INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

CANADA, as represented by the Honourable
Frank Iacobucci

-and-

PLAINTIFFS, as represented by the National Consortium, the
Merchant Law Group and Independent Counsel

-and-

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

-and-

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

NATIONAL ADMINISTRATION COMMITTEE

Report to the Supervising Courts Pursuant to the April 18, 2018 Direction and December 21, 2018 Supplemental Direction of Justice Brown and Justice Perell

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LIST OF ACRONYMS AND NAMES

ADR	Alternative Dispute Resolution process that predated the Settlement Agreement
AFN	Assembly of First Nations, a party to the Agreement and a member of NAC
AFN Report	A document produced by the AFN and the University of Calgary task force prior to the negotiation of the Agreement
AIP	The Agreement in Principle executed on November 20, 2005
CARS	Computer Assisted Research System, developed for and used to assist in eligibility determination of Common Experience Payment
CBA	Canadian Bar Association
CEP	Common Experience Payment
Consortium	National Consortium, a party to the Agreement and a member of the NAC
Court Counsel	Legal counsel appointed by the first administrative judges, initially the late Randy Bennet and subsequently Brian Gover
Crawford	Crawford Class Action Services
DAF	Designated Amount Fund of which Canada is the trustee
DNQ	Files held by Blott law firm which he concluded did not qualify for IAP claims
IAP	Independent Assessment Process, an adjudicative process established by the Agreement under the guidance of the Oversight Committee
IEF	Inuvialuit Education Foundation
Independent Counsel	Independent claimants' counsel, a party to the Agreement and member of NAC
INAC	Indian and Northern Affairs Canada

Inuit Representatives	Means Inuvialuit Regional Corporation, Makivik Corporation and Nunavut Tunngavik Inc., a party to the Agreement and a member of NAC
IRSSA	Indian Residential Schools Settlement Agreement, also referred to as the Agreement and the Settlement Agreement
IRSRC	Indian Residential Schools Resolution Canada, the Department of Canada validating CEP applications
LAC	Library and Archives Canada
MLG	Merchant Law Group, a party to the Agreement and a member of the NAC
NAC	National Administration Committee, comprised of Canada, Churches, AFN, Inuit Representatives, National Consortium, Independent Counsel and Merchant Law Group
NCC	National Certification Committee, which operated prior to the NAC to obtain court approval of the Agreement
NCTR	National Centre for Truth and Reconciliation
NIBTF	National Indian Brotherhood Trust Fund
Oversight Committee	Established by the Agreement to oversee the implementation of the IAP
RACs	Regional Administration Committees
RCAP	Royal Commission on Aboriginal Peoples
Reconsideration	First stage of review for a CEP claim
SADRE	Single Access Dispute Resolution Enterprise, a database for assistance in the determination of CEP claims
SCC	Supreme Court of Canada
Service Canada	Department of Canada responsible for intake and identification of CEP applicants
SOS	Student-on-student abuse claims

INTRODUCTION

1. The National Administration Committee (NAC) of the Indian Residential Schools (IRS) Settlement Agreement (IRSSA or Settlement Agreement) hereby reports to the supervising courts on the Committee's activities to fulfill its role and responsibilities in the implementation of the Agreement in accordance with the Direction dated April 18, 2018 and Supplemental Direction dated December 21, 2018 from the Administrative Judges.

2. This report, which represents the consensus of the NAC members respecting their work, will begin by describing the origins of the Settlement Agreement, and the NAC. It will then turn to a detailed description of the activities of the NAC in carrying out its responsibilities and implementing and advancing the objectives of the Agreement. Schedules 1 and 2 hereto contain the perspective of the Assembly of First Nations (AFN) and Inuit Representatives respectively, regarding the points of view they advanced in the negotiation and implementation of the IRSSA. Schedules 1 and 2 were generated during the creation of the NAC Final Report and reflects only the views of the identified NAC party. They are not necessarily shared by other members of the NAC and, therefore, do not form part of this report. To be clear, these perspectives are not the perspective of the NAC. However, the AFN, Inuit Representatives and some NAC members view these perspectives as important to understand the perspectives that the AFN and Inuit Representative NAC members brought to their task.

3. The NAC is comprised of representatives of the seven major parties to the Settlement Agreement: Canada, the AFN, the Inuit Representatives, the Church Organizations (who were allowed two representatives sharing a single vote), the National Consortium, Merchant Law Group, and Independent Counsel. These stakeholders emerged as the key representatives in the negotiation of the IRSSA, and were designated to constitute the membership of the Committee tasked with administering the Settlement Agreement. The NAC became active upon the implementation of the IRSSA in

September 2007 and has continued its work to the present. Its current membership is as follows:

Independent Counsel:	Peter Grant (Chair)
Canada:	Catherine Coughlan
Assembly of First Nations:	Kathleen Mahoney
Inuit Representatives:	Hugo Prud'homme
Church Organizations:	Alex Pettingill - Protestant organizations
	Michel Thibault - Catholic organizations
Merchant Law Group:	Tony Merchant/Jane Ann Summers
National Consortium:	Jon Faulds

4. Throughout its existence the NAC has been comprised of persons who were directly involved in the negotiation of the IRSSA and has experienced a remarkable consistency of membership. The representatives for AFN, Merchant Law Group, Canada, the Protestant Churches and Independent Counsel remained the same throughout the entire eleven years of the NAC. There was only one change for the Inuit Representatives, the National Consortium, and the Catholic Church and the replacement representatives had also been involved in the negotiation of the IRSSA. Each of the parties determined who would sit on the NAC on behalf of their respective group. The NAC wishes to recognize the work of William Roderick (Rod) Donlevy Q.C. who was critically involved in the work of the NAC as the Catholic Church representative right up to just before his death on December 25, 2014.

5. There have been three chairs of the NAC. From October 2007 until September 2009, Alan Farrer (National Consortium) was the chair of the NAC. From October 2009 until June 2011, Gilles Gagné (Inuit Representatives) was the chair. From August 2011 until present, Peter Grant (Independent Counsel) has served as chair with Jon Faulds as the alternate chair.

6. Although none of the NAC members are residential school survivors, the majority of the NAC members had the honour of representing survivors or Aboriginal organizations that advocate for them, and learned directly from them of the horrific impact of Indian residential schools.

7. The Settlement Agreement, which then AFN National Chief, Phil Fontaine, described as "an agreement for the ages" sought to make amends for the residential school experience and reflected the desire of all parties for a fair, comprehensive, and lasting resolution of the legacy of Indian residential schools. In keeping with the magnitude of the issue it addressed, the Agreement was and remains the largest class action settlement in Canada's history. Reflecting its goal of promoting healing, education, truth and reconciliation, and commemoration, it established a Truth and Reconciliation Commission, endowed the Aboriginal Healing Foundation to support healing programs addressing the residential school legacy and provided funding for commemoration of that legacy.

8. The breadth of the IRSSA reflects the extent of the commitment by Canada and the Church Organizations to the resolution of the residential school legacy. That resolution has been an historic and transformational milestone in the relationship between Canada's Indigenous and non-Indigenous peoples, as the nature and effects of residential schools became better known and understood. All the members of the NAC consider themselves fortunate to have had the opportunity to make some contribution to the national project of reconciliation through their role in the implementation of the Settlement Agreement.

Genesis of the Indian Residential Schools Settlement Agreement

A. Litigation Against the Crown

9. The Settlement Agreement was the culmination of at least two decades of political, social and legal advocacy by and on behalf of Indigenous Canadians[1] whose lives had been impacted by the experience and legacy of the Indian residential school system.

10. In the last two decades of the 20th century, as the last residential schools in Canada closed, Indigenous leaders and survivors began speaking out about the residential school experience. They spoke of the origin of the schools in the desire of churches

[1] Indigenous and Aboriginal are used interchangeably.

and government to convert and assimilate Canada's first peoples by separating children from their family, home, community, and culture. They spoke of the impoverished and regimented life those children experienced at the schools, of the poor quality of education provided, of the sexual, physical and emotional abuse which many children suffered at the hands of those whose duty it was to teach, guide, and care for them, and of the pain and damage which these experiences had caused to the individuals who had attended the schools and to the fabric of their families, communities, and nations.[2] As these voices multiplied, non-Indigenous Canadians began to learn about residential schools, the existence and nature of which had previously been largely unknown. The issue received national attention in October, 1990, when Phil Fontaine, then Grand Chief of the Assembly of Manitoba Chiefs, appeared on national television to speak about the abuse he and fellow students had experienced at the Fort Alexander Indian Residential School and he called for an inquiry.[3] Meanwhile, the first litigation arising from abuse at Indian residential schools had been commenced, in 1988.

11. The 1996 release of the Report of the Royal Commission on Aboriginal Peoples (RCAP)[4] focused further attention on the residential schools legacy. In a lengthy chapter based largely on government and church records, the report painted a dismal picture of a system conceived in 19th century stereotypes, fueled by the evangelizing agenda of church organizations, administered without adequate resources or properly trained staff, dedicated to the eradication of Indigenous language and culture and the assimilation of Aboriginal people into the dominant European culture, and rife with neglect, mistreatment, and abuse of children[5]. The RCAP report recommended a public inquiry into the residential school system, with the power to recommend remedial action

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[2] See Miller, J.R. (James Roger), Shingwauk's Vision: A History of Native Residential Schools, University of Toronto Press, 1996; and Milloy, John S., A National Crime: The Canadian Government and the Residential School System 1879 to 1986, The University of Manitoba Press, 1999.
[3] CBC Digital Archives, Phil Fontaine's Shocking Testimony of Physical and Sexual Abuse https://www.cbc.ca/archives/entry/phil-fontaines-shocking-testimony-of-sexual-abuse
[4] Report of the Royal Commission on Aboriginal Peoples, *Indigenous and Northern Affairs Canada* https://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637
[5] Ibid, Volume 1, Part 2, chapter 10 p. 309.

including apologies, compensation, and funding for healing. The Commission also called for the creation of a national archive of records related to residential schools and the creation of public education programs and school curricula that explain the history and effects of residential schools.[6]

12. As criticisms of the residential school system mounted and public awareness of the residential school legacy grew, several organizations issued apologies or statements of regret for their involvement. These included the Oblate Conference of Canada (1991), the Anglican Church of Canada (1993), the Presbyterian Church in Canada (1994) and the United Church of Canada (1998).[7] In 1998 the Government of Canada issued its Statement of Reconciliation to Canada's Aboriginal peoples.[8] The Statement expressed "profound regret" for Canada's role in the development and administration of residential schools and conveyed to survivors of physical and sexual abuse at the schools that Canada was "deeply sorry" for the tragedy they had experienced. Canada also committed $350 million for community-based healing programs and services "to deal with the legacy of physical and sexual abuse at residential schools." [9]

13. At the same time, survivors began to seek compensation through the legal system for harms they had experienced at residential schools. The first such claims seeking damages for sexual abuse were filed in British Columbia in 1988[10] with claimants in other parts of Canada following suit. The first proposed class proceeding, on behalf of former students of the Mohawk Institute residential school (the *Cloud* case),[11] was filed in 1998. That same year the late Chief Justice Brenner of the B.C. Supreme Court ruled

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[6] Ibid, pages 366-367; Volume 3, chapters 3 and 4.
[7] The apologies are available at: https://guides.library.utoronto.ca/c.php?g=527189&p=3698521
[8] The statement is available at: https://www.aadnc-aandc.gc.ca/eng/1100100015725/1100100015726
[9] Address by the Hon. Jane Stewart on the Unveiling of Gathering Strength, Canada's Aboriginal Action Plan, *Indigenous and Northern Affairs Canada*, available at: https://www.aadnc-aandc.gc.ca/eng/1100100015725/1100100015726
[10] *Aleck v. Clarke*, 1999 CanLII 15172 (BC SC), available at: https://www.canlii.org/en/bc/bcsc/doc/1999/1999canlii15172/1999canlii15172.html?autocompleteStr=aleck%20v%20clarke&autocompletePos=1
[11] *Cloud v. Canada (Attorney General)*, 2004 CanLII 45444 (ON CA), available at: https://www.canlii.org/en/on/onca/doc/2004/2004canlii45444/2004canlii45444.html?autocompleteStr=Cloud&autocompletePos=1

in the landmark *Blackwater* decision[12] that both Canada and the church organizations were jointly and severally vicariously liable for abuse in the schools, with the government 75% responsible and the church organizations 25%. With that decision litigation spread across Canada.

14. As the volume of legal actions increased, the nature of the claims evolved. While earlier claims focused on allegations of sexual abuse, newer claims also alleged that the removal of plaintiffs from their homes to be placed in the schools where they were subjected to the objectives and circumstances of the residential school system was wrongful in itself and was legally compensable. Reflecting this view, in 2000 a class action on behalf of all residential school students across Canada was commenced.[13] As a result, Canada faced the prospect of a claim on behalf of any person who had attended a residential school.

15. As the volume of court actions continued to grow three main groups of claimant's counsel emerged. These were:

- The National Consortium. It comprised more than 20 law firms from across the country advancing both individual and class claims (including the *Cloud* and *Baxter* class actions) and pursued a coordinated approach to both litigation and negotiation. In addition to pursuing litigation claims through the courts, the Consortium engaged in preliminary discussions with Canada and the church organizations respecting the possibility of a comprehensive resolution of claims and worked with the AFN to pursue mutual goals.

- Merchant Law Group (MLG). Based in Saskatchewan, with offices across Canada, MLG represented the largest number of individual claimants of any single law firm in the country. MLG pursued a variety of those claims to trial,

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[12] *Blackwater v Plint* [2005] 3 S.C.R. 3, [2005] SCC 58, available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2239/index.do

[13] *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ON SC),available at: https://www.canlii.org/en/on/onsc/doc/2006/2006canlii41673/2006canlii41673.html?autocompleteStr=Baxter%20&autocompletePos=2

including the case of *H.L.* which was ultimately determined in the Supreme Court of Canada in April, 2005.[14] In that case the SCC upheld the trial judge's finding that the claimant's alcoholism and its impact on his past earnings were causally related to the sexual abuse he had suffered at residential school.

- Independent Counsel. This group originated in B.C. and included individual counsel who had been involved in the earliest residential school abuse claims, of which the trial in the *Blackwater* case was the most notable. *Blackwater* was also ultimately decided by the Supreme Court of Canada which confirmed the trial decision that both Canada and the church organizations were jointly vicariously liable for abuse committed by school staff. From B.C. the group extended across Canada to include counsel in the prairie provinces, Ontario and Québec, and coalesced into an organized group of 23 law firms in 2005. Unlike the National Consortium and Merchant Law Group, Independent Counsel represented individual claimants only and did not initiate class proceedings.

16. The AFN commenced class proceedings in 2005 in order to set out their claims for the residential school harms as well as to secure legal status to appear before the courts and secure a place at the negotiating table.[15]

17. The Inuit Representatives also initiated class actions in 2005 in the Northwest Territories,[16] Nunavut,[17] and Québec,[18] to protect the interest of Inuit former students and their families.

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[14] *H.L. v Canada*, 2005 SCC 25, online at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do

[15] To see the AFN's statement of claim go to *Fontaine et al v Canada (Attorney General)* (5 August 2005), Toronto 05-CV-294716 CP (ONSC) (Statement of Claim), online at: https://kathleenmahoney.files.wordpress.com/2018/04/afn-issued-statement-of-claim_2005.pdf
The AFN made their claim on behalf of 4 classes of people - survivors, deceased survivors, families of survivors and aboriginal peoples generally. For the four classes they claimed compensation for cultural, linguistic and social damage, social and educational programs, healing initiatives, counselling, commemoration and truth and reconciliation hearings as well as compensation for sexual, physical and emotional abuse.

[16] IRC organized the class action titled *Rosemarie Kuptana v. the Attorney General of Canada*, Supreme Court of the Northwest Territories, File # S-0001-2005000243.

[17] *Michelline Ammaq, Blandina Tulugarjuk and Nunavut Tunngavik Incorporated v. Attorney General of Canada*, Nunavut Court of Justice Court, File # 08-05-401 CVC.

[18] Makivik sponsored a legal action filed on behalf of some Nunavik Inuit former students in the Superior Court District of Montréal, File # 500-17-026908-056.

B. Dialogue Process (1998-1999)

18. Canada's response to this tide of litigation focused at first on community-based initiatives to address the aftermath of physical and sexual abuse at residential schools. In 1998 and 1999, with the help of an independent facilitator, Canada convened a series of exploratory dialogues across the country. Survivors, Aboriginal leaders including AFN representatives, healers and other experts, senior government, church representatives, and legal counsel participated in the dialogues to consider alternatives to the court process in addressing abuse claims. Key findings arising from the process were that survivors wanted a holistic approach which would include healing from the injuries caused by residential schools, an opportunity to tell their stories and be believed and respected, an apology, and fair and just compensation. Survivors also expressed the need to address intergenerational harms, to rebuild damaged relationships, to restore lost language and culture, and to commemorate survivors who had died.

19. As a result of those dialogues a dozen community-based "pilot projects" aimed at achieving a collective and holistic resolution of residential school abuse claims were attempted. Some of the projects resulted in settlement but most were unsuccessful for various reasons, including the fact that only a narrow range of abuse claims would be compensated and the absence of any provision for collective remedies such as community healing, intergenerational harms, commemoration, or a truth commission. Ultimately this community-based approach to resolving claims was not pursued on a larger scale. However, the principles underlying the dialogues, including emphasis on story-telling and healing in addition to financial compensation, continued to inform the process of pursuing resolution.

C. Alternative Dispute Resolution (ADR) Process (2002-2006)

20. In 2002, Canada instituted an alternative dispute resolution process for residential school abuse claims. The ADR provided former students the option to pursue their claims individually outside the courts, before an adjudicator authorized to award

compensation in accordance with a predetermined schedule of wrongs and levels of harm. This program resulted in a number of settlements but it was criticized for being too cumbersome, providing compensation that was too limited, discriminating between claimants, and being gender biased.[19] Moreover, the ADR was only a partial alternative to litigation as it was limited to personal abuse claims. It did not address the needs of survivors to heal, intergenerational harms, or commemorate the dead.[20] Actions based on the claim that being placed in a residential school was itself wrongful and for the common experience of all survivors in being separated from their family, home, community, languages and culture remained unaddressed. Based upon its view of the law at the time, Canada was unwilling to consider the negotiation or settlement of such claims, leaving recourse through the courts the only option.

21. Ultimately, the Parliamentary Committee on Aboriginal Affairs conducted hearings to evaluate the ADR in February, 2005.[21] Claimants, legal counsel, including members of the National Consortium and Independent Counsel, survivor groups, and the AFN gave evidence. In addition to hearing survivors speak of horrific experiences at residential schools, the Committee heard how the ADR did not recognize or compensate many of those experiences. In one example, the Committee heard how Canada spent $28,000 appealing an award of $1,500 on the grounds the award fell outside the scope of the ADR. The Committee released its report in April, 2005, finding the ADR to be "an excessively costly and inappropriately applied failure, for which the Minister and her officials are unable to raise a convincing defense."[22]

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[19] These criticisms are set out in detail in Assembly of First Nations, *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, available online at: https://kathleenmahoney.files.wordpress.com/2018/03/afn-report-indian_residential_schools_report.pdf
The AFN Report points out that besides being subject to a cap on awards, compensation varied among provinces, and with the church denomination involved in the claimant's school. Some church denominations contributed to the ADR while others did not, with the result that claimants from schools whose church did not contribute received only 70% of the assessed award. Claimants from BC, Ontario or the Yukon could receive up to $50,000 more for the same injuries than survivors who lived in other provincial jurisdictions because case law in those provinces had determined a higher level of compensation than the other provinces.

[20] Ibid.

[21] House of Commons Standing Committee on Aboriginal Affairs and Northern Development 4th Report http://www.ourcommons.ca/DocumentViewer/en/38-1/AANO/report-4

[22] Ibid.

D. AFN and CBA Reports (2004-2006)

22. In March 2004 the AFN and the University of Calgary[23] convened a national conference including experts in a wide range of relevant fields, survivors, Indigenous leaders, legal counsel and government officials to examine how the residential school legacy could be addressed. Virtually all in attendance agreed that the ADR was inadequate to achieve the goals of reconciliation or a just and fair settlement for residential school survivors. The conference concluded with a proposal by National Chief Phil Fontaine that the AFN and the University of Calgary convene a task force that would bring forward recommendations to improve the ADR as well as address needs of survivors that would meet with their acceptance. Canada agreed and provided the necessary funds for the task force to commence work.

23. As the task force met, the concept of universal compensation for former residential school students received an endorsement from the Canadian Bar Association (CBA). At its annual national meeting the CBA approved a resolution calling on Canada to go beyond its existing settlement programs and provide a base payment to all residential school survivors.[24]

24. The task force issued its report in November 2004[25], known as the AFN Report. The report noted certain positive aspects of the ADR, including its use of an out of court process to settle claims, Canada's contribution to a claimant's legal fees and the provision of a commemoration fund. However, the AFN Report criticized the limited scope of wrongs addressed by the ADR and made detailed recommendations to remedy the discrimination described above, remove the "standards of the day"

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[23] The conference was co-chaired by the National Chief Phil Fontaine and law Professor Kathleen Mahoney from the University of Calgary Faculty of Law. The title of the conference was Residential Schools Legacy: Is Reconciliation Possible? March 12, 13, 14, 2004. To see the conference program go to https://kathleenmahoney.files.wordpress.com/2019/03/2004-residential-school-legacy-conference-agenda.pdf

[24] Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Annual Meeting held in Winnipeg, MB, August 14-15, 2004, online at: http://www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2004/Portee-du-mecanisme-de-resolution-des-conflits-rel/04-08-A.pdf

[25] The Assembly of First Nations *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, *supra* note 19.

defenses, allow compensation for loss of income claims, remove limits of time and place for third party abuse and simplify the process.

25. The AFN Report proposed that in addition to an improved process for assessing abuse claims there be a lump sum payment to all residential school survivors for their shared experience of being removed from their families and communities and having their language and culture suppressed. The AFN Report suggested that the lump-sum payment include a base amount of $10,000, with a further sum of $3,000 for each year spent at a residential school. The AFN Report also proposed a truth and reconciliation initiative and other measures to address the principles that had emerged from the exploratory dialogues and task force including health, commemoration, healing and intergenerational harms and special considerations for the elderly.[26]

26. In February 2005, the CBA followed up on its earlier resolution with its own report in support of universal compensation. Citing RCAP and endorsing the AFN Report, the CBA proposed a reconciliation payment that "would not require a person to prove that he or she was a victim, but rather would recognize a person as a survivor of an injurious program for which the government of Canada is responsible."[27]

E. Increased Litigation Pressure

27. Developments in the courts added pressure for a comprehensive resolution.[28] By 2005 the volume of individual claims filed had grown to more than 10,000, threatening to

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[26] AFN Report, *supra* note 19, pages 14-31, 36-38. The AFN conducted a nation-wide process to consult with survivors as to what they wanted and needed in a settlement agreement. The consultations revealed that the priorities of the survivors were a truth commission, healing, commemoration and apologies. Compensation was a lesser priority.

[27] Canadian Bar Association, The Logical Next Step, Reconciliation Payments for All Residential School Survivors, available online at: https://www.cba.org/CMSPages/GetFile.aspx?guid=0ca77877-f121-4109-ae19-3332eecfa42a

[28] The Treasury Board of Canada estimated that it would take 53 years to conclude residential school court cases, estimated to be 18,000 in number. The cost was estimated to be $2.3 billion in 2002 dollars not including the value of the actual settlement costs. See Treasury Board of Canada Secretariat 2003, Indian Residential Schools Resolution Canada, Performance Report for the Period ending March 31, 2003, available online at: http://publications.gc.ca/site/eng/246476/publication.html

swamp the courts.[29] In November 2004 the Ontario Court of Appeal (ONCA) certified the *Cloud* [30]case as a class proceeding, overturning decisions in the lower courts that had found the case unsuitable to go forward as a class action. The ONCA rejected Canada's argument that the ADR was a preferable procedure for dealing with the claims, noting that it had been created unilaterally and could be terminated the same way, that it was limited to abuse claims only, and that it placed a cap on the amount of possible recovery. Canada sought leave to appeal the *Cloud* ruling to the Supreme Court of Canada, but their application was denied.

28. In the wake of the *Cloud* decision, counsel for the *Baxter* national class action moved to schedule a certification application for that claim, raising the specter of a class proceeding on behalf of all residential school students across Canada. In Alberta, a test case on behalf of a representative group of Plaintiffs was set down for trial commencing in September 2005. That test case trial would address the claim that being placed in a residential school was wrongful in itself, providing the first opportunity for a court to pronounce on the legal basis for the universal claim.

F. Political Agreement

29. Throughout the first half of 2005 the AFN engaged in intensive discussions with representatives of Canada, including at the highest levels, to advance its Report.[31] Legal counsel for the claimants also continued to pursue discussions with Canada aimed at achieving a comprehensive resolution to the litigation, while continuing to advance their claims in court.[32] As noted above, in February 2005, the Parliamentary Committee on Aboriginal Affairs took up the issue of Canada's ADR's program and

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[29] McMahon J noted in 2006 there were 10,538 active litigation files and another 5,000 claims being advanced under Canada's ADR program, *Northwest v. Canada (Attorney General)*, 2006 ABQB 902 at paras. 3 and 4.
[30] *Cloud v. Canada (Attorney General)*, 2004 CanLII 45444 (ON CA), http://canlii.ca/t/1jd1b
[31] See Mia Rabson, "Fontaine Recalls When Former PM Martin Agreed to Address Residential Schools Legacy", *Winnipeg Free Press* (2 June 2015), online: https://www.winnipegfreepress.com/special/trc/Fontaine-recalls-when-former-PM-Martin-agreed-to-address-residential-schools-legacy-305901261.html.
[32] For a history of this period see K. Mahoney, The Settlement Process: A Personal Reflection *(2014) 64U LJ 508.* https://www.utpjournals.press/doi/abs/10.3138/utlj.2485

concluded it was a failure. Three months later, the SCC ruled it would not hear Canada's appeal from the certification of the *Cloud* case as a class action.

30. Shortly after the SCC ruling the ongoing discussions between Canada and the AFN bore fruit. On May 30, 2005, it was announced that a Political Agreement had been reached between Canada and the AFN to address the residential school legacy. That Agreement recognized "the need to develop a new approach to achieve reconciliation on the basis of the AFN Report." As a first step Canada committed to appoint former Supreme Court of Canada Justice Frank Iacobucci as its representative:

> to negotiate with Plaintiffs' counsel, and work and consult with the Assembly of First Nations and counsel for the churches, in order to recommend...a settlement package that will address payment for all former students of Indian residential schools, a truth and reconciliation process, community based healing, commemoration, an appropriate ADR process that will address serious abuse, as well as legal fees.[33]

G. Agreement in Principle

31. As a result of the appointment of Justice Iacobucci, most residential school litigation was put on hold. Following preliminary discussions negotiations commenced in July 2005 and continued intensively at various locations across the country over a period of five months. The negotiations led by Justice Iacobucci on behalf of Canada involved the AFN and three Inuit organizations, legal counsel for Plaintiffs, and representatives of the United, Anglican, Presbyterian, and Catholic churches. In short, all parties represented on the NAC participated in those negotiations. They were conducted at two main "tables", one of which addressed compensation for residential school survivors and the other healing, commemoration and a truth and reconciliation process.[34] Working groups were struck to focus on modifications to the ADR process and to address issues relating to legal fees. Canada and the church organizations met

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[33] To see the full Political Agreement between the Assembly of First Nations and Her Majesty the Queen in Right of Canada, represented by the Deputy Prime Minister Anne McLellan, 30 May 2005, see Appendix A of this report. The Political Agreement is also available online at: https://web.archive.org/web/20070319141417/http://www.afn.ca/cmslib/general/IRS-Accord.pdf

[34] The first table included all the parties to the Settlement Agreement. The second table involved only the AFN, Canada and the church representatives.

separately to negotiate the churches' contributions to the overall settlement. Although the Catholic church entities did not initially participate, they joined the negotiations in the late fall of 2005 as negotiations reached a critical juncture.

32. By November 2005 the Liberal minority government that had initiated the settlement negotiations was poised to fall. There was doubt as to the future of the negotiations if no agreement was reached before the government dissolved and an election was called. Spurred by this uncertainty, the parties engaged in a marathon bargaining session which resulted in an Agreement in Principle dated November 20, 2005 (AIP). The main pillars of that Agreement were:

> • a lump sum payment to all residential school survivors, referred to as the Common Experience Payment or CEP, for which the minimum sum of $1.9 billion was committed. The amount of the redress payment for each individual would be based upon the number of years spent in a residential school. Each eligible claimant would receive $10,000 for the first year or part thereof and $3,000 for each subsequent year or part thereof.
>
> • an improved ADR process to be called the Independent Assessment Process (IAP), which Canada agreed to fund to the extent necessary to pay all proven claims of physical and sexual abuse and other wrongful acts causing serious psychological harm;
>
> • funding for healing and commemoration programs and events;
>
> • the creation of a Truth and Reconciliation Commission whose mandate included hearing and preserving the statements of survivors, creating an historical record of the IRS system and its legacy, providing for the preservation of that record and making it available for research, and reporting and making recommendations concerning the IRS system and its ongoing effects and consequences.

33. The Agreement in Principle, at Appendix B of this report, contained detailed provisions regarding its implementation including the creation of a National Administration Committee to play a central role in its administration.

34. The NAC was comprised of a representative of each of the seven key stakeholders who had emerged in the course of negotiations. These were: the Assembly of First Nations and the Inuit Representatives, the National Consortium, Merchant Law Group

and Independent Counsel, being the three groups of legal counsel, the Catholic and Protestant Church organizations and Canada. As contemplated in the AIP, the NAC's mandate would be "to interpret the final settlement judgment and to consult with and provide input to Canada with respect to the Common Experience Payment" and its functions were to include ensuring national consistency with respect to the implementation of the settlement.

35. This Agreement in Principle was the foundation of the final Settlement Agreement.[35]

H. Settlement Agreement

36. The Agreement in Principle provided that its terms be incorporated into a formal Settlement Agreement. Discussions and negotiations on the terms of that agreement began in early 2006 resulting in the formal Settlement Agreement dated May 8, 2006.[36] The substantive elements of the AIP were incorporated in the Settlement Agreement with some changes. The most significant of these concerned the disposition of any surplus in the amount designated for the payment of the CEP. Under the AIP, any surplus above a minimum threshold would have been distributed to claimants, to a maximum of $3,000.00 each, for personal healing activities drawn from an approved list of healing programs. Any remaining surplus would be paid into the Aboriginal Healing Foundation.

37. Under the Settlement Agreement, the use of surplus shifted from healing to education. Any excess funds above the threshold were to be distributed in the form of personal credits redeemable for educational services, which could be assigned to descendants of recipients and used at any educational institution accredited by the parties. Any remaining surplus would be proportionately shared between the AFN's National Indian Brotherhood Trust Fund and the Inuvialuit Education Foundation to establish

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[35] The evolution of the Settlement Agreement was in three steps: the Political Agreement set out the framework, the Agreement in Principle expanded the framework to set out the explicit terms and the formal Settlement Agreement completed all of the provisions.

[36] Indigenous and Northern Affairs Canada, Indian Residential Schools Settlement Agreement, http://www.residentialschoolsettlement.ca/settlement.html [Settlement Agreement].

educational programs for the benefit of class members, including the intergenerational class.

38. With respect to the NAC, the Settlement Agreement confirmed its composition but expanded its mandate. In addition to the matters described in the AIP, the Settlement Agreement designated the NAC to hear appeals from eligible CEP recipients and to determine references to it from the Truth and Reconciliation Commission, as well as to exercise specified powers in relation to the Independent Assessment Process. As will be seen, the addition of an appellate role in relation to the CEP had significant impact on the functioning of the NAC.

39. The Settlement Agreement was intended to effect a binding resolution of all residential school claims and litigation, which could only be accomplished by way of a class action settlement approved by the Courts. Some parties expressed concern about the jurisdiction of any single Canadian court to approve such a settlement as the law then stood. In particular, the Federal Court lacked jurisdiction over the church organizations and the jurisdiction of the provincial superior courts over claimants in other provinces was insufficiently clear. As a result both the Agreement in Principle and the Settlement Agreement provided that the Settlement be approved in nine Canadian jurisdictions; six provinces and the three territories.

I. Approval Orders

40. To obtain court approval across the country a National Certification Committee (NCC) was established whose composition mirrored that of the NAC. It assumed primary responsibility for bringing the applications necessary to obtain the required approvals. A schedule for the nine hearings was established, beginning in Ontario before Regional Senior Judge Winkler (as he then was) at the end of August 2006. The hearings occurred over a span of almost two months with the first decision – that of Winkler RSJ – issuing in mid-December.[37] Winkler RSJ expressed conditional support for the

[37] *Baxter v Canada (Attorney General)* (2006), 83 OR. 481. http://www.classactionservices.ca/irs/phase2/PDFs/Ontario.pdf

settlement but had concerns about its administration, including the court's ability to properly supervise the settlement and the possibility of conflict between Canada's status as a defendant and its proposed role as administrator of the settlement.[38] He found that further administrative measures were required to mitigate this possible conflict and allow proper court supervision, including the appointment of a supervisor or supervisory board to act as the court's eyes and ears and report to the court on the implementation of the settlement. In their subsequent decisions, the other approval judges split between those who would have endorsed the settlement as is and those who echoed the concerns of Justice Winkler.

41. As a result of this divergence of views the approval judges convened a meeting with the parties to discuss how the concerns over settlement supervision and administration might be addressed. A further round of negotiations amongst the parties ensued resulting in agreement on how to resolve the issues identified by the courts. This agreement included provisions for the appointment of a Court Monitor with access to all relevant records and information on the implementation of the CEP and the IAP, who would report to the courts thereon. On the CEP side, Canada was also required to appoint a CEP Administrator who would report to the courts on the implementation and operation of the CEP at least quarterly. With respect to the IAP, courts approval would be required for the selection of the Chief Adjudicator, who in addition to his existing reporting requirements would also report directly to the courts no less than quarterly.

42. The Court Approval Orders also established a process for the review of legal fees charged to IAP claimants and a protocol for bringing issues concerning the settlement before the courts by means of a process called a Request for Directions. Finally, the courts directed the appointment of a court counsel who would assist the court in supervising the implementation of the IRSSA, and would act as the courts' liaison with the NAC. The first court counsel, Randy Bennett, attended virtually all NAC meetings during his tenure to which he brought his experience in the administration of other class

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[38] Ibid., para 8.

settlements. Mr. Bennett was of critical assistance to the NAC in implementing the IRSSA and addressing the early CEP appeals. All NAC members were greatly saddened by his untimely death on January 3, 2013. The Courts appointed Mr. Brian Gover to replace Mr. Bennett.

43. With the agreement of the parties to these additional measures, a joint hearing of the approving judges was held in March 2007 in Calgary, with all of the judges attending either in person or by teleconference. Orders approving the Settlement Agreement (the Approval Orders)[39] and Orders incorporating the additional provisions (the Implementation Orders)[40] were agreed to by all nine courts.

44. These Orders triggered the process for notifying the claimants of the settlement and providing those who wished to pursue their own individual claims as they saw fit the opportunity to opt out. It was a term of the Agreement that if more than 5000 class members opted out, the Settlement Agreement would be void. In fact, the opt-out rate was minimal.[41] There were no appeals from the Courts' orders and as a result, the Settlement Agreement took effect on September 19, 2007.

45. As with most settlement agreements, the IRSSA expressly provides that it should not be considered an admission of legal liability by the Defendants. Many of the plaintiffs' claims were novel in law, and there were a variety of potential defences available to the defendants including those based on limitations, standards of the day, and restrictions on Crown liability. However, Canada and the Church Organizations chose not to raise these defences for the purposes of the settlement negotiations, choosing instead to pursue broadly based resolution and reconciliation thus making the Settlement Agreement possible.

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[39] For a listing of the Court orders, see Court Judgments: http://www.classactionservices.ca/irs/library.htm
[40] Ibid.
[41] The opt out amount was less than 25 persons.

I. MANDATE OF THE NATIONAL ADMINISTRATION COMMITTEE

A. The Philosophical Foundation for the NAC

46. Like the Settlement Agreement itself, the National Administration Committee (NAC) is unique in the annals of Canadian class actions.[42] Typically, the implementation of a class action settlement or award is overseen by a neutral administrator under the supervision of the Court. In large multi-jurisdictional settlements involving government, a committee of plaintiffs' counsel may play a role. However, the creation of an administration committee representing all parties to the settlement, including the defendants and political organizations representing plaintiffs was unprecedented, as was the role of the NAC. It included interpretation of the Settlement Agreement, implementation of some of its key terms, acting as an appellate body on claims under the Agreement, dealing with issues referred to it by other entities created by the Agreement and ensuring the Settlement Agreement was implemented fairly and consistently across the country.

47. The impetus for an all-party NAC arose from the purpose of the settlement negotiations and the resulting Settlement Agreement. The aim of the negotiations was not simply to settle litigation claims but, in the words of the preamble to the Agreement, to achieve "a fair, comprehensive and lasting resolution of legacy of Indian Residential Schools" which would include "the promotion of healing, education, truth and reconciliation and commemoration". Throughout the negotiating process legal counsel for the parties to the litigation worked together with political organizations such as the AFN and Inuit Representatives to achieve that resolution. The resulting Settlement Agreement was complex and would take many years to fully implement. It required a forum where all the parties to the Settlement Agreement were represented to ensure they had a voice in deciding issues that would arise during that implementation process, and that the Agreement was implemented in the spirit of reconciliation. The NAC was established to fulfill that need.

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[42] The mandate of the NAC is set out in Article 4.11 of the Settlement Agreement. See Appendix C.

48. The nature and composition of the NAC reflected a carefully crafted balance of interests. The legal and political representatives of the Plaintiffs, who were the beneficiaries of the Settlement, held five of the seven seats on the NAC. Although the Church Organizations had both Catholic and Protestant representatives on the NAC, they collectively only had one vote.[43] Canada, held a single seat. The Settlement Agreement balanced the majority enjoyed by the Plaintiffs on the NAC by providing Canada a veto over any NAC decision that would increase the costs of the Settlement as approved by the courts. The Agreement required that all members of the NAC be legal counsel, in recognition of the fact that the Settlement Agreement was, ultimately, a legal document. The Agreement called for a NAC decision to be made by consensus, failing which a majority of five was required. These measures together promoted consensual and reasonable decision-making which was faithful to the terms and spirit of the Agreement.

49. The parties first articulated their intention to form the NAC in the November 20, 2005 Agreement in Principle.[44] The Agreement in Principle set the framework for resolution to the Indian residential schools legacy, to be achieved by a court-approved settlement agreement. The Agreement in Principle foreshadowed the contents of the IRSSA, making provisions for the CEP, IAP, the TRC, and funding for healing and commemoration programs.

50. The NAC was framed as playing a central role in the administration of the Settlement Agreement. It was the only entity created under the Agreement that had representation from all the parties.

51. There were significant developments in the evolution of the role of the NAC. They may be described in different ways, but one approach is as follows:

> 1. Initiation of the NAC and its relationship with other IRSSA institutions (2007-2009);

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[43] If the Catholic and Protestant representatives could not agree on a given issue, they would abstain from voting.

[44] See Agreement in Principle in Appendix B, online at: http://www.residentialschoolsettlement.ca/AIP.pdf.

2. Implementation and evolution of rules to govern CEP appeals (2009-2012); and

3. Increased requests for directions to Courts (2012-present).

52. During the early years, the Administrative Judges were Chief Justice Winkler from Ontario and Chief Justice Brenner from British Columbia. Through Randy Bennett, the Court Counsel, and directly, they both provided guidance and assisted the NAC greatly on this unique venture of implementing the largest class action settlement in Canadian history. The first Chair, Allan Farrer stated:

> I do recall appreciating the continued hands on approach of the supervising Courts and particularly, Justice Winkler, with whom I had dealt, being from Ontario. The fact that the late Randy Bennett was able to attend our NAC meetings as a conduit to the Courts and problem solve with us, was most beneficial.

B. Key Roles of the NAC

53. The role of the NAC was set out in the Settlement Agreement and, in particular, in Articles 4.10 and 4.11.[45] These provisions include the following regarding the purpose of the NAC:

> 4.10(1) In order to implement the Approval Orders the Parties agree to the establishment of administrative committees as follows:
>
> a) the National Administration Committee .....
>
> 4.11(12) The mandate of the NAC is to:
>
> (a) interpret the Approval Orders; ...
>
> (c) ensure national consistency with respect to implementation of the Approval Orders to the greatest extent possible;
>
> (d) produce and implement a policy protocol document with respect to the implementation of the Approval Orders;
>
> (o) exercise all the necessary powers to fulfill its functions under the IAP;

54. The purpose of this section is to highlight the key activities of the NAC during the course of its mandate from 2007 until the date of this report (May 6, 2019).

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[45] Articles 4.10 and 4.11 of the Settlement Agreement are set out in full in Appendix C.

C. NAC Involvement in CEP

55. From the time of implementation until approximately December 2013, the bulk of the NAC's time was dedicated to CEP-related work. In early days, that work focused on the development, approval, and modification of policies and protocols designed to make the CEP process run as intended. The focus then shifted to the NAC's role as an appellate body hearing CEP appeals brought forward by CEP applicants. One of the most extensive tasks of the NAC was the appeals to be heard from CEP claimants whose claims were denied. This involved the consideration of over 4675 appeals. The NAC's work in these respects was extensive and is described more fully below.[46]

D. NAC Involvement in IAP[47]

56. From early on in its mandate, the NAC nurtured a constructive working relationship with the Oversight Committee, which was established to specifically implement the IAP process. This constructive relationship allowed for mutual respect for the IAP process and the CEP process. Under the first Chief Adjudicator of the IAP (Dan Ish), the NAC and the Oversight Committee met at least twice a year. This relationship was contemplated under the NAC's mandate, whereby it was required to consider the Oversight Committee's recommended modifications to the IAP before such modifications could take effect.

57. This constructive relationship allowed for some coordination between the CEP and the IAP. The NAC met on several occasions with the Chief Adjudicator of the IAP and the Independent Chair of the Oversight Committee. The NAC also had a meeting with the whole Oversight Committee on two occasions. The Oversight Committee was alive to the overarching role held by the NAC in respect of certain points related to the administration of the IAP.

58. For example, in order for there to be a more expedited option for the growing number of IAP claims, the Oversight Committee and the Chief Adjudicator, with the support of

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[46] See section II. *The Common Experience Payment.*
[47] See section IV. *The Independent Assessment Process.*

the NAC, sought an amendment to the Settlement Agreement to allow for "Short Form Decisions" which could be rendered at the time of the hearing. This issue arose upon the Oversight Committee's recognition of a need for an expedited decision-making option within the IAP as the number of claims grew during the early days of that process.[48] The Oversight Committee and the Chief Adjudicator proposed an amendment to the Agreement which would allow the use of a curtailed decision report (the Short Form Decision) that could be rendered at the time of the hearing. An IAP claimant would have the option to receive such a decision in lieu of detailed reasons. The NAC carefully considered the proposal, sought some amendments, and ultimately consented to a Court Order to make the necessary changes to the Settlement Agreement. This was presented to the Courts in December 2009. This exemplifies the parties' original intention as to the role of the NAC to address issues relating to implementation of the Settlement Agreement with the objective of working with the entities created by the Settlement Agreement (e.g. Chief Adjudicator, Oversight Committee and TRC) to ensure a smooth implementation of the Settlement Agreement.

59. The NAC had occasion to consider the potential for overlap of information relevant to the IAP and the CEP. At a joint meeting with the Oversight Committee, the NAC agreed that when an IAP Adjudicator decided the years of a student's residence at a school, the NAC would not contradict that finding to the detriment of the CEP appellant.[49]

E. NAC Decision Not to Create the Regional Administration Committees

60. Under the Settlement Agreement, as Article 4.12 sets out (Appendix C), the parties envisioned the creation of Regional Administration Committees (RACs). The parties agreed to establish three RACs representing different regions of the country.[50]

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[48] IAP claims under the Settlement Agreement are claims for sexual assault or serious physical assaults or other wrongful abuse and were heard by an independent adjudicator. The implementation of protocols for the IAP was decided by the Oversight Committee so long as there was no amendment to the Settlement Agreement.

[49] See para 158.

[50] The first one for British Columbia, Alberta, Northwest Territories and the Yukon, the second for Saskatchewan and Manitoba, and the third for Ontario, Québec and Nunavut.

Independent Counsel had advocated for the RACs in order to ensure that issues that were local to a region could be addressed more effectively at a regional level.

61. The mandate of the RACs and the limitation of that mandate was clearly set out in Article 4.12(11).[51] Membership on the RACs was to consist of three Plaintiff representatives, and the operative mandate was to deal with day-to-day operational issues arising from implementation.

62. In negotiating for the establishment of the RACs, one key objective was to ensure that local issues could be appropriately and consistently addressed. The RACs were never implemented for a number of reasons summarized as follows:

    a. it was assumed that each of the nine Courts would address issues within their geographical jurisdiction whereas the Courts approved a Court Administration Protocol and assigned two judges to administer the Settlement Agreement nationwide;

    b. the first Administrative Judges, Winkler, CJ and Brenner, CJ appointed a Court Counsel, Randy Bennett, who closely worked with the NAC, and any issues relating to the Approval Orders, were addressed through the NAC; and

    c. the RACs had a very limited mandate and the key initiatives in which there could be operational concerns initially were the CEP process which was addressed by the NAC and the IAP Process which was addressed by the Chief Adjudicator.

63. As a consequence, the RACs were never established. After three years, on August 27, 2010, the NAC exercised its authority under 4.10(11)(g) "to review the continuation of RACs as set out in Section 4.13"; and after consultation with the parties, the NAC 'terminated' the RACs.

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[51] The RACs will deal only with the day-to-day operational issues relating to implementation of the Approval Orders arising within their individual regions which do not have national significance. In no circumstance will a RAC have authority to review any decision related to the IAP.

F. NAC Involvement in National Centre for Truth and Reconciliation Privacy Issues

64. From 2014 to 2016, the NAC dealt with an issue related to the privacy of information held by the National Centre for Truth and Reconciliation (NCTR). As a creation of the Settlement Agreement and the ultimate recipient of the TRC's research materials, the NCTR was in possession of materials of an intimate and sensitive nature.

65. On one occasion, the NAC intervened to ensure that privacy of former residents would be protected. The incident arose when the NAC became aware that the NCTR had posted an unredacted school narrative on its website. The school narrative contained sufficient information to identify several student victims of sexual abuse by an employee. The NAC informed the NCTR of the issue, following which the NCTR removed the information from its website. In a subsequent decision, the Court found that the disclosure was a "mistake".[52]

66. As a result of the disclosure, the NAC attended as a group at the NCTR and observed a presentation regarding the privacy regime under which the NCTR operates. Thereafter, the NAC did not collectively pursue any further issues, although a majority of the NAC members were concerned with the conduct of the NCTR regarding privacy of IAP claimants and actively participated in limiting the disclosure of IAP Records.[53]

G. NAC Development of Interpretation Rules for CEP Appeals

67. During its mandate, the NAC decided 4675 CEP appeals.[54] The NAC started reviewing appeals in December 2008. At the beginning of the appeal process, there were intense internal debates within the NAC on how to apply the CEP validation principles and protocols.[55] However, notwithstanding the very different perspectives of the NAC members, the NAC worked through these issues and came to agreement on some

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[52] *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585.
[53] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47(SCC Decision). AFN, Independent Counsel, Inuit Representatives, and Catholic parties and entities.
[54] See section II.B. *Some CEP Statistics.*
[55] See section II E. *NAC and the CEP Validation Principles and Protocols.*

common interpretation and decision rules. At all times in setting these rules, the NAC was guided by the objective of the Settlement Agreement to compensate those placed in residence at the schools. By looking at cases through this lens, it was easier to conclude if a claimant was entitled to the CEP.[56]

H. NAC Public Outreach

68. Initially, the NAC engaged in several forms of public outreach. Those included the publication of a blog and NAC meeting minutes. However, the NAC ceased those activities when it became apparent that the high level of confidentiality required by various aspects of the Settlement Agreement strongly militated against the publication of detailed information about the NAC's activities. Instead, general notifications and updates were posted to the public by way of the official court administrator website maintained by Crawford Class Action Services Canada (Crawford).[57]

69. The NAC was instrumental in the early publication of IAP counsel lists, the aim of which was to connect individual claimants to legal counsel who might be willing to handle their claims. The NAC developed the list based on those practitioners' who had signed the Settlement Agreement and had experience in the IAP and the precursor ADR.

I. Distributing Requests for Direction

70. The NAC served as a vehicle through which parties to the Settlement Agreement received notice of upcoming and ongoing litigation. Under the Request for Direction Service Protocol, the Chair and Secretary of the NAC received copies of all Requests for Direction prior to filing.[58] As a matter of practice, the Chair distributed Requests for Direction to all NAC members. Other litigation documents such as facta, notices of appeal, and judicial decisions were circulated in the same way.

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[56] The detailed work of the NAC and the process relating to the CEP is described more fully in section II below.
[57] *Residential Schools Settlement Official Court Notice*, online: http://www.residentialschoolsettlement.ca/english_index.html.
[58] Request for Direction Service Protocol at para 3, online: http://www.classactionservices.ca/irs/documents/REQUESTFORDIRECTIONSERVICEPROTOCOL.pdf.

J. The NAC's Rescindment of Class Opt-Outs

71. While the provisions of the Settlement Agreement clearly allowed class members to opt out of the settlement,[59] the parties had not contemplated how to address situations where an individual who had opted out of the Settlement Agreement wished to re-enter the Settlement Agreement. On occasion, individuals who had previously opted out made requests to opt back in.

72. The NAC addressed this issue by voting on whether to rescind opt-outs on a case-by-case basis. From 2008 to 2012, the NAC issued ten Records of Decision (ROD) that allowed opted-out class members to take the benefits of settlement, including by making CEP and IAP applications.[60] The opt-out rescindments approved by the NAC were subsequently confirmed by court order.[61]

K. Records of Decision

73. The NAC held formal votes with respect to decisions to be made. The Records of Decision of the NAC are appended as Appendix D to this report. The mover of the decision is shown in the reference number of each of ROD by the use of initials ("C" for Canada, "IC" for Independent Counsel, and "NC" for National Consortium).

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[59] Settlement Agreement at Preamble at para F, p 7, and Article 4.14, p 42.

[60] NAC Record of Decision No. 017/C approved on January 28, 2011; NAC Record of Decision No. 019/C approved on September 15, 2011; NAC Record of Decision No. 020/C approved on January 12, 2012; NAC Record of Decision No. 021/C approved on September 11, 2012; NAC Record of Decision No. 002/IC approved on October 23, 2009; NAC Record of Decision No. 003/IC approved on August 27, 2010; NAC Record of Decision No. 004/IC approved on September 10, 2010; NAC Record of Decision No. 005/IC approved on January 4, 2011; NAC Record of Decision No. 006/IC approved on December 15, 2010; and NAC Record of Decision No. 007/IC approved on October 29, 2010.

[61] See for example, *Fontaine v Canada (Attorney General)* (10 February 2011), Toronto, Ont. S.C.J. 00-CV-192059CP (order); *Fontaine v Canada (Attorney General)* (20 October 2011), Toronto, Ont. S.C.J. 00-CV-192059CP (order); *Fontaine v Canada (Attorney General)* (21 August 2012), Vancouver, BC. B.C.S.C. L051875 (order); *Fontaine v Canada (Attorney General)* (10 October 2012), Toronto, Ont. S.C.J. 00-CV-192059CP (order).

II. THE COMMON EXPERIENCE PAYMENT

A. Introduction

74. This section of this report is dedicated to the CEP. The goal of the CEP was to provide individual financial compensation to every former student who resided at an Indian residential school and who was alive as of May 30, 2005. Compensation was based on the number of school years of residence at an Indian residential school ($10,000 for the first school year or part thereof, $3,000 for each subsequent school year or part thereof).

75. Canada, as Trustee of the Designated Amount Fund (DAF) created to pay the CEP, played a prominent role in the administration of the CEP. Section 10.01 of the Settlement Agreement set out some of Canada's duties and responsibilities. In particular, Canada was responsible for developing and implementing the system and procedures for processing, evaluating and making decisions on CEP applications and CEP payments in a way that reflected the "need for simplicity in form, expedition of payments and appropriate form of audit verification."[62] Under section 10.01, Canada was also responsible for providing sufficient personnel for the administration of the CEP, responding to all CEP inquiries from applicants, communicating its decisions to applicants, and reporting to the NAC and the Courts on CEP matters.

76. With respect to the CEP, the NAC was to "consult with and provide input to the Trustee with respect to the Common Experience Payment" and hear appeals from CEP applicants.[63] In the first year of implementation, the NAC dedicated most of its time to identifying and finding solutions to emerging CEP issues. From 2009 to 2013, the NAC focused mainly on reviewing and deciding appeals from CEP applicants.[64] Through these roles, the NAC developed a core expertise in all CEP matters.

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[62] Settlement Agreement, section 10.01 (a).
[63] Ibid., section 4.11 (12) (b) and (k).
[64] After 2013, the NAC decided 82 appeals (57 in 2014, 19 in 2015, and 6 in 2016).

77. This part of the report explores in detail the CEP application and appeal processes including key CEP statistics; the cornerstones of CEP eligibility; emergent CEP issues; principles and protocols used for assessment of CEP; the NAC appeal processes; and the challenges in meeting the objectives of the CEP.

B. Some CEP Statistics

78. The following CEP statistics[65] provide an idea of the volume of work and challenges encountered in the CEP process. A total of 103,236 decisions were made regarding CEP applications. Of these decisions, 79,309 (or 77%) of applicants were issued compensation, with 23,927 (or 23%) of applications deemed ineligible. A total of $1,622,422,106 was paid to successful CEP applicants, with an average individual payment of $20,457.

79. Each applicant was required to submit a CEP application form. If one (or more) of the school year(s) claimed in the application was denied by Canada, the CEP applicant was entitled to apply for a reconsideration of the decision. The right to appeal to the NAC and subsequently to the supervising Court gave applicants two opportunities to have their applications reviewed independently of Canada. Many CEP applicants requested a reconsideration of their CEP decision and appealed to the NAC and the supervising Court, with the following outcome:

Stage	Decisions	Eligible[66]	Denied[67]
Reconsideration	27,793 (27%)	9,771 (35%)	18,022 (65%)
NAC Appeal	4,675 (4.5%)	1,164 (25%)	3,511 (75%)
Court Appeal	736 (0.7%)	13 (2%)	723 (98%)

80. As reflected in the above, 75,443 (or 73%) of the applicants did not seek reconsideration of their CEP decision. For those who did, most requests for reconsideration or appeal were denied, with the highest rate of eligibility determinations

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[65] *Statistics on the Implementation of the Indian Residential Schools Settlement Agreement, Information Update on the Common Experience Payment (From September 19, 2007 to March 31, 2016)*, available at CEP Statistics [CEP Statistics].

[66] "Eligible" means at least one of the school years claimed was allowed.

[67] "Denied" means that none of the school years claimed was allowed

being made at the reconsideration stage (35%) followed by the NAC (25%) and the Court (2%).

C. The CEP in the Settlement Agreement

81. While the above-mentioned statistics are useful, they do not explain how CEP applications were assessed and why some applicants were successful and why others were not. One important explanation for why some applicants were denied the CEP is that they did not meet some of the eligibility requirements agreed upon in the Settlement Agreement for the CEP.

82. The main eligibility requirements included:

a. **Residence:** The CEP was only available to a student who resided at an indian residential school. Some IRS had both resident students and day students. Students who attended an IRS as a day student only (without sleeping at the IRS) were not eligible for the CEP.

b. **Alive on May 30, 2005:** Former students who passed away before May 30, 2005 were not eligible for the CEP. The requirement to be alive on May 30, 2005 was a compromise reached by the parties to the Settlement Agreement and represented the date that the Political Agreement was signed between the Assembly of First Nations and Canada to resolve the legacy of IRS.

c. **Recognized Indian Residential Schools:** Only former residents at one of the IRS listed on Schedule "E" and "F" of the Settlement Agreement were eligible for the CEP. The institutions listed in Schedule "E" were previously recognized by Canada as IRS in the Alternative Dispute Resolution process, while the schools listed in Schedule "F" were added during the negotiations leading up to the Settlement Agreement. Following the conclusion of the Settlement Agreement, it was possible for anyone to request additional institutions to be recognized as an IRS.[68]

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[68] See section VII. *Article 12 and other Applications Regarding Eligible Institutions.*

d. **Payment for each School Year "or Part Thereof".** In order to be eligible for the CEP, applicants had to reside at the IRS for the purpose of education or the IRS had to be their primary residence. Many applicants claimed the CEP for a temporary overnight stay at an IRS for reasons unrelated to education including, sporting activities, summer camp, or preparing for a religious ritual and were denied payment because they were not at the IRS for the purposes of education. When children were taken to an IRS for the purpose of education and believed that the IRS would be their primary residence during the school year, they would be eligible for CEP, even if they resided at the IRS for a short duration. The difference between a "temporary overnight stay" and a "residency of short duration" is explained further.[69]

e. **Deadline to Apply.** All CEP applicants were required to submit a CEP application between September 19, 2007 and September 19, 2011.[70] CEP applications were accepted until September 19, 2012 where "undue hardship" or some other exceptional circumstances prevented a CEP applicant from submitting an application prior to the deadline.[71]

83. Each CEP application needed to "be validated in accordance with the provisions of this Agreement"[72] and processed in accordance with Schedule "L" of the Settlement Agreement. The Settlement Agreement did not provide detail on how the CEP applications would be validated but the CEP Process Flow Chart under Schedule "L" of the Settlement Agreement identified some of the key players and their roles in the CEP:

Entity	Role(s)
Service Canada	Receipt of application and verification of identity & issuance of cheques
IRSRC*	Applications identified for further analysis and research
NAC	First level of appeal
Court	Second level of appeal

*Indian Residential Schools Resolution Canada

[69] See paras. 152 and 184 to 186 *infra*.
[70] Section 5.04(1)(2) of the Settlement Agreement.
[71] *Ibid.* at section 5.04(3).
[72] *Ibid.* at section 5.01(3).

84. Service Canada and Indian Residential Schools Resolution Canada (IRSRC) had critical roles to fulfil in the implementation of the CEP. Confirming the identity (Service Canada) of over 100,000 applicants and validating their presence (IRSRC) at IRS decades earlier could be complicated. The employees of Service Canada and IRSRC worked hard to implement the CEP and demonstrated a high level of professionalism. Many applications were difficult to validate and required significant additional research. Many others could not be validated without additional information or documents from applicants. In the next section, some of the early CEP difficulties that emerged are discussed along with the measures that were taken to resolve them.

D. NAC and Emergent CEP Issues

85. A number of early challenges emerged following the implementation of the Settlement Agreement, which resulted in delays in the processing and approval of CEP applications. Both Canada and the NAC responded quickly to these challenges and their consequences.

86. Service Canada and IRSRC both experienced unforeseen challenges in the validation and payment of CEP applications.

i. Service Canada

87. Due to the CEP notice program and the early efforts by Service Canada to sign up CEP applicants, including via mobile processing units, the CEP program saw a dramatic uptake in early months.[73] Within the first month of implementation, Service Canada received almost 60,000 CEP applications. By December 31, 2007, it had received over 83,000 CEP applications. At its peak, in November 2007, Service Canada received over 100,000 phone call enquiries.[74] The high number of CEP applications "was much

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[73] Service Canada began to receive CEP applications on September 19, 2007.

[74] *Evaluation of the Delivery of the Common Experience Payment*, Employment and Social Development Canada, July 12, 2013, page vi, online at: Evaluation of the CEP [Evaluation of the CEP].

greater than expected"[75] and led to processing delays. Service Canada adapted quickly to the challenge, and in a period of two months (October and November 2007), "increased its capacity to process applications over tenfold."[76]

88. One factor contributing to the delays was that many applicants did not have the required identity documents. CEP claimants were required to provide an original birth certificate or two official identity documents, including one with a photograph. When applicants were able to produce these documents, the name as written in the identity documents had, in many cases, changed since their issuance for several reasons including custom adoption, marriage, divorce, or the applicant now using an Indigenous name. To curb further processing delays, on Service Canada's request, the NAC relaxed the identification requirements by approving a Record of Decision that would allow a guarantor's declaration to suffice as proof of identification.[77]

ii. Indian Residential Schools Resolution Canada

89. Once Service Canada completed its identification work, it transferred the complete CEP application to IRSRC,[78] whose main role was to validate whether and for what period of time an applicant qualified as a resident at IRS.

90. IRSRC's first step in validating information about residency was completed by a computer system known as CARS (Computer Assisted Research System). It assessed CEP applications by looking up the name of the applicant in a database of over one million residential school records.[79] However, the CARS system was executed late,

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[75] Ibid. at p.vi.
[76] Ibid. at p.vi.
[77] NAC Record of Decision No. 002/C dated October 12, 2007 see Appendix D.
[78] On June 1, 2008, IRSRC merged with Indian and Northern Affairs Canada, which changed its name to Aboriginal Affairs and Northern Development Canada in 2011 and to Indigenous and Northern Affairs Canada (INAC) in 2015. For simplicity, when the acronym "INAC" is used, it will refer to INAC and its predecessors, including IRSRC.
[79] *Lessons Learned Study of the Common Experience Payment Process*, Aboriginal Affairs and Northern Development Canada, February 2015, Updated June 2017, p. 23, online at: Lessons Learned [Lessons Learned].

ineffectively or not at all in the initial stages.[80] It also encountered a number of technical issues and other limitations.[81] Specifically, CARS was only able to make automatic eligibility decisions in about 44% of all the CEP applications received, meaning that the remaining 56%[82] had to be reviewed and processed by a team of INAC researchers who would conduct manual research in school documents, a time consuming process.

91. Like Service Canada, IRSRC also "did not have the organizational capacity (...) to respond to the high number of applications"[83] at the outset of the program, which contributed to further delays in the assessment process. By mid-November 2007, IRSRC had only validated approximately 15,000 CEP applications. Notwithstanding IRSRC's initial capacity challenges, IRSRC rapidly increased its staff, worked overtime, and corrected a number of technical issues with the CARS system. As result, the number of applications processed increased markedly. Over a span of five weeks, approximately 53,000 additional applications were processed between mid-November to December 22, 2007.[84]

92. By early 2008, approximately four months after implementation, some 85,000 applications had been received with 55,000 applicants having received compensation.[85] Although the process worked well for many, internal statistics provided by Canada revealed that approximately 46% of all CEP applicants were not receiving all the years claimed on their applications and over 10,000 claimants were deemed ineligible.[86] The impetus for creating the reconsideration process arose from these statistics. Through the efforts of INAC and the NAC, a reconsideration stage was therefore instituted.[87]

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[80] Ibid. at p.38.
[81] Ibid. at p.38.
[82] Ibid. at p.23.
[83] Ibid. at p.17.
[84] Ibid. at p.29.
[85] Minutes of the NAC meeting held on January 7, 2008.
[86] Minutes of the NAC meeting held on January 17, 2008.
[87] The reconsideration process is explained below in paragraphs 110 to 120.

iii. Elderly CEP Applicants

93. Concerned with the impact that the delays could have on elderly CEP applicants, the NAC adopted early measures to expedite their applications. On October 30, 2007, the NAC approved Record of Decision No. 005/C and instructed INAC to prioritize applications from claimants aged 65 years or older, regardless of the order in which CEP applications were received.

94. Additionally, on November 29, 2007, the NAC approved Record of Decision No. 006/C to benefit elderly applicants who had received the CEP advance payment.[88] That ROD provided that CEP applications from advance payment recipients would be approved without further validation to facilitate the processing of their applications. Prior to the implementation of the Settlement Agreement, advance payment recipients had already been verified for residence at an IRS. For such individuals, it was more likely that school records relating to the duration of their residence would be incomplete and that INAC would be more likely to find an applicant eligible for all the school years claimed.

95. As a result of these measures, elderly CEP applicants who were also advance payment recipients typically received all the years they claimed in their CEP applications without having to apply for reconsideration or appeal to the NAC or the supervising Court, and without having to go through the complete CEP validation process, which we discuss next.

E. NAC and the CEP Validation Principles and Protocols

96. The parties to the Settlement Agreement intended for the CEP application and appeal processes to be efficient, fair, accurate and user-friendly. The following section reviews the criteria used to validate a CEP application. A key document was the CEP Validation

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[88]The CEP advance payment program was made available between May 10 and December 31, 2006 to all former students 65 years of age or older on May 30, 2005. The program issued an immediate payment of $8,000 to 10,300 elderly former students. The $8,000 was subsequently deducted from any future CEP payment. Applications for the advance payment were verified against IRS school records and paid without further research if an applicant could be confirmed as an IRS resident in one school year. *Audit of the Advance Payment Program*, Indian and Northern Affairs Canada, December 4, 2008, p. i. Online: https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/app_1100100011682_eng.pdf

Principles. All the CEP applications were assessed, and school years paid or denied, based on the application of the CEP Validation Principles.

i. The CEP Validation Principles and Some Key Validation Tools

97. After the conclusion of the Settlement Agreement in May 2006, the parties through the NCC, agreed on the CEP Validation Principles, which were approved by the supervising Court in March 2007.

CEP Validation Principles

1. Validation is intended to confirm eligibility, not refute it;
2. Validation must accommodate the reality that in some cases records may be incomplete;
3. Validation must be based on the totality of the information available concerning the application;
4. Inferences to the benefit of the applicant may be made based on the totality of the information available concerning the application;
5. If information is ambiguous, interpretation should favour the applicant;
6. This principle (6) shall apply to applicants who identify themselves as having been status Indian at the time of residency in a residential school. The absence of such an applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non-residence that year. An applicant whose application is rejected on this basis may seek reconsideration based on the provision of further information;
7. Where an application is not accepted in whole or in part, the applicant will be advised of the reasons and may seek reconsideration based on the provision of additional information that relates to the rejection, including evidence that may be provided by the applicant personally which may include:
   - photographs;
   - other documentary evidence of a connection with the school;
   - affidavit evidence, including but not limited to, the affidavits of other students;
   - school or residence employees, Aboriginal leaders or others with personal knowledge relating to the applicant's residence at the school;
   - an affidavit from the applicant confirming residence by reference to corroborating documents and/or objective events;

8. An application will not be validated based on the applicant's bare declaration of residence alone.

98. An important feature of validating claims derived from the CEP Validation Principles was the right of CEP applicants to provide additional information at every phase of the assessment and appeal processes (reconsideration, NAC appeal, and appeal to the supervising Court). Applicants were encouraged to provide all the information they could remember and any documentation they had to validate residency. The information could be provided orally (calls were transcribed) or in writing via mail, e-mail or fax. In almost all the appeals allowed by the supervising Court,[89] the additional years were granted on the basis of new information provided to the supervising Court.

99. Arising from Principle 4, the concepts of "Inference" and "Interpolation" were interpretive instruments beneficial to CEP applicants:

Inference. An inference could be made to validate a claim where school documents confirmed only the start or end date of residency, but where lists of students were not available for the duration of the claimed period. For example, if no student lists were available from 1960-61 to 1963-64 and an applicant requests those four years in residence, that applicant's entire claim may be validated if he or she appears on an admission form as entering in September 1960 (subject to other available information, such as a discharge form).

Interpolation. An interpolation could apply to validate a claim where non-consecutive years are confirmed eligible, but where a gap in school records exists for the interceding year(s). For example, if school documents confirm an applicant's residence in the first year (1960-61) and the third year (1962-63), but a list of residential students was not available for the second year (1961-62), the applicant would receive the CEP for all three years (subject to other available information, such as an attendance report at a provincial school in 1961-62).

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[89] 14 appeals were allowed by the supervising Court.

100. Principle 6 applied to applicants with Indian status, or Indigenous persons registered as an Indian under the *Indian Act* (**Indian Status**). An applicant with Indian Status who did not appear in complete lists of residential students in a given year was deemed to be a non-resident at the IRS in that year. These lists of residential students were prepared by the administrators of the IRS who were required to do so. Given that these lists were provided to the federal government in order to obtain per capita grants paid to IRS, these lists were deemed complete and accurate unless there was contrary evidence.

101. These lists of residential school students were known as "**Quarterly Returns**" (prior to September 1971) and "**Enrolment Returns**" thereafter. They are referred to as "**Primary Documents.**" Quarterly Returns were filed for the periods ending on September 30, December 31, March 31 and June 30 of each school year. Enrolment Returns were prepared twice a year, in September and in March. IRS students were usually listed with their registration number, their band name, date of birth and typically their date of admission at the IRS.

102. Primary Documents that were incomplete in a given school year were considered to be a "**Document Gap.**" In the case of Quarterly Returns, a document gap could be partial (some but not four Quarterly Returns available for the school year) or complete (no Quarterly Returns available). In the case of Enrolment Returns, a partial gap occurred when only one of the two Enrolment Returns was available for a school year. When an applicant with Indian Status claimed residency at an IRS with a Document Gap and residency could not be confirmed with the Primary Documents available, that school year was researched manually by INAC.

103. INAC's researchers would conduct their manual review in INAC's database of school documentation. It included both Primary Documents and "**Ancillary Documents**," which include all the school records other than Primary Documents that identify students by name and can help validate an applicant's residency and its duration.

Primary Documents and Ancillary Documents were referred to as the "**Student Records**." In September 2007, INAC's searchable database contained over one million scanned and coded school documents collected since 1996. INAC was responsible for collecting school documents, undertaking research in its own document collection, identifying and addressing gaps in the Student Records. After the Court Approval of the Settlement Agreement, INAC cooperated with churches, provincial and territorial archives, and various Indigenous organizations to expand its collection of school documents. Therefore, there were more records for assessment of eligibility later in the process than earlier in the process.

104. The CEP Validation Principles guided the development of three key protocols to assess CEP applications: the CEP Process and Assessment Protocol (CEP Protocol),[90] the CEP Reconsideration Process Protocol (Reconsideration Protocol),[91] and the CEP Appeal Protocol (Appeal Protocol).[92]

105. The CEP Protocol and the CEP Appeal Protocol were prepared by INAC and approved in August 2007 by the NCC a few weeks before the launch of the CEP program on September 19, 2007. The NAC was responsible for approving protocols related to the implementation of the CEP.[93] However, because the Settlement Agreement did not authorize the NAC to conduct any business prior to the "Implementation Date"[94] (September 19, 2007) and because a CEP protocol was required to be in place prior to that date, the NCC first approved the CEP Protocol. These protocols were subsequently modified and approved by the NAC. The main features of these three protocols, and the changes required by NAC, are discussed below.

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[90] The CEP Protocol is attached under Appendix E [CEP Protocol].
[91] The Reconsideration Protocol is attached under Appendix F [Reconsideration Protocol].
[92] The Appeal Protocol is attached under Appendix G [Appeal Protocol].
[93] Settlement Agreement, Section 4.11(12)(d).
[94] Ibid., section 4.10 (2).

ii. The CEP Protocol

106. The CEP Protocol stated the objectives of the assessment process, namely, that assessment must "ensure that every eligible applicant receives the correct amount of compensation" and be "fair, objective, timely, and practical, minimize the onus placed on the Applicants, be efficient, and executed with a minimum of errors."[95] The extent to which these objectives were attained is discussed below.[96] For now, the main features of the CEP Protocol will be reviewed.

107. INAC implemented an "escalating assessment"[97] to validate applications. The CEP Protocol mandated the following stages for the assessment process:

Stage 1: CARS. The initial processing of all applications was done by the computer system CARS, based largely on the presence or absence of an applicant's name in Primary Documents. CARS would:

- search Primary Documents for the years claimed by the applicants (and 10 years before and after the period claimed) using the name(s), date of birth, age, and/or gender of the applicant;

- assess an applicant with Indian Status as eligible for a school year when the name of the applicants appeared on a Primary Document in that school year;

- assess an applicant with Indian Status as ineligible for a school year when in such school year, the applicant was:
    - not found on complete Primary Documents;
    - not found in the Student Records when the Document Gap was small;
    - identified as a day student in Primary Documents; or
    - identified on a Primary Document as absent for the whole year;

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[95] CEP Protocol, *supra* at note 90, Executive Summary, p.4.
[96] See paragraphs 192 to 212.
[97] CEP Protocol, *supra* at note 90, Executive Summary, p.4.

- assess Inuit, Métis and non-Indigenous as eligible when these groups were listed in Primary Documents;
- apply Inference and Interpolation[98] when there was a Document Gap; and
- flag applications for manual review when there were matching issues (e.g. multiple dates of birth, inconsistent student numbers, two or more potential name matches, etc.).

108. Applications were also flagged by CARS and moved to Stage 2a (Manual Review) when there was a Document Gap in Primary Documents or when the applicant was not a Status Indian (Métis, Inuit and non-Indigenous). When the name of an applicant was not found in the Student Records, CARS would escalate the applicants to Stage 2b (Request for Additional Information).

Stage 2a: Manual Review. At this stage, an INAC[99] researcher would review the Student Records and try to confirm residence by assessing the content and context of school documents in which the name of the applicants appeared. Any other information available to INAC on the IRS (e.g. if both day students and residents attended the IRS) was considered by INAC. For instance, if the applicant's name was found in a student newsletter of the IRS, the IRS had both resident and day students, and the home community of the applicant was located at such a distance that he or she could not have commuted to the IRS daily, a reasoned assumption would be made to confirm residency that year. Inference and Interpolation were also applied at Stage 2a.

When no school year could be confirmed through a manual review, the applicant was contacted to request additional information (Stage 2b). If some school years claimed by an applicant were approved and others denied, the applicant received

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[98] See paragraph 99 above for examples of Inference and Interpolation.
[99] Supra, at note 78.

compensation for the school years assessed as eligible, and was advised of the right to seek reconsideration (Stage 3).

Stage 2b: Request for Additional Information. Applicants whose applications could not be validated in the previous stages were contacted and given the opportunity to provide information in writing and/or to answer questions in a telephone call regarding their memories from their time at IRS.

109. The focus of INAC was to identify information that could be corroborated by the information in the Student Record. When the applicant provided two pieces of information verified against time specific information known about the IRS, residency was validated. The information was not expected to be perfect, and the "*benefit of the doubt would be given to the Applicants.*"[100] Once residence was validated, Inference, Interpolation and reasoned assumptions were applied to determine the duration of residency. When applications were filed by personal representatives or estates, these representatives were contacted, and any information provided would be assessed. When applicants were denied one or more school year(s) after Stage 2b, they were informed about the reconsideration process.

iii. The Reconsideration Process Protocol

110. Unlike the right to appeal to the NAC or to the supervising Court, the reconsideration process was not created by the Settlement Agreement and was instead developed by INAC and the NAC in response to issues that emerged in the initial months of implementation of the CEP process.[101] Nevertheless, it became a very important step in the assessment process by INAC,[102] with approximately 27%[103] of all CEP applications completed going through reconsideration. With the formalization of the reconsideration process, NAC instructed INAC to send a letter to CEP applicants

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[100] CEP Protocol, supra at note 90, p.8.
[101] As discussed above in paragraphs 85 to 92.
[102] INAC developed an informal protocol and began to process reconsideration in the spring of 2008. The Reconsideration Protocol was formally approved by the NAC in August 2008.
[103] CEP Statistics, supra at note 65.

denied school years to advise them that they could seek reconsideration of the decision.

111. The NAC went on to modify the CEP reconsideration process. In Record of Decision No. 004/NC, the NAC decided that the provision of one piece of information by the applicant when verified against time specific information known about the IRS would be sufficient to validate a school year that had a Document Gap. In the absence of Primary Documents and notwithstanding contrary information in Ancillary Documents, residence could still be validated by a provision of a single piece of information. For example, if the claimant provided a name of a dorm supervisor whose presence at the school was corroborated by school records, residence at the school in that year could be confirmed.

112. To further assist CEP applicants in the process, the NAC approved Records of Decisions No. 012/C and No. 014/C. First, it directed INAC to research all the names of former students or employees provided by applicants for the first time at reconsideration. Second, when applicants provided the names of individuals who could assist in the validation of residency (usually former students or employees at the IRS), the NAC directed INAC to advise each applicant to contact the individuals and obtain supporting statements.[104]

113. These modifications (one piece of information only, researching the names of students and staff, advising to obtain supporting statements) proposed by NAC had two consequences: first, they helped to validate residency; and, second, many files at the reconsideration stage were sent back for additional INAC research to validate their claim.

114. Applicants were required to apply for reconsideration within six months from the date that they received a decision letter advising them they were not eligible for one or more school year(s). Reconsideration was typically initiated by filing out a

[104] NAC Records of Decision No. 012/C and No. 014/C approved on September 12, 2008. See Appendix D.

reconsideration form and sending it by mail, fax, or e-mail to the CEP Response Centre. Reconsideration could also be requested orally by calling the CEP Response Centre.

115. Although the provision of new information was not required for reconsideration, applicants were encouraged to provide information to help validate their residency. New information was assessed in the same manner as the information assessed at Stage 2b with one exception: only one piece of information (as opposed to two) corroborated by the Students Records was sufficient to approve a school year, assuming no contradictory information was found in the Student Records.

116. Reconsideration requests from elderly former students were prioritized. The amount of time required to process a reconsideration file depended on its complexity and the information available in the Student Records. INAC expected that most reconsideration files would be processed within 90 days with more complex files expected to take up to 160 days. When a decision was not rendered on a reconsideration file within 90 days, the applicant was notified by mail that INAC required more time to process the file.

117. Whenever practical, reconsideration files were reviewed by a different researcher than the one who undertook the initial assessment. The researcher would review the original findings made by CARS and/or manual review. All findings were recorded in a database known as SADRE (Single Access Dispute Resolution Enterprise). Researchers were instructed to pay particular attention to locating and reviewing school documentation added to INAC's collection after the original CEP decision under reconsideration. This new documentation included records received through INAC's ongoing documentation collection efforts as well as records provided by applicants to support their own claims which mentioned other students and could assist in assessing the residency of other applicants. Documentation provided by any applicant was only incorporated in INAC's collection with the consent of the applicant.

118. When additional information was required to validate a reconsideration claim, applicants were contacted and asked more specific questions. These questions included the following:

- What was the community you lived in prior to residing at the IRS?
- How did you get to school and who took you there?
- How old were you when you started to reside at the IRS and what grade were you in?
- What were the circumstances/reasons of your stay at the IRS?
- Were you known by a different name at the IRS?
- Can you describe the IRS? What was the colour of the building? How many floors did it have? Where was the dining room located? Where were the dormitories? Where were the bathrooms? Was there any other building on the property?
- What did you wear at the IRS (regular clothes, school uniform)?
- Where did you sleep at the IRS?
- Did you have regular chores?
- Can you describe your schedule for a typical day?
- Can you describe any school clubs or activities?
- Were there any renovations during your stay?
- Were there any unusual occurrences (e.g. school accidents, epidemics, fire, disaster)?
- Did you have any visitors?
- Did you have any brothers or sisters that also attended the IRS?
- Can you name any fellow students?
- Can you remember the names of your teachers or supervisors?
- Did you have to attend church?
- Were there any school trips or outing?
- When and why did you leave the IRS?
- Where did you live after the IRS?
- What else can you tell me about the IRS that may help confirm that you resided there?

119. At the reconsideration stage, applicants often provided additional documentation which could include police records on truancy, social services records, medical reports, IRS newsletters, journals and yearbooks, articles from newspapers, IRS photographs, permanent school record, report cards, letters from schools, government, students and parents, affidavits and letters from students, employees and others etc. This documentation was analysed by INAC researchers to determine if it was useful and reliable to validate residence. Key questions included:

- Does the document speak specifically to residence at the IRS?
- What is the source of the document (government, church, local archives)?
- Does it name the applicant and the IRS?

- Is the document dated? When was the document created and for what purposes?

120. When a reconsideration file was completed by INAC, Service Canada sent a decision letter to the applicant to advise him or her of the right to appeal any ineligible school year to the NAC.

iv. The CEP Appeal Protocol

121. During the life of the Settlement Agreement, the NAC made several modifications to the appeal processes it oversaw.

122. The NAC identified one issue with the CEP Appeal Protocol and the CEP Protocol approved by the NCC. First, the CEP Protocol prepared by the NCC required applicants to submit new information as a condition of applying for reconsideration.[105] Second, the CEP Appeal Protocol required an applicant to go through reconsideration as a precondition for appealing to the NAC. Together, these two requirements meant that any applicant who did not provide new information could not apply for reconsideration, and therefore could not appeal to the NAC. This was inconsistent with the Settlement Agreement, which provided a right to appeal to the NAC to any applicant who did not receive compensation for the years submitted in their application.[106] NAC resolved the problem by deciding that an applicant could seek reconsideration without providing new information.

123. With respect to timelines for appeal, for the first part of CEP implementation, applicants could appeal to the NAC as of right within 12 months of their receipt of INAC's decision denying in whole or in part their reconsideration request. Thereafter, an appeal would require the permission of a supervising Court. However, on April 15, 2011, the NAC issued a Record of Decision No. 018/C through which it instructed the CEP Appeal

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[105] Reconsideration was not yet a stand-alone process, see paragraphs 92 and 110.
[106] Settlement Agreement, section 5.09(1).

Administrator to continue to accept all appeals filed up and until September 19, 2012.[107] This measure effectively dispensed with the 12-month timeline.

124. Appeals were initiated by filing an appeal form with the CEP Appeal Administrator. NAC instructed INAC and the CEP Appeal Administrator to prioritize appeals from elderly applicants or those suffering from health conditions.[108] Otherwise, appeals were processed in the order received.

125. In the appeal form, applicants were to explain the reasons why they disagreed with INAC's decision to deny their claim. They were also invited to provide any information that could assist in validating their claim. Applicants were not required to use the appeal form developed by INAC and could also initiate appeals to the NAC by providing verbal authorization (via phone call) for the CEP Appeal Administrator to use as the appeal form any document previously filed by the applicant to request missing years. The CEP Appeal Administrator was required to confirm the school years appealed and to make a note on the document authorized as the appeal form.

126. New information provided by applicants in connection with their NAC Appeal was researched by INAC.[109] Applicants who had provided names of supporting individuals (usually students and staff) for the first time at the NAC appeal stage were contacted by the CEP Appeal Administrator and advised to provide statements from the supporting individuals in writing.[110]

127. To expedite the appeal process, when an applicant provided new information in connection with a NAC appeal and INAC concluded that, based on the new information, the appeal should be allowed in full, the NAC directed INAC to send a letter to the

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[107] CEP applications were accepted between September 19, 2007 and September 19, 2011, and thereafter, in cases of undue hardship or exceptional circumstances, until September 19, 2012.
[108] NAC Record of Decision No. 002/NC approved on August 21, 2008. See Appendix D.
[109] NAC Record of Decision No. 013/C dated September 12, 2008. See Appendix D.
[110] NAC Record of Decision No. 014/C dated September 12, 2008. See Appendix D.

applicant advising that all the years claimed in the appeal were allowed and their NAC appeal was deemed withdrawn.[111]

128. INAC and the CEP Appeal Administrator prepared the appeal files. The Appeal Protocol mandated appeals files to contain specific information and documentation. Appeal files included:

- all correspondence exchanged with the applicants;
- notes of any discussions with the applicant;
- copies of any Student Records that referred to the applicant; and
- documents submitted by the applicant.[112]

129. The Appeal Protocol required appeal files to contain the following information:

- the reason why the claim was denied by INAC;
- if there were gaps in Primary Documents;
- information that the school records disclosed relevant to the information provided by the applicant;
- additional records that were reviewed; and
- telephone conversations held with the applicant and what they revealed.[113]

130. NAC was mandated to review INAC's decision on a CEP application to ascertain if a material error had been made with respect to the following:

- the interpretation of the Settlement Agreement;
- the interpretation and application of the CEP verification principles;
- the evaluation of evidence or information presented; and
- any other material grounds raised by the applicant.[114]

131. Section 4.11 (9) of the Settlement Agreement required NAC to attempt to reach decisions by consensus. When consensus could not be reached by NAC, a majority of five out of the seven members was required to make a decision. This requirement applied to NAC appeals.

132. Three decisions were possible on an appeal:

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[111] NAC Record of Decision No. 015/C approved on July 16, 2009. See Appendix D.
[112] Appeal Protocol, supra at note 92, section 4(b).
[113] Ibid., section 4(c).
[114] Ibid., section 16.

- allow one or more school year(s);
- remit the files to INAC for reconsideration with directions including specific questions to be asked to the applicant; or
- deny one or more of the school year(s).[115]

133. Decisions were recorded in a document entitled "Reasons for Decision," a copy of which was provided to each applicant. Applicants denied one or more years by NAC were also informed of their right to appeal to the supervising Court in this document. All NAC members agreed that the Reasons for Decision should clearly explain why the appeal was allowed or denied.

F. Deciding CEP Appeal Files

i. Introduction

134. This section of the report explains how the NAC processed and reached decisions on thousands of appeal files. The NAC decision process was closed to the public. Applicants did not testify, and decisions were based solely on the document review of the appeal files. The NAC appeal process was designed to review as efficiently as possible a considerable number of appeals from applicants residing all across Canada and elsewhere.

135. The review of appeal files by NAC was the first review activity undertaken by an entity independent of INAC in connection with the CEP process. Before reaching this stage in the CEP process, all applications were previously assessed at least twice by INAC (the initial assessment of CEP applications and the reconsideration). Many files were assessed three times. Approximately 56% of all the school years claimed could not be assessed by CARS and required a manual review.[116]

136. When the Settlement Agreement was concluded, some believed that the NAC appeal process would be highly favorable to applicants because the five members of the NAC appointed by groups who represented former students in the negotiations leading up

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[115] Ibid., section 17.
[116] Lessons Learned, supra at note 79, p.23.

to the Settlement Agreement would vote to allow appeals. Similarly, some believed that the two NAC members who represented the churches and Canada would be more likely to deny appeals. This was not the case, because each NAC member was required to apply the CEP Principles and protocols in accordance with the rules of natural justice and procedural fairness. Interpretation of how the CEP Principles and protocols applied to a particular situation varied from one member to the next, giving rise to discussions and divided votes. However, such divisions are common features of many adjudicative bodies. The reality was that the majority of the NAC appeals were decided by consensus.

137. The NAC decided 4,675 appeals, allowing 1,164 (25%) and denying 3,511 (75%). In 20% of appeals allowed, the applicant received all the school years claimed. In 80% of the appeals allowed, the applicant received some but not all of the years claimed.

138. It is important to note that these statistics do not provide a full picture of the context, most notably because they do not explain the reasons for which individual applicants included certain years in their NAC appeal. Many applicants included additional years when they were uncertain about how much time they spent in residence; others erroneously appealed for school years that had already been approved while others claimed compensation at two or more IRS in the same school year when they were unsure about where and when they resided at each one.

ii. Content of NAC Appeal Packages

139. The CEP Appeal Administrator and INAC worked cooperatively to prepare NAC appeal files. A NAC Appeal Package contained between 80 and 250 pages (and occasionally more) with the majority of NAC Appeal Packages between 100 and 150 pages. They included all the documentation and information assessed by INAC in the previous phases of the assessment, as well as new information provided for the first time in the NAC appeal. A list and description of the documents typically included in a NAC Appeal Package can be found in Appendix H.

iii. Review of Appeal Files by NAC

140. The NAC held monthly in-person meetings to process appeal files and discuss matters related to the Settlement Agreement. The meeting locations reflect the geographic and diversity of the NAC members. In 2013, when the number of appeals decreased, the NAC met every few months once a sufficient number of appeals were ready to be heard.

141. The first 500 NAC appeal files were ready in August 2008. Although the NAC members were well acquainted with the CEP Principles, the assessment protocols (CEP, reconsideration and appeal) and the processes followed by INAC to validate residency, it was the first time NAC members were able to assess how the principles and protocols had been applied by INAC. Although some NAC members visited INAC's CEP processing facility in the spring of 2008, held discussions with INAC researchers and shared their findings with the other members, the NAC members did not see an actual appeal file until August 2008. As such, the NAC needed to establish processes for accurate, efficient and consistent reviews of potentially thousands of voluminous appeal files.

142. The NAC members attended a training session with INAC on August 20, 2008 to familiarize themselves with the content of the appeal files. Between August and September 2008, the NAC members reviewed appeal files and concluded that improvements were needed to the NAC Appeal Package. Specifically, additional information was required to be included in the NAC Appeal Package and summarized in the executive summary.

143. The decision-making process for appeal files was developed in incremental steps during the first few months after the first appeals were reviewed. All the appeals files to be reviewed by the NAC were posted on a secure website maintained by the CEP Appeal Administrator at least two weeks prior to the monthly NAC meeting.

144. Although all NAC members were responsible for reviewing all appeal files, each NAC member was assigned an equal number of appeal files and was responsible for presenting the key elements of each appeal file assigned to him or her and recommend a decision (allow, deny, return to trustee) for each of the school year(s) under appeal. All NAC members would then discuss the various elements of the files, how the CEP principles and protocols should be applied in the particular appeal, and how the appeal should be decided. Some files were decided relatively quickly while others gave rise to long debate. All members then voted for or against allowing the appeal for each school year.

145. The NAC member who presented the appeal file was also responsible for writing the decision. The reasons for the decision were reviewed by one NAC counterpart member and posted on the secure website in the folder "Decisions for Comment." Other members then had 10 days to review the decision and provide comments. After 10 days, the decision was updated (if required) and posted in the folder "Final Decisions." The CEP Appeal Administrator then sent a letter including the NAC decision to the applicant.

iv. NAC Appeal Decisions

146. The NAC's reasons for decisions were generally one or two pages in length and provided sufficient information for the applicant to understand why the school years claimed were denied or allowed.[117]

147. The NAC agreed that some information would not be disclosed to the applicant in the reasons for decision, specifically:

- **The vote.** The NAC could mention when a decision was unanimous but would not provide the specific result of the vote. Once the vote was completed, it became a collective decision of the NAC.

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[117] A sample decision can be found in Appendix I

- **Author of Decision.** As the decision, once made, was a NAC decision, the identity of the author drafting the decision was not disclosed.

- **The names of students and staff provided by the applicant.** They could only be identified by their initials for confidentiality reasons.

- **Specific Document Gaps in Primary Documents.** Gaps in Primary Documents (Quarterly Returns and Enrolment Returns) had been known since 2007 when an audit was performed on INAC's document collection.[118] To preserve the integrity of the process, gaps were not revealed to claimants. A generic reference to "incomplete documents available" was used in a decision rather than disclosing information such as "Primary Document Gap from September 1957 to June 1958."

- **Students boarded in private homes.** When applicants were denied compensation because they were placed in a private residence (and not at the IRS) for various reasons (e.g. overcrowding, school policies for older students), their applications were put in a special folder pending the decision of the supervising Court as to whether or not the applicants qualified for the CEP under the Settlement Agreement. It was deemed unnecessary to advise these applicants that their CEP decision could be re-assessed depending on the outcome of a court decision, when there was no certainty on how the court would decide this case of private boarders. The supervising Court eventually decided that these students did not qualify for the CEP.[119]

- **The character of the information.** Usually no reference was made to the subjective character of the information provided by the applicants. For instance, it would be acceptable to write that an applicant provided a "detailed" description of the IRS, but words such as "compelling" or "vivid" were avoided.

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[118] Lessons Learned, *supra* at note 79, p.24.
[119] *Fontaine v. Canada (Attorney General)*, 2014 BCSC 941.

148. The NAC agreed to use a number of standard statements in their decisions in certain situations. Examples of standard statements used for certain IRS (St. Augustine Mission School and Coqualeetza), or when a representative (or estate) had applied for the CEP, or when CEP Validation Principle #6 was applied to deny an appeal, can be found in Appendix J.

v. Application of CEP Validation Principle 6 by NAC

149. CEP Validation Principle 6[120] was the most frequent reason for a denial of a year of residence. Principle 6 was in practice applied in a very similar manner by all NAC members in the following circumstances:

- The applicant was a "Status Indian";
- The name of the Status Indian did not appear in complete Primary Documents (Quarterly Returns or Enrollment returns) in the school year claimed;
- There was no reason or information in the file to explain the absence of the name of the applicant from the complete Primary Documents in the school year claimed; and
- No explanation or further information was available in the file to doubt the accuracy of the Primary Documents in the school year(s) claimed.

150. CEP Principle 6 did not apply to Métis and Inuit, because IRS administrators were not required to list students who did not have Indian Status in Primary Documents and they were not consistently listed in Primary Documents. Some IRS predominantly attended by Inuit students used Quarterly Returns or similar documents to record residency. When Métis and Inuit students were listed in the Primary Documents for an IRS, and the name of the Métis or Inuit applicant did not appear in them, the situation was considered to be an indication of non-residency and was assessed in balance with any information in the file that could indicate residency.

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[120] CEP Validation Principle 6 stated: "This principle (6) shall apply to applicants who identify themselves as having been status Indian at the time of residency in a residential school. The absence of such an applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non-residence that year. An applicant whose application is rejected on this basis may seek reconsideration based on the provision of further information."

151. CEP Principle 6 provided for reconsideration based on the provision of further information if the application was rejected. When information was provided by the applicant that could explain why their name did not appear on complete Primary Documents, the NAC carefully considered the information. In situations where the information was convincing, the "presumption of non-residency" could be refuted. CEP Principle 6 could also be refuted when the information in the NAC appeal file indicated that one (or more) of the following circumstances applied:

- The applicant claimed the CEP for a residency of short duration in the school year;
- The applicant was underage in the school year (usually less than 6 years old);
- The applicant was overage in the school year (usually older than 16 years old);
- The applicant was in care of a welfare agency; or
- The "Indian Status" of the applicant was uncertain in the school years claimed.

152. A residency of short duration sometimes explained why an applicant did not appear in Primary Documents. Many applicants claimed the CEP for various stays of short duration at one or more IRS. Some applicants attended multiple IRS in a school year. Some applicants were in and out of the IRS during the school year for several reasons (stays at hospitals, moved to a private home, parents sick, parents deceased, temporary family crisis, etc.). Some applicants were sent to the IRS late in the fall and did not return after the Christmas. Some applicants started in the middle of the school years and stayed for a few weeks. Some applicants started near the end of the school year.

153. When the four Quarterly Returns were available, it was more difficult to establish residency on the basis of a shorter or sporadic stay in residence. When two or more Quarterly Returns were missing, especially successive ones (March and June), or when only one of the two Enrolment Returns were available (September or June), the NAC more readily found a stay of short duration could explain why the applicant's name did not appear in Primary Documents - provided that other information was available

to indicate residency. In all circumstances, the NAC looked for information that could explain why the applicant's residency was of short duration.[121]

154. The age of the students could also explain the absence of an applicant's name in complete Primary Documents. Residents less than 6 years old or older than 16 years were sometimes not listed in Primary Documents, because the IRS did not usually receive funding for them. However, residents as young as one year were sometimes found in Primary Documents. When an underage applicant claimed the CEP for a school year and their name did not appear in complete Primary Documents, but other underage students younger than the applicant appeared in Primary Documents, CEP Principle 6 usually applied and the applicant was denied. The same applied to overage students: when other residents of the same age or older appeared in Primary Documents but the applicant did not, the CEP was usually denied for that school year.

155. INAC-Research usually indicated the status of every applicant (Indian Status, Inuit, Métis, non-Aboriginal). When an applicant had gained or lost status as a child because of a circumstance related to a parent (marriage), this information was considered by the NAC. When the Indian Status of the applicant was uncertain in a school year under appeal, the NAC considered the applicant to be non-status and did not apply CEP Principle 6. Similarly, when the applicant had been in care of a child welfare agency, the NAC did not always apply Principle 6. The funding for these students was sometimes provided by a provincial or territorial government and they were not always listed on the Primary Documents.

156. In rare circumstances, the NAC granted the CEP when an applicant with Indian Status did not appear in complete Primary Documents and none of the reasons listed above applied.[122] For example, when the quality and the accuracy of the information provided by the applicant was compelling or time-specific information was confirmed by INAC,

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[121] See paras. 168 and 186.
[122] See paras 151 to 155.

the NAC concluded that the Primary Documents were inaccurate. The CEP was granted when more than one of the following circumstances applied:

- The applicant lived far away from the IRS, there were no day students at the IRS, and the type of the information provided by the applicant could not have been known to a temporary visitor;
- The applicant provided names of both residents and staff who were only located in the school years under appeal;
- The applicant provided letter(s) of support from other confirmed resident(s) in the school years claimed, and the letters were specific to the applicant and the school year(s) claimed;
- The applicant provided letter(s) of support that confirmed the residency from other knowledgeable person(s) at the IRS who were confirmed as being at the IRS during the school years in question (teacher, school administrator); and/or
- Other time-specific information provided by the applicant was confirmed by INAC (e.g. if the applicant indicated that upon arrival, her hair was cut short by Sister X and it was confirmed that Sister X was in charge of that task for new students).

157. The NAC also granted CEP to applicants with Indian Status not listed in complete Primary Documents when other documents in INAC's collection or provided by applicant indicated residency. For example, a report card, photograph or school newsletter from an IRS for residents only was considered sufficient.

vi. IAP Decisions and the CEP

158. Many CEP applicants also claimed in the Individual Assessment Process to obtain compensation for abuses they suffered at the IRS. These claims were heard by adjudicators and decisions were rendered in writing. Adjudicators usually reviewed the school records to confirm the presence of the applicant at the IRS. They also listened

to testimony from the applicant and could ask questions when the school record was incomplete or inconsistent with the testimony. In their decisions, adjudicators often referred to the school records and to the testimony of the applicant to make findings respecting residency. The NAC reviewed these IAP decisions and respected the findings of the adjudicators on residency in situations when the applicant did not appear in complete Primary Documents in the year(s) in question, but an adjudicator found an applicant to be a resident. The following scenarios occurred respecting the decisions of adjudicators:

- If the adjudicator made a finding on the duration of the residency and indicated a start and an end date (such as the applicant was a resident from September 1969 to June 1973), the NAC would accept these finding for the CEP for all these school years;

- If the adjudicator made a finding of fact only on the duration of the residency without specifying the years (such as the applicant was a resident for a period of three years and the abuse occurred in the second year), the NAC would grant a minimum of three years;

- Whenever an adjudicator made a finding of fact that the abuse occurred in a specific school year, the NAC would grant the school year;

- If the school record or the information in an appeal file reviewed by NAC indicated a longer residency than the one determined by the adjudicator, the NAC would allow the years confirmed by the adjudicator and the additional years confirmed by the appeal file;

- When an adjudicator determined that an applicant was a resident for a specific number of years and the school records in the appeal file indicated a shorter residency, the NAC would defer to the decision of the adjudicator and allow the longer period; and

- When the adjudicator concluded that the applicant was a day student at an IRS, the NAC would usually deny the school year(s) claimed unless the NAC had other evidence indicating residency.

vii. Appeal Files Remitted to INAC

159. When a majority of five NAC members agreed that some key information was missing from an appeal file to accurately make a decision to allow or deny each school year under appeal, the NAC could remit the file to INAC with specific instructions. This occurred for a small percentage of the files in circumstances, such as:

- The applicant mentioned in a document or a call that he or she resided at an IRS that had not been researched by INAC;

- The applicants provided the names of former students and staff that had not been researched by INAC, the presence or absence of whom could impact NAC's decision;

- The applicant had provided the name of an individual who could provide a statement of support that could be influential in NAC's decision, but the applicant was not advised to contact the supporting individual;

- The applicant used a name variant at the IRS that was not researched;

- Unsuccessful attempts had been made to contact the applicants to obtain additional information, but the NAC believed additional attempts should be made to seek specific information;

- The applicant provided time-specific information that could validate residency if confirmed by INAC; and

- INAC referred to school documents that were not included in the appeal file.

viii. Reasons to Deny a School Year

160. It is potentially misleading to establish a list of the common reasons why the NAC would deny an appeal for a school year, because each appeal file was unique. Decisions were made based on an analysis of all the information available in a file, and often a combination of elements in a particular file led to the particular decision. It is possible to generally identify some of the most common reasons for denying a school year while keeping in mind that any information in a file indicative of residency was carefully assessed and considered in light of the applicable CEP Principles and protocols. Although the object of these principles was to validate eligibility and any ambiguities were to be resolved to favour the applicants, the NAC would not grant a school year when documentation clearly established that an applicant was not a resident in a school year and there was no contrary evidence.

161. The most frequent reason why the NAC denied school years was where the applicant's name of an applicant was absent from complete Primary Documents or other complete lists. For example, when the administrator of an IRS for Inuit students in the Arctic used Primary Documents to confirm the residents the absence of the name of an Inuit applicant from those documents was considered evidence that the applicant was not a resident at the IRS in that year.

162. Many Ancillary Documents commonly used by IRS provided information on the duration of the residency. One such document was the "Application for Admission" at an IRS which indicated if the child had never attended school before or was attending a local school in the previous year. Some files contained a "Discharge Form" which usually indicated the date the applicant entered and left the IRS, the grades completed, and the reasons for leaving the IRS.

163. Some Quarterly Returns specifically identified new residents at the IRS in a section separated by a solid line. Quarterly Returns also identified residents who left the IRS

in the previous quarter and why (e.g. going to school from home, did not come back, left school, did not come back after holiday, quit to be married, attending day-school, discharge applied for). The September Quarterly Return generally indicated that a student who was present at the end of the previous school year did not return. It also indicated whether the applicant was in residence for "62 days." This "62 days" represented the operating grant claimed by the IRS for the summer months of July and August for students who had been in residence the previous June and who did not return to residence in September. Students who returned to the IRS in September appeared on the Quarterly Returns with more than 62 days in residence to account for the days in September the students were present at the school. All these documents indicated whether an applicant was a resident in a school year claimed and were balanced with other information in the appeal file indicative of residency.

164. Some IRS administrators also kept detailed lists of residents and students for internal administrative purposes. Some of the organizations (both religious and secular) kept a detailed ledger or lists of all the residents at the IRS. These documents would identify the name and date of birth of the student, their level of education, their home community, the date they entered the IRS, the date they left the IRS, the grades completed, and how many years they resided at the IRS. In the first years of the residential school system, these documents were often prepared manually by religious organizations. In the later years, information on residents was usually gathered by secular organizations, sometimes in a computerized database. When the name of an applicant did not appear in these ledgers, documents or databases, applicants could be denied in the absence of information indicative of residence.

165. Many applicants were identified in historical documents as day students at an IRS. Day students were not eligible for the CEP. These documents could originate from the IRS or from elsewhere. Examples of IRS generated documents include the lists of day students receiving lunch at the IRS every quarter, a letter from the administrator of the IRS listing all day students, a school principal's monthly report identifying residents and day students, or a list of students being bused to the IRS every day.

166. Documents unrelated to the IRS sometimes identified applicants as attending school elsewhere or being at a different institution in a school year. Letters and lists prepared by the provincial government, local school districts or a religious organization sometimes located an applicant at a different institution in a school year. When an applicant was so identified the NAC denied the appeal in the absence of information to the contrary. Many applicants were unable to accurately remember when they were residents and when they were day students because they had attended residential school many decades ago.

167. Frequently, applicants were denied the CEP because they self-identified as day students. Others misunderstood that only residents were eligible for the CEP. Some said they had applied for the CEP because other day students they knew had claimed to have received it. In fact, while some day students may have received a CEP, an audit of the CEP revealed relatively few such cases.[123]

168. Many applicants were either day students or going to school elsewhere claimed the CEP for temporary overnight stays. A temporary overnight stay in a school year did not qualify for the CEP. They were distinguished from residencies of short duration, which did qualify an applicant for the CEP.[124] NAC usually considered a temporary overnight stay to be any length of stay when the applicant's primary place of residence was elsewhere. Examples of temporary stays that usually resulted in a denial of the school year claimed include the following situations:

- Stays at the residence because of an injury;

- Stays at the residence to prepare for and/or participate in religious activities (first communion, confirmation, etc.);

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[123] Lessons Learned, supra at note 79, p.41.
[124] The distinction between a temporary stay and a residency of short duration is explained further in paragraphs 184 to 186.

- Stays at the residence on weekends to participate in sports activities;
- Stays at the residence for a few nights to allow students to help decide if they want to go to the IRS the following year (in the later years of the IRS system);
- Stays at the residence for a few nights before being transferred to a private home when the student knew that the stay was temporary;
- Stays overnight at the IRS because of bad weather;
- Stays at the IRS because of a flood or a fire in the community; and
- Stays at the IRS during the summer months to participate in a summer camp.

169. Some applicants who claimed the CEP lived with their family on the premises usually because a family member was employed by the IRS. These applicants were not eligible unless they slept in the dormitory with the other students.

170. Some employees who lived at the IRS claimed the CEP. When applicants worked at an IRS as adults and received a salary, they did not qualify for the CEP. They were residing at the IRS voluntarily for the purpose of work and not for the purpose of education. On the other hand, it was common for elderly applicants to explain that they had spent many years at an IRS in their youth where they mostly worked as farm laborers or janitors and received little formal education. These applicants would qualify for the CEP. Some situations were more ambiguous, for example, when an applicant had been a student at an IRS and had transitioned into casual employment at the IRS when they were older (16, 17 etc.) but continued to attend class at the IRS, the CEP could be granted.

171. CEP appeals were denied by NAC for the following reasons:

- The IRS was closed in the school year(s) claimed;

- The applicant already received compensation for all the years claimed in the appeal, and all attempts by the CEP Administrator to contact the applicant to clarify the school years under appeal failed;

- The applicant applied for more school years, because he or she could not remember the exact school years he or she lived at the IRS. This was often the case when the communications in the file revealed that the applicant was clearly looking for one additional school year but had applied for four because he or she was unsure about the exact school years;

- The IRS only taught grade 9 to 12 and the applicant was too young to have been in those grades in the school years claimed;

- The applicant was younger than 6 years old in the school year claimed and the IRS school policy clearly indicated that the IRS did not admit students younger than 6 in that school year;

- The applicant was older than 16 in the school year claim and a school policy indicated that students 16 and older would not be admitted in residence and would instead be placed in private homes;

- The applicant was Métis and the IRS policy was to only accept students with Indian Status;

- The applicant resided at two residential schools in the same school year. He or she had received the CEP for residing at the IRS in that school year, but believed he or she was entitled to two years of CEP because he or she had attended two IRS. The CEP was paid on a school year basis and attending more than one IRS in the school

year had no impact on the amount paid. As soon as residency at one IRS in a school year was validated, the CEP was paid for that school year; or

- The personal representative or estate could not provide any additional information, none of the information in the file could validate residency, and the name of the applicants did not appear in Primary Documents and Ancillary Documents at any IRS during the period when the applicant was between 4 and 18 years old.

172. Finally, applicants were denied the CEP as a result of the application of CEP Principle 8 which stated that residency could not be validated based on the applicant's declaration of residence alone. To explain what was considered a "bare declaration of residence," it is first necessary to review the reasons why school years were allowed by NAC.

ix. Reasons to Allow a School Year

173. Many of the appeals when NAC allowed one or more school years were complicated files. The documents and information in the file could often not validate with certainty that the applicant was a resident in a school year but the application of the CEP Principles as interpreted by the NAC produced a favorable outcome for the applicant. Whenever a situation was ambiguous, the benefit of the doubt was given to the applicant. Whenever the school documents were inconclusive, such as a gap, or a reasonable explanation why the name of an applicant was absent, the NAC would carefully review the situation.

174. When partial or complete gaps existed in the Primary Documents for a school year, the CEP Principles would allow the NAC to approve a school year provided that information in the file could validate residency. When no school document could refute that an applicant was a resident in a school year and the applicant provided time specific information about the IRS, this information was sufficient to validate residency and allow the appeal for the school year.

175. When no such time specific information could be provided, the situation was considered a "bare declaration of residence" and was considered insufficient under the CEP Validation Principles to grant the appeal. What constituted a "bare declaration of residence" or "time specific information" was debated at length among NAC members, and a consensus was never fully achieved. Therefore, the NAC would debate its applicability to specific appeals.

176. However, the CEP Validation Principles required NAC members to reject bare declarations. "I was a resident for 7 years at the IRS" constituted a "bare declaration of residence". On its own, the declaration could not validate residency without the presence of additional information. The threshold to validate residence was not high in the absence of Primary Documents.

177. More weight was given to the names of former students and staff provided and confirmed at an IRS when there were also no day students attending the IRS at that time. When the applicant provided names of students located at the IRS during the school years in question but the applicant was recorded as a day student, less weight was given to the names of other students and staff, because the applicant would have known these individuals through his or her regular attendance as a day student. Similarly, when a former student had evidently copied the names of all the students in a yearbook or used an extensive list which was identical for many claimants from one school and was obviously prepared by someone else, it was given less weight. Names of former students and staff were useful to validate residence in the following circumstances:

- The name of a student was only identified as a resident in one or more of the years under appeal;

- The name of a staff member was only identified as an employee in one or more of the years under appeal;

- The name of the student was provided in a specific context that was confirmed (e.g. the student shared a room with students X and Y in the school year 1975-76 and students X and Y were both confirmed as residents in the school year during that year); and

- The name of the staff was provided in a specific context that was confirmed (the dorm supervisor was Mr. X during the first year and Mr. Y during the second year and both were confirmed by INAC).

178. Similar principles were used by the NAC to assess letters and affidavits of support. INAC researched the author of the letter to confirm their presence at the IRS. It was the quality and not the quantity of letters or affidavits that mattered. Letters and affidavits of support were most helpful when:

- They were specific to residency at the IRS. The statement "X slept at the IRS" was more helpful then the statement "X was at the IRS" in situations where both day students and residents attended the IRS. Whereas the first statement supported residence, the second statement could also refer to attendance as a day student at the IRS;

- They refer to specific school years. The statement "I know that X was a resident at the IRS in the school year 1979/80" was better than "X slept at the IRS";

- They contained specific details. The statement "X and I were friends. The Indian Agent brought us to the IRS. We took a plane to Edmonton, it was the first time we were in a plane. In Edmonton, we took a bus to get to the IRS. X and I were in the same dormitory the first year. We were 6 years old."

179. Most of the letters and affidavits of support were provided by other former students, school administrators, teachers, staff, and social workers. These letters helped validate residence when the author was confirmed at the IRS and their content provided specific information about the applicant.

180. Some applicants provided documents to support their residency, such as a yearbook or a report card confirming that the applicant was at the school. When no day students attended the school, the NAC would allow the appeal based on that information. When a school document was not in INAC's school collection or INAC could not independently confirm the authenticity of the school document, the NAC would assess the document. An example would be a document found by an applicant in the archives of a school board, such as a class register with the name of the applicant and the mention "Indian Residential School" next to their name. When there was an ambiguity, it was resolved in favour of the applicant.

181. At some IRS, the INAC documents were limited. The NAC always considered the number and quality of INAC documents when assessing an appeal. When Primary Documents were unavailable and few of the other school documents could confirm time specific information, the NAC followed the ambiguity principle.

182. An applicant who provided a detailed description of the IRS and specific details about activities undertaken while at the IRS (totem poles at the entrance, presence of a graveyard, two double-beds per room made of metal, learned to carve at the IRS, etc.) and INAC had no contrary information, this information could establish eligibility for the CEP on the sole basis of the accurate description.

183. Sometimes a description of the IRS was sufficient to validate residency. An applicant who provided information that only a resident could know (e.g. the applicant described sleeping in the old dormitory until the dormitory was moved to a new building) and INAC confirmed the information, such information was relied on to allow the appeal.

184. Many applicants claimed the CEP for a short period of residency. The CEP Protocol defined the terms "Eligible Year" and "Residence" as follows:

Eligible Year — *A School Year, or part thereof for which an Applicant's Residence is confirmed.*

Residence — *The Applicant resided overnight at an IRS for one or more nights in a School Year and may have attended classes at the IRS, a public school or a federal day school.*

185. As indicated by the underlined text, residence in part of a school year, even for one night, was sufficient to qualify for the CEP. The key element was the term "resided overnight." Residence is usually defined as "the place where someone lives." In the context of the Settlement Agreement, applicants who slept overnight at the IRS for a temporary period of time when they usually lived elsewhere did not qualify for the CEP. It was possible to be deemed a resident for sleeping at the IRS for a very short period of time. Generally, when the applicant knew that the stay at the IRS would be for a temporary period of time for a specific reason, the CEP was denied. When the applicants did not know (or could not have known) that the stay at the residency would be temporary, the applicant was considered to be a resident and the CEP was allowed for the school year.

186. Some examples when applicants would be considered residents (keeping in mind that time specific information was also required to validate residency) include:

- The applicant stayed for a few nights at the IRS and was sent to a sanatorium when a medical exam revealed he or she was suffering from tuberculosis;
- The applicant stayed one month at the IRS and ran away;
- The applicant was brought to the IRS by the mother without the knowledge of the father and the next day, the father drove to the IRS and returned home with the child;
- The applicant was brought to the IRS following the death of the mother and stayed in residence for a few weeks until a grandparent decided to raise them;

- The applicant slept at the IRS for a couple of weeks and then learned for the first time that he or she would be moved in a private home;

- The applicant slept at the IRS for a few weeks and was moved out of the IRS because of overcrowding, with no prior knowledge of the situation when he or she first arrived at the IRS; or

- The applicant was returned home for any reason.

187. The NAC considered whether the Inference and Interpolation principles had been properly applied. When the NAC concluded that additional years should have been granted via Inference or Interpolation, the NAC allowed the appeal for those years.

x. Missing Records

188. After its review of thousands of CEP files, the NAC reached three conclusions on the issue of missing records.

189. First, INAC's collection of over 1,000,000 school records[125] covered all the IRS and most of the school years claimed. It is true that these documents were not evenly distributed between the IRS: some IRS had thousands of documents and complete lists of residential students, while others had substantially less documentation available. Nevertheless, for all IRS, at least some school documents were available to help validate residency.

190. Second, when lists of residential students were missing and the name of the applicant did not appear in other school records, INAC undertook significant effort to contact the applicant to obtain additional information. The additional information obtained often resulted in CEP eligibility.

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[125] Lessons Learned, supra at note 79, p.23.

191. Third, the unavailability of complete lists of residential school students in a school year supported eligibility for that year because reasoned assumptions based on the totality of the information available (CEP Principle 3), Interpolation and Inferences (CEP Principle 4) could be made to the benefit of the applicant and any ambiguity was resolved in favour of the applicant (CEP Principle 5).

G. Meeting the Objectives of the CEP

i. The Objectives of the CEP

192. The following section assesses the extent that the objectives set forth in the executive summary of the CEP Validation Protocol[126] respecting the delivery of the CEP have been met. These objectives include: 1) ensuring that the applicant receives the correct amount of compensation; 2) a fair and objective assessment; 3) a timely assessment; 4) minimizing the onus placed on applicants; 5) a practical and efficient assessment, and 6) a minimum of errors. Based on the NAC's experience, most of these objectives were met, as discussed below.

ii. The Correct Amount of Compensation

193. Did each CEP applicant receive the "correct amount of compensation"? Many former students believed that they did not receive compensation under the CEP for all school years that they resided at an IRS. Appeal files reviewed by the NAC revealed that in many cases applicants were mistaken regarding the number of years in residence. Primary Documents and Ancillary Documents often clearly indicated a period of residency (start date, end date, interruption, return etc.), and the period of residency was often confirmed by multiple independent historical documents from different sources.

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[126] CEP Protocol, supra at note 90, Executive Summary, p.4.

194. When Primary Documents and Ancillary Documents were inconclusive, applicants who were able to provide accurate and detailed information about their life at residential school were most likely to be successful on appeal.

iii. Fair and Objective Assessment

195. The CEP Validation Principles and related assessment protocols were applied fairly and consistently by the NAC at every level of the appeal process. Nevertheless, some applicants who provided statements, letters, affidavits and/or other documents to help validate their claims at the reconsideration and appeal stages stated that the validation process treated them unfairly, especially when their efforts did not result in the recognition of all the school years they were claiming.

iv. Timely Assessment

196. Most CEP applicants who had resided at an IRS expected to receive their CEP payment relatively quickly after submitting their application form. The amount of time required could vary greatly from case to case. To a large extent, validation was dependent on the availability and completeness of Primary and Ancillary Documents for each IRS, the ability of applicants to provide information on a timely basis, and the ease or difficulty of INAC to research and confirm the information received.

197. As discussed above the CEP program encountered many challenges[127] in the first months of its existence. These were eventually remedied, but the problems contributed to delays at the outset of the program. Such delays frustrated many CEP applicants.[128]

198. Once initial technical challenges were resolved, a more fundamental issue became apparent: the computer system CARS only made automatic findings of eligibility in 44% of the claims, meaning that the remaining 56%[129] required further research in school

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[127] See section D. *NAC and Emergent CEP Issues* at paras 85 to 95.
[128] Lessons Learned, supra at note 79, p.38.
[129] Ibid., at p.23.

documentation by INAC. At the time of the Settlement Agreement, Canada had estimated that only 20% of the CEP applications would require further research.[130] The necessity of conducting research for a substantive number of CEP applications contributed to additional delays.

199. For the 44% of the claims for which CARS was able to make a finding of eligibility, applicants received payment on a timely basis. Elderly applicants who had received an advance payment were also paid all the years claimed in their CEP applications on a timely basis. For these two groups, the CEP fulfilled the objective of timely CEP compensation.

200. For the 56% of the claims that required further research, the process was not always timely, particularly for those who subsequently applied for reconsideration (27,798), the NAC (5,259), or the Court (741).[131] It sometimes took years between the initial CEP claim and the time when a final decision was made. This usually occurred when few Primary Documents or Ancillary Documents were available, or applicants were unable to provide information to the CEP Administrator on a timely basis.

201. These delays in the processing of some CEP claims were not the result of major implementation failures. INAC implemented a robust validation system in accordance with the CEP Validation Principles and related protocols. When CARS could not make automatic findings of eligibility, validating residency based on further information and supporting documents provided by applicants and researched by INAC was often a time-consuming process.

v. Onus Placed on Applicants

202. Another objective of the CEP Principles was to minimize the onus on CEP applicants. This was achieved when CARS made automatic findings of eligibility and paid all the school years claimed. However, when applicants were required to apply for

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[130] See Schedule L of the Settlement Agreement (Flow Chart)
[131] CEP Statistics, supra at note 65.

reconsideration and/or appeal in order to receive compensation, the onus placed on applicant was greater.

203. In the reconsideration process, applicants were invited to provide additional information and/or supportive documents to help validate their claims. Although the threshold was low to establish residency in the absence of contrary evidence in the historical documentation, applicants had the onus to provide information about their life at residential school. Many applicants provided personal written statements, some quite long and detailed. For some applicants, describing their residential school experience was difficult.[132]

204. Many applicants provided historical school documents obtained from various archives or from the federal, provincial and/or territorial governments through access to information requests. Some applicants also swore personal affidavits to support their residence and/or obtained statements from their elderly parents or other relatives. Preparing and/or obtaining these documents was often difficult.

205. A study of the CEP conducted by the Aboriginal Healing Foundation in 2010 found that 40% of the 281 CEP applicants interviewed confirmed that the CEP process was difficult or challenging.[133]

vi. Practical and Efficient Assessment

206. When the name of an applicant appeared on complete Primary Documents, the validation process was practical and efficient. When the Primary Documents were incomplete for an institution, but an applicant's name appeared as a resident on Ancillary Documents in the school years requested, the claim would take longer to

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[132] Although this may not have been apparent from the written statements or phone interviews, all NAC members who participated in IAP hearings saw this repeatedly in those hearings.

[133] *The Indian Residential Schools Settlement Agreement's Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients*, The Aboriginal Healing Foundation Research Series, 2010, p xiii, online at: http://www.ahf.ca/downloads/cep-2010-healing.pdf.

process but could usually be decided solely on the basis of the information provided in the application form.

207. A high percentage of the CEP applicants (approximately 73%) never applied for reconsideration. However, for the approximately 27% of applicants who did apply for reconsideration, some of whom subsequently appealed to the NAC and the Court, the processes did not always appear to be practical and efficient.

vii. Executed with a Minimum of Errors

208. Was the CEP executed with a minimum of errors? Based on the thousands of CEP files reviewed by NAC, it is possible to answer that question in the affirmative. However, errors were made. For the purposes of this report, errors could include overcompensating, undercompensating, or a wrongful denial of the CEP. In the context of the Settlement Agreement, the NAC was aware that undercompensating or denying the CEP to an otherwise eligible applicant would be tremendously unfair and would significantly undermine the "spirit of reconciliation and healing that is the ultimate aim of the SA [Settlement Agreement]."[134] For that reason, the NAC was extremely careful in consideration of every appeal.

209. The NAC is aware that overcompensating sometimes occurred as a result of the application of the CEP Validation Principles of Interpolation and Inference or from the application of NAC's Record of Decision No. 006/C to pay all the school years claimed by elderly advance payment recipients in their CEP applications. In both cases, overcompensation could occur when residency could be validated but its duration remained uncertain, because it was deemed preferable to overcompensate rather than undercompensate when Primary Documents were nonexistent or incomplete. Overcompensation was the exception and usually resulted from a combination of factors, such as a gap in Primary Documents and applicants applying for a longer

[134] Preamble of the Settlement Agreement.

period of residency when uncertain about the exact school years they spent in residence.

210. With respect to the possibility that some applicants may not have received the CEP for all the school years they resided at an IRS, the NAC believes such cases to be very rare. However, they could have occurred when Applicants did not follow through with the reconsideration and appeal processes sometimes for the following reasons:

- Applicants were legally incapacitated or died after submitting their CEP applications and their personal representative or estate administrator could not provide any information to corroborate the applicants' CEP claim;

- Applicants died without a will and the legal process to appoint an estate administrator was not completed in time to apply for reconsideration or appeal to the NAC; or

- Applicants were incapable of providing any information, because they could not remember details related to their residential school experience as a result of trauma, addictions, diseases, accidents or old age.

211. It is also possible that an applicant was denied compensation in the rare cases when Primary Documents may have been inaccurate and mistakenly omitted to list an applicant as a residential school student. The NAC was very alive to this possibility and, on appeal, carefully reviewed and weighed all the information in every file when an applicant did not appear on complete Primary Documents to confirm that no other information existed that would contradict the Primary Documents. In cases where such other information was sufficient, it was relied upon to allow appeals. Similarly, if there were other sufficient reasons to explain the absence of an applicant's name from complete Primary Documents, the CEP Appeal was allowed.

212. In summary, the objectives to pay the correct amount of CEP compensation in a fair, objective, practical and efficient manner with a minimum of errors were achieved.

However, the process was not always timely and for some applicants, the onus placed on them was, at times, greater.

H. Conclusion on the CEP

213. Under the Settlement Agreement, Canada agreed to pay eligible CEP applicants a Common Experience Payment based on the number of years they resided at an IRS. The parties to the Settlement Agreement representing the plaintiffs were concerned that decisions on CEP eligibility would be made by Canada as the administrator of the Settlement Agreement. To address this concern, the Settlement Agreement provided for a multilevel decision and mutually-accepted validation principles and protocols to ensure that claims would be dealt objectively, impartially and accurately.

214. The CEP Validation Principles and the three assessment protocols derived therefrom were the result of a compromise. Although one option could have been to pay every applicant based on the school years claimed with little to no verification, this would have resulted in payments to non-eligible applicants or overpayments.[135] Another option could have been a payment based on confirmation of the name of the applicant on residential school records in every school year claimed which would have resulted in a denial of compensation to considerable numbers of eligible CEP applicants due to incomplete historical school records as well as the exclusion of Métis and Inuit students from Primary Documents. The CEP Validation Principles represented a balance between these two possible options. Although historical documentation played a key role in the validation process, claims could also be validated by applicants providing oral or written information on the IRS and/or other supporting evidence.

215. This report is not intended to review the appropriateness of the CEP Validation Principles and related protocols. Any change to the criteria or process would likely have had both desirable and undesirable results. With the benefit of hindsight, the NAC recognized that the following process changes could have been beneficial:

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[135] CEP Statistics, supra at note 65. 23,927 (23%) of the CEP applications were deemed ineligible.

- Advise claimants from the outset that the validation process could in some cases take time and be complicated and explain the reasons why. The notice program and other community outreach activities created expectations that CEP applications would be processed and paid promptly on the sole basis of the application form, and applicants were often frustrated when their claims were not approved on a timely basis and they had to provide additional information, statements, and documents;

- The original letters to CEP claimants did not include sufficient detail as to the reasons for the CEP decision. Once this became apparent, in 2007 and early 2008, the NAC was involved in redrafting the letters to provide more information to the claimants after the initial CEP decision.

I. CEP Appeals Advancing to Court

216. The parties to the Settlement Agreement agreed that NAC decisions to deny the CEP in whole or in part could be appealed to a supervising Court.[136] The formal process envisioned by the parties and set out in the CEP Appeal Protocol was not ultimately approved by the Courts. Instead, the appeal process was simplified, and appeals were determined solely in writing.[137]

217. In addition to providing for CEP appeals to the NAC, Article 5.09 authorized a further appeal to the supervising courts for CEP applicants dissatisfied with the outcome of their appeal to the NAC.

218. The preconditions to an appeal were twofold: a prior unsuccessful appeal to the NAC, in whole or in part; and the appeal related to an eligible IRS school. The latter

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[136] Settlement Agreement, section 5.09(2).
[137] Appeal Protocol, sections 27 and 28. The process to appeal to the supervising Court was simplified by eliminating the requirements to appeal by way of notice of motion and dispensing with service of documents on the Trustees. Applicants were also not required to pay filing fees.

precondition respected the separate process under Article 12[138] for additions of schools to the lists of eligible institutions.[139]

219. As with NAC appeals, appeals to the supervising courts were designed to be streamlined, efficient and easy to complete. The applicant was required to complete a preprinted form that was available in hardcopy or electronically from the CEP Administrator. The CEP NAC Appeal Form and the CEP Court Appeal Form were virtually identical. [140]

220. On receipt of the Court Appeal Form, the CEP Administrator conveyed the entire NAC appeal package, described above, to the court for consideration. All CEP appeals were determined on the record before the court. Appellants were entitled to forward additional information to the court although oral submissions to the court were not permitted.

221. The Western Administrative Judge, Brown J., heard and determined all CEP appeals. Ultimately, that Court determined 750 CEP appeals. Of those decided, 14 were allowed on the basis of new information not before the NAC. This result is unsurprising given the rigorous research and assessment processes of the lower levels at reconsideration and the NAC appeal process.

III. CEP SURPLUS

A. Distribution of Excess Funds from the Designated Amount Fund

222. The Settlement Agreement provides that after the payment of the CEP to all eligible applicants, any excess funds from the $1.9 billion set aside for the CEP (the Designated Amount Fund (DAF)) would be distributed to CEP recipients in the form of personal credits for education to a maximum of $3,000 per person. After the payment of the

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[138] See section VII. *Article 12 and other Applications Regarding Eligible Institutions.*
[139].See Schedules E and F of the Settlement Agreement.
[140] See Appendix K for the CEP Court Appeal Form.

personal credits, the remaining balance in the DAF (if any) would be payable to the National Indian Brotherhood Trust Fund (NIBTF)[141] and Inuvialuit Education Foundation (IEF).[142] [143]

223. The Settlement Agreement provided key dates and conditions for the distribution of personal credits and the transfer of the remainder in the DAF to the NIBTF and IEF. The personal credits could only be distributed after an audit of the DAF determined that more than 40 million dollars remained in the DAF after the CEP application deadline.[144] A 2013 audit of the CEP determined that $328,879,724 remained in the DAF as of October 1, 2012,[145] an amount sufficient to distribute personal credits of $3,000 to each CEP recipient and leave a surplus for NIBTF and IEF.

B. Distribution of Personal Credits

224. The Settlement Agreement described the main features of the personal credits.[146] First, they would have no cash value and would only be redeemable for "either personal or group education services" provided by "education entities or groups" jointly approved by Canada, the AFN and the Inuit Representatives. Second, the personal credits would be transferable by a CEP recipient to family members. Third, Canada, the AFN and the Inuit Representatives would develop further terms and conditions for the distribution of the personal credits. Finally, all the internal administrative costs relating to the personal credits would be paid from the DAF.[147]

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[141] The NIBTF was developed in 1975 and has funded over 170 group projects ranging from language and cultural revitalization programs, such as cultural healing and teaching circles and camps, to student support, training and scholarship programs. In addition, it has approved funding for over 1,800 First Nation and Métis individuals engaged in post-secondary, cultural learning, or training and certification. See http://nibtrust.ca/about/

[142] The Inuvialuit Education Foundation is a registered charity established in 1990 that provides financial assistance and scholarships to Inuvialuit post-secondary students. See https://www.irc.inuvialuit.com/program/inuvialuit-education-foundation

[143] Settlement Agreement, section 5.07.

[144] Ibid., section 5.05(2).

[145] Employment and Social Development Canada, Schedule of the Common Experience Payment Designated Amount Fund, available at 2015 CEP Audit.

[146] Settlement Agreement, definition of "Personal Credits."

[147] Settlement Agreement, section 5.08(2).

225. In an October 31, 2013, order, Brown J.[148] approved the terms and conditions for the distribution of the personal credits, including a notice program, an administration plan, and a budget. The NAC consented to the terms as negotiated by Canada, the AFN and the Inuit. The principal elements approved are set out in Appendix M.

226. The Notice Program and the mail-out of personalized Acknowledgement Forms to CEP Recipients took place in January 2014. By June 2014, it became obvious that the uptake was low as few redemption forms had been submitted. In the summer 2014, INAC undertook a series of additional measures to raise awareness of the October 31, 2014 deadline to submit the Acknowledgement Form. These measures included another direct mail-out to CEP recipients, a social media campaign, and targeted radio spots. In the fall of 2014, INAC organized a "workout" with Crawford, the AFN and the Inuit Representatives to ensure all the parties involved had a common understanding and to discuss how to best assist CEP recipients and their families with the personal credits.

227. In November 2014, Canada, the AFN and the Inuit Representatives obtained an interim order from the Court for Crawford to continue to accept Acknowledgement Forms and Redemption Forms after the initial deadlines (respectively October 31 and December 1, 2014). On January 7, 2015, the Supreme Court of British Columbia issued an Order again, setting extended deadlines: March 9, 2015 for Acknowledgement Forms; June 8, 2015 for Redemption Forms, and August 31, 2015 to complete the educational activities. Additional outreach activities were conducted by INAC, AFN and the Inuit Representatives to inform CEP recipients and their families.

228. Notwithstanding the best efforts of INAC, Crawford, the AFN and the Inuit Representatives, and increases in the uptake following the extension and additional outreach activities, at the end of the process, only 23,774 of the 79,309 CEP recipients,

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[148] Order of Madam Justice Brown dated October 31, 2013.

or approximately 30 percent, used a total of $57,194,000 in personal credits. [149] INAC identified some of the reasons for the low uptake,[150] including:

- A short timeframe to identify and complete educational activities and go through a multistep acknowledgement and redemption process;

- The administration process was complex and included forms that were lengthy and not easily understood by CEP recipients (7 pages for the Acknowledgement Form with a total of 22 options);

- The average age of CEP recipients in 2014 was 60 years old, an age where one is less likely to pursue educational activities. Transferring credits to family members required consultation and communications with transferees and education providers with application deadlines sometimes required months in advance for mainstream institutions;[151] and

- Few applicants began the process until September 2014. The process had fixed deadlines and a large number of forms were received immediately prior to the deadlines. This resulted in delays for Crawford in processing forms. Crawford was unable to meet its services standards, leaving insufficient time to address incomplete or deficient forms.

229. Approximately 50 percent of the personal credits were used by First Nations and Metis for "Group Educational Entity," i.e. by pooling credits to participate in education programs aimed at the preservation, reclamation, development or understanding of

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[149] These numbers (23,774 CEP recipients and $57,194,000) were provided by Canada on February 28, 2019.

[150] INAC, *Final Report, Lessons Learned,* supra at note 79.

[151] Approximately 35 percent of the funds were transferred and used by family members of First Nations and Métis CEP recipients and approximately 24 percent were transferred and used by family members of Inuit CEP recipients. These numbers were compiled from two statistical reports prepared by Canada as of April 28, 2016.

native identities, histories, or languages. For the Inuit, approximately 62 percent[152] pooled their personal credits to participate in programs aimed at the preservation, reclamation, development, or understanding of Inuit identities, histories, cultures, or languages. The AFN and the Inuit Representatives, through their personal credits liaisons, played a key role in working with Indigenous communities to coordinate the development and delivery of these programs. This utilization of the personal credits was one of the successes of the credit program as it benefitted several persons and the communities.

230. The distribution of personal credits to CEP recipients for education purposes was a very challenging and complex undertaking. From the outset, it had little appeal to a majority of CEP recipients. Only 38.8 percent of the CEP recipients (30,770 out of 79,309) submitted an acknowledgement form and 10.6 percent (3,240 out of 30,770) of those who submitted an acknowledgement form were denied because their form was incomplete (80 percent of those denied) or filed after the March 9, 2015 extended deadline (18 percent of those denied).

231. With the benefit of hindsight, the parties to the Settlement Agreement would have likely agreed on a different approach to interest more class members, make the benefit easier to claim, simpler and less costly to administer.

C. Transfer to National Indian Brotherhood Trust Fund and Inuvialuit Education Foundation

232. Section 5.07 of the Settlement Agreement directed the trustee to transfer to the NIBTF and IEF all excess funds remaining in the DAF following the distribution of the personal credits with "all amounts remaining in the DAF on January 1, 2015"[153] payable to the NIBTF and IEF "as soon as practicable."[154]

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[152] These percentages were calculated based on two statistical reports prepared by Canada as of April 28, 2016.
[153] Settlement Agreement, section 5.07(4).
[154] Schedule I to the Settlement Agreement, Trust Agreement, section 7.1.

233. The funds transferred were divided between the NIBTF and IEF based on the proportion of CEP recipients identified as First Nations and Métis for NIBTF and as Inuit for the IEF. The funds received were to be distributed to First Nations, Métis and Inuit for educational programs in accordance with terms and conditions agreed upon between Canada, NIBTF and IEF.

234. On July 27, 2015, the British Columbia Supreme Court (the July 27, 2015 Order) approved by consent the *Terms and Conditions Regarding the Transfer of the Designated Amount Fund to the National Indian Brotherhood Trust Fund and Inuvialuit Education Foundation* agreed upon by Canada, the NIBTF and IEF. The other parties to the Settlement Agreement were consulted on the terms and conditions through the NAC. The main features of the terms and conditions are set out in Appendix N.

235. In the July 27, 2015 Order, the Court ordered Canada as trustee of the DAF to pay to the NIBTF and IEF the remainder in the DAF in percentage instalments subject to retaining temporarily some of the funds that could be required to pay some contingent liabilities related to current litigation seeking to add additional residential schools and some outstanding liabilities including the ongoing administration and payout of personal credits applications.

236. A total of $230,400,629[155] was transferred to the NIBTF and IEF between August 2015 and May 2018. NIBTF received $217,267,788 and IEF $13,132,841. As of January 31, 2019, a sum of approximately 18.4 million dollars remained in the DAF for contingent and ongoing liabilities. Once resolved, any residue in the DAF will be transferred to the NIBTF and IEF. NIBTF and IEF are charities registered with the Canada Revenue Agency and distribute funds to individuals and groups for educational purposes in accordance with administration plans approved by the Supreme Court of British Columbia.[156]

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[155] The numbers in the paragraph were provided by Canada on January 31, 2019.
[156] NIBTF's administration plan was approved on July 27, 2015 and IEF's administration plan was approved on January 7, 2016.

IV. INDEPENDENT ASSSESSMENT PROCESS

A. NAC Interaction with the Oversight Committee and the Chief Adjudicator

237. In the early days of the Settlement Agreement both the NAC and the Oversight Committees were developing practical and effective strategies for implementation of the Settlement Agreement. As a result, the NAC and the Oversight Committee as well as the Chief Adjudicator met on several occasions in the first few years of implementation. The key measures resulting from those meetings are described more fully below.

B. Use of IAP Decisions in CEP Appeals

238. A strategic principle adopted by the NAC was in respect to findings of fact made by an adjudicator regarding the residency of IAP claimants. The NAC agreed to adopt an adjudicator's findings for use on CEP appeals to confirm residence where it was to the benefit of the CEP claimant.[157] This principle was only applied by the NAC and the courts in CEP appeals. It did not apply at initial CEP application or reconsideration stages. Although 'residence' was not a requirement to prove an IAP claim, it was a pre-requisite to establish a CEP claim. Therefore, where an IAP adjudicator made a factual finding of 'residence', the NAC would accept that finding for the purposes of a CEP appeal.[158]

C. Short Form Decisions

239. The NAC supported an amendment to the Settlement Agreement to allow for the use of "Short Form Decisions" in lieu of the fully detailed written decision specified in the IAP model. The amendment was approved by the Court on January 4, 2010 and thereafter, 9,156 Short Form Decisions (24.1% of all completed claims) were issued.[159]

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[157] See para.153.
[158] See paras 56 and 153.
[159] See para 55.

240. Short Form Decisions eliminated a full written decision which required a detailed narrative of evidence and rationale supporting the decision and effectively reduced the amount of time between the hearing and the ultimate payment of compensation. Short Form Decisions could be used only with the consent of the parties where the requirements set out below were met.

241. In order to opt for a Short Form Decision, each of the following were required:

- The claim was a standard track claim;[160]
- Legal counsel represented the claimant at the hearing;
- All testimony, research, mandatory document production and future care plans were completed before the hearing;
- Submissions took place immediately after the oral hearing was concluded rather than a later date;
- The claimant, having received independent legal advice, provided written consent to the use of a short form decision; and
- The representatives of the parties that attended the hearing provided written consent to a Short Form Decision [161]

242. In those cases where a Short Form Decision was rendered:

- The decision had to be signed by the adjudicator, and the parties attending the hearing, and
- The parties retained their right to have the decision reviewed.

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[160] Standard track claims refers to claims where consequential harms and consequential loss of opportunity must be proven on a balance of probabilities and then proven to be plausibly linked to one or more acts proven. A finding of a plausible link does not require the negation of other potential causes of harms, but it must be based on or reasonably inferred from the evidence led in the case rather than assumptions or speculation as to possible links.

[161] When a Church party did not send a representative to the hearing, Canada was able to consent to a Short Form Decision on behalf of the Church.

243. A Short Form Decision was not available for self-represented claimants or where there were issues of credibility, liability or compensation.

D. Negotiated Settlement Process

244. The Negotiated Settlement Process (NSP) arose as an alternative to full IAP adjudication early on and was derived from the ADR process. This process did not require an adjudicator but involved an interview of the claimant conducted by a Justice Canada lawyer followed by negotiations. If the claimant accepted an offer, the claim was concluded with the payment of the negotiated amount. If the NSP did not result in a settlement, the claimant would re-enter the IAP stream. Similar to the Short Form Decision, it was suitable for cases in which all disclosure had been made and there were no outstanding questions about years of attendance, or parties involved.

245. The parties to an NSP could not deviate from the compensation rules under the IAP but the claimant had more opportunity to interact with the Justice Canada lawyer and receive an earlier settlement than in the regular IAP process. In total, some 4163 claims were settled through the NSP.

E. IAP Fee Reviews

246. At the first approval hearing in Ontario, Winkler RSJ ruled that legal fees on IAP decision could not exceed 30%, with 15% being paid by Canada and 15% by the IAP claimant from their awards.[162] BC Supreme Court Chief Justice Brenner in his Approval Reasons stated that the 30% maximum should be reserved for those cases that were exceptionally difficult.[163] This limitation on legal fees and the simplified fee review process was welcomed by the AFN and the Inuit Representatives and was supported by the National Consortium, Independent Counsel and Merchant Law Group as protection for claimants from unreasonable legal fees. Canada and the Churches had no role and, therefore, took no position in the fee review process.

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[162] *Baxter v. Canada (Attorney General)*, [2006] O.J. No. 4968.
[163] *Quatell v Attorney General of Canada*, 2006 BCSC 1840.

247. Subsequently, the Chief Adjudicator issued Fee Review Guidelines[164] and adjudicators addressed fee reviews in almost all cases whether requested by an IAP claimant or not.

248. Once the Chief Adjudicator issued his guidelines on fees, the majority of plaintiff's counsel acquiesced to the guidelines. They indicated their willingness to do so both at the hearing and in writing to the adjudicator. The normal fee approved was in the range of 22.6%.[165] As Canada committed in the Settlement Agreement to pay 15% of legal fees in addition to the award, the claimants would pay 7.6% of the fees on average, deducted from their awards.

249. However, the enormous publicity in both the Indigenous and mainstream media surrounding the conduct of a few lawyers who attempted to charge the maximum fees allowed coupled with misconduct of some counsel handling IAP claims,[166] led the Chief Adjudicator to require a written fee review decision in virtually every IAP claim, including Short Form Decisions and NSP claims.

250. The effect of the requirement for fee reviews in every case arguably intruded into the solicitor - client relationship. Moreover, in some instances it did not respect the right of IAP claimants to refuse a fee review. The fee review was conducted at the conclusion of the hearing when the IAP claimant had disclosed highly personal and sensitive details about their abuse at residential schools and its impact on their lives. The adjudicator might excuse legal counsel from the hearing room and question the claimant alone about the legal representation they received.

251. This process appeared at odds with the non-adversarial nature of IAP hearings. Some adjudicators interpreted their instructions from the Chief Adjudicator in such a manner that they would openly challenge the claimant's counsel on legal fees. The claimant's

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[164] See Appendix L Chief Adjudicator's Fee Review Guidelines; See http://www.iap-pei.ca/media/information/publication/pdf/pub/pub-lfr-guide-20101004-eng.pdf
[165] Ibid., page 2.
[166] See section VIII A. *Counsel Conduct.*

counsel would have to counter with extensive submissions on the fee review including providing extensive details about their history as counsel as well as their work with IAP claimants.

252. What was intended as a means to provide IAP Claimants with an efficient and simplified fee review process, was, in some cases, carried out in a manner that created its own challenges. Some counsel reported that they felt the process damaged their integrity in the eyes of their own clients.

F. Finalization of the IAP

253. One of the unexpected benefits of the enormous uptake of the IAP in earlier years was that the Oversight Committee and the IAP Secretariat quickly recognized and addressed the scope and the possible challenges.

254. This enabled the Chief Adjudicator to prepare in 2013 the IAP Completion Strategy entitled *Bringing Closure, enabling reconciliation: plan for resolving the remaining IAP caseload.*[167] The Chief Adjudicator shared the report with the Oversight Committee and the NAC and then submitted it to the Supervising Courts in January of 2014.

255. The Adjudication Secretariat in its document entitled *Independent Assessment process (IAP) 2018 Update to the IAP Completion Strategy*[168] provided a comprehensive analysis of the initiatives needed to resolve the remaining caseload. As of June 4, 2018, 99% of the 38,098 claims received had been resolved. This was accomplished through the use of innovative strategies.[169] The 2018 update envisioned closure of the Adjudication Secretariat on March 21, 2021.

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[167] Available at: http://www.iap-pei.ca/media/information/publication/pdf/pub/com-2013-12-10-eng.pdf.
[168] Available at http://www.iap-pei.ca/media/information/publication/pdf/pub/iapmisc-comp-2018-eng.pdf.
[169] Available at http://www.iap-pei.ca/media/information/publication/pdf/pub/lcp-eng.pdf.

V. SUPPLEMENTARY RESOLUTION INITIATIVES

A. Administrative Split

256. In or about the 1960s, some residential schools underwent a re-organization in which the educational component of the school was administratively separated from the residence, and established as an independent entity operated by Canada typically as a federal day school. To IAP claimants this "administrative split" resulted in no change to where they lived and went to school.

257. Until 2010, this re-organization was not a factor in the implementation of the Settlement Agreement. IAP claims arising from abuse in such schools were handled without distinction from those in the residence. However, in 2010, Canada's representatives began to make the submission that such schools were not covered by the Settlement Agreement. They were separate institutions not named in the Settlement Agreement and claims arising from them were outside the jurisdiction of the IAP unless the claim could be connected back to the residence. Adjudicators generally agreed that the terms of the Settlement Agreement supported this argument, leading to such claims not receiving IAP compensation.

258. This resulted in anomalous situations. Otherwise identical claims could be decided differently - some compensated and others not - depending on whether their case was decided before or after 2010. Some of the parties were concerned that this approach was not in keeping with the spirit of the Settlement Agreement.[170]

259. The administrative split issue received public attention and was raised in Parliament. The Minister of Indigenous Affairs committed to addressing the issue. The AFN raised this issue with Canada and also brought it before the NAC, which made a formal

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[170] The Chief Adjudicator reported to the courts and the NAC that there were 53 schools subject to challenges on the grounds that they were not, or had ceased to be, "residential schools" recognized by the Settlement Agreement. These challenges were based on the administrative split as well as other grounds. The Chief Adjudicator estimated they could result in between 500 and 1000 claims being dismissed, the majority of which fell within the administrative split category. The Chief Adjudicator placed these claims on hold until a decision of the Court (see section VIII. *NAC Involvement in Requests for Directions*).

request to the Minister of Indigenous Affairs that Canada address the issue. The NAC wrote to the Minister offering assistance to the Department in ensuring that these claims were resolved on their individual merits.

260. Consistent with the Minister's commitment, Canada ceased challenging IAP claims arising in such schools and pursued settlements with individuals whose IAP claims had been impacted by the administrative split argument. Survivors whose claims had been dismissed on a preliminary basis were granted settlement interviews and, where their claim otherwise met the requirements of the IAP, awarded compensation consistent with the IAP. Claims that had been dismissed after hearing were settled on the basis of the evidence at the hearing.

261. This approach subsequently provided the model for addressing a second category of dismissed claims.

B. Student-on-Student Claims

262. The IAP allowed compensation for student-on-student abuse subject to a test that considered such factors as the severity of the abuse, the location of the abuse, the relative characteristics of the alleged student perpetrator, staff knowledge and supervision, and the presence or absence of reasonable steps to prevent the abuse.[171] IAP claimants could have been relieved of the burden to establish certain circumstances where Canada made an admission that applies to the facts of their claim.

263. Specifically, the IAP provided compensation for claims of sexual or physical assault committed by one student against another (SOS claims) at an IRS where it was proven that those responsible for the operation of the school (1) had or should reasonably have had knowledge that the abuse of the kind alleged was occurring at the school during

[171] Schedule "D" of the Settlement Agreement, at Appendix IV, para B, at pages 32-33.

the time in question; and (2) did not take reasonable steps to prevent it; or (3) failed to provide reasonable supervision to prevent the abuse.[172]

264. One way of proving these requirements was an admission by Canada. The Settlement Agreement provided that Canada would work with the other parties to develop such admissions from a variety of sources including previously decided IAP cases. Where these elements were established, at a given school at a given time, they could provide the basis of an admission on which subsequent claimants could rely.

265. Canada's admissions list grew throughout the life of the IAP. As of March, 2013, there were 1,103 total admissions. By April, 2017, there were 4,482 SOS admissions. This arose as a logical consequence of the fact that Canada actively looked to IAP decisions to generate its admissions. As a result, IAP claims determined at an earlier date were less likely to benefit from Canada's admissions, resulting in some claims being dismissed which would benefit from a subsequent, dispositive admission. Essentially, the order in which claims were determined affected the compensability of some student-on-student claims.

266. In 2013, the Adjudication Secretariat and INAC, with consent of all parties, sought to address this situation by implementing a process which identified pending claims likely to require an admission in order to receive compensation, and placed those files on hold. The Supervising Court subsequently determined that adjudicators could not 're-open' affected claims.[173] Separately, members of the NAC applied to the Court, seeking guidance on whether Canada had complied with its obligation to work with the parties respecting admissions and whether SOS claimants were entitled to have their claims determined on the complete record of SOS admissions by Canada.[174] This application was rejected on the basis that that the NAC lacked standing.[175]

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[172] Ibid., at page 32.
[173] The NAC appealed this decision and the appeal is pending.
[174] The NAC pursued its application on basis of 5-1-1 vote with Canada opposed and the churches abstaining.
[175] The NAC appealed this decision and the appeal is pending.

267. On March 13, 2018, following this judicial guidance and consistent with overtures by the AFN to the Minister of Crown-Indigenous Relations and Northern Affairs, Canada announced it would negotiate settlements with IAP claimants whose student-on-student abuse claims were dismissed but who would now benefit from a subsequent, dispositive admission.[176] Canada continues to negotiate settlements with affected individuals.

VI. TRUTH AND RECONCILIATION COMMISSION

A. History of the TRC

268. The AFN, with the support of the other parties on the claimants' side and the Church Organizations, took the lead in negotiating the terms of a Truth and Reconciliation Commission (TRC) with Canada. Respecting the wishes of survivors and in keeping with the overall goal of the Settlement Agreement, the AFN advocated that the TRC be a non-adversarial, co-operative, transformative process led and informed by Indigenous legal traditions. The introductory mandate statement for the TRC reads as follows:

> *There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic response to the Indian Residential school legacy is a sincere indication and acknowledgment of the injustices and harms experienced by the Aboriginal people and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.*[177]

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[176] Indigenous and Northern Affairs Canada, "Statement regarding Canada's pursuance of negotiated settlements with former Indian Residential School students who suffered student-on-student abuse" (13 March 2018), online at: https://www.canada.ca/en/indigenous-northern-affairs/news/2018/03/statement-regarding-canadas-pursuance-of-negotiated-settlements-with-former-indian-residential-school-students-who-suffered-student-on-student.html.

[177] Settlement Agreement, Schedule N http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf

269. The TRC had a six-year mandate and was comprised of three commissioners and a secretariat. Two of the commissioners including the Chair were Indigenous with one being a residential school survivor. The third commissioner was the spouse of a survivor.

270. In June 2008, The Honourable Harry Laforme was appointed as Chair of the TRC. Jane Brewin and Claudette Dumont-Smith were appointed as commissioners to the TRC. In October 2008, Justice Laforme resigned from the commission, followed in January 2009 by Brewin and Dumont-Smith. In June 2009, the Honourable Murray Sinclair was appointed as Chair together with commissioners Wilton Littlechild Q.C. and Marie Wilson.

271. The TRC received a fund of $60 million to hold seven major national events as well as smaller events in First Nations, Métis and Inuit communities where survivors and other stakeholders were heard, their stories witnessed and recorded. The TRC was also required to recommend commemoration activities for funding from the federal government. Another part of their mandate was to set up a research center to permanently house the TRC's records and documents.

272. More than 155,000 people attended the national events,[178] both Indigenous and non-Indigenous. The TRC heard testimony or received statements from over 6,750 survivors, members of their families and other individuals.[179]

273. The TRC issued an interim and a final report which was received by the Prime Minister of Canada in October, 2015. The Final Report detailed findings gathered over six years of hearings, and included 94 Calls to Action.

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[178] Summary of the *Final Report of the Truth and Reconciliation Commission of Canada*, page 25, online at: http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf

[179] Ibid. at p. 25.

274. The Calls to Action were designed to address systemic discrimination by reforming policies and programs at all levels of government – federal, provincial, municipal and Aboriginal – to work together to change policies and programs in a concerted effort to repair the harm caused by residential schools. Forty-two calls to action addressed institutions of child welfare, education, language and culture, health, and justice for systemic change recognizing that reconciliation required structural change in Canadian society, including specific recommendations for law societies and law schools to incorporate cultural knowledge, Indigenous law and skills based training into their educational programs.[180]

275. The AFN, the Inuit Representatives and claimