eligible CEP Recipient any fees or disbursements in respect of the Common Experience Payment paid to that Eligible CEP Recipient.
7. Legal fees payable to legal counsel from November 20 forward shall be paid in accordance with the terms set out in Articles 44 and 45 of Schedule "G" to this Agreement in Principle.
8. All legal fees payable under the above provisions shall be paid no later than 60 days after the expiry of the latest applicable opt-out period.
9. The National Consortium member law firms are as follows:

Thomson, Rogers

Richard W. Curtis Law  
Office

Field LLP

Troniak Law Office

Koskie Minsky

Leslie R. Meiklejohn Law  
Office



David Paterson Law Corp.	Huck Birchard
Docken & Company	Ruston Marshall
Arnold, Pizzo, McKiggan	Rath & Company
Cohen Highley LLP	Levene Tadman Gutkin Golub
White, Ottenheimer & Baker	Coller Levine
Thompson Dorfman Sweatman	Adams Gareau
Ahlstrom Wright Oliver & Cooper	

### **XIII. TRANSITION PROVISIONS**

It is agreed that the no prejudice commitment set out in the letter of the DM of IRSRC dated July, 2005, and attached as Schedule "H" means that following the coming into force of the final settlement agreement:

1. All Eligible CEP Recipients are entitled to receive the CEP regardless of whether a release has been signed or a judgment received for their IRS claim.
2. Where a release of an IRS claim was signed after May 30, 2005 in order to receive the payment of an award under the DR Model:
  - (a) the government will recalibrate the award in light of the compensation scale set out at page 6 of Schedule "B";
  - (b) the claimant may have their hearing re-opened to reconsider the assignment of points under the Consequential Loss of Opportunity category in Schedule "B", and pursuant to the standards of the IAP, in any case where the adjudicator assessed their claim as falling within the highest level in the Consequential Loss of Opportunity scale in the DR Model;
  - (c) a claimant who alleges sexual abuse by another student at the SL4 or SL5 category, where such abuse if proven would be the most serious proven abuse in their case, may have their hearing re-opened to consider such an allegation in accordance with the standards of the IAP.
3. Following the coming into force of a final settlement agreement, Canada will, at the request of a claimant whose IRS abuse claim was settled by Canada without contribution

from a Catholic entity which was party to such claim and is a party to this Agreement in Principle, such settlement having been for an amount representing a fixed reduction from the assessed Compensation, offer to pay the balance of the assessed compensation to the Claimant. Provided, however, that no amount shall be paid to a Claimant pursuant to this section until the Claimant agrees to accept such amount in full and final satisfaction of his or her claim against the Catholic Defendants, and to release the Catholic Defendants.

As well until a final settlement agreement comes into force, Canada will make best efforts to resolve cases currently in litigation, including those that would not fit within the IAP.

#### **XIV. CONFIDENTIALITY**

Save as required by law, the parties agree that the undertaking of confidentiality as to discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to this Agreement in Principle continues in force.

#### **XV. COMMUNICATIONS**

Save as required by law, the parties agree to not engage in any media or public communication as to this Agreement in Principle until after its approval by Cabinet. Following approval by Cabinet, Canada will make an initial public announcement.

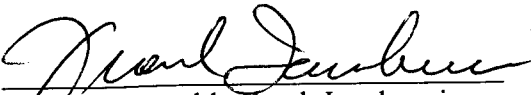
#### **XVI. FINAL SETTLEMENT AGREEMENT**

It is acknowledged by the parties that further discussion will be necessary to give effect to the provisions of this Agreement in Principle in a final settlement agreement. Canada agrees to compensate lawyers for time spent in such further discussions between the date of execution of this Agreement In Principle and the date of execution of the final settlement at the lawyers' normal hourly rates, plus reasonable disbursements and GST and PST, if applicable.

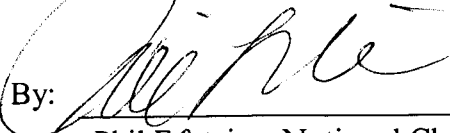
It is understood by all the Parties that the Federal Representative is recommending to Canada that this Agreement in Principle should form the basis of a comprehensive settlement package and the Federal Representative has no authority to bind Canada.

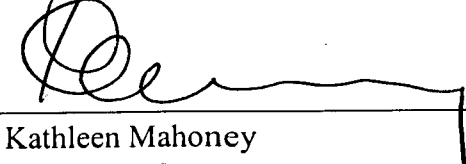
Signed this 20th day of November, 2005.

**THE FEDERAL REPRESENTATIVE**

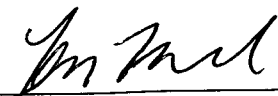
By:   
The Honourable Frank Iacobucci

**ASSEMBLY OF FIRST NATIONS**

By:   
Phil Fontaine, National Chief

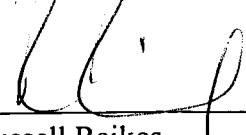
By:   
Kathleen Mahoney

**CABOTT & CABOTT**

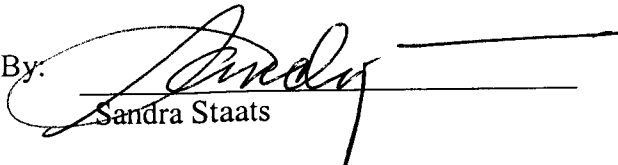
By:   
for Laura Cabott

By:

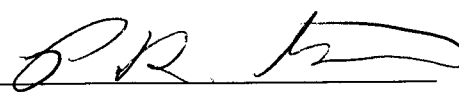
**COHEN HIGHLY LLP**

By:   
Russell Raikes

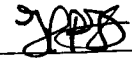
**HEATHER SADLER JENKINS**

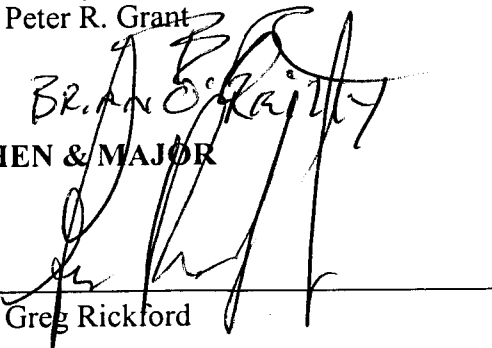
By:   
Sandra Staats

**HUTCHINS, GRANT & ASSOCIATES**

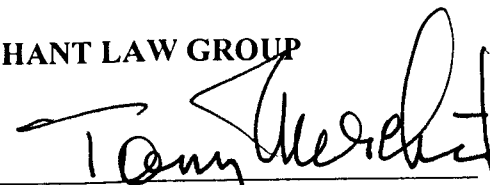
By:   
Peter R. Grant

*Region 2*  
**INUVIALUIT CORPORATION**


By:   
Hugo Prud'homme

*Brian O'Rielly*  
**KESHEN & MAJOR**  
By:   
Greg Rickford

**MERCHANT LAW GROUP**

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

**NATIONAL CONSORTIUM**

By:   
Craig Brown

NELLIGAN O'BRIEN PAYNE

By: Lori O'Neill  
Lori O'Neill

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

By: S. John Page  
S. John Page

THE PRESBYTERIAN CHURCH IN CANADA

By: S. John Page  
S. John Page

THE UNITED CHURCH OF CANADA

By: Alexander D. Pettingill  
Alexander D. Pettingill

CATHOLIC ENTITIES

By: W. Roderick Donlevy  
W. Roderick Donlevy

FULTON & COMPANY

By: Leonard S. Marchand  
Leonard S. Marchand

By: Pierre L. Baribeau  
Pierre L. Baribeau

MAKIVIR CORPORATION

per GILLES GAENE  
GILLES GAENE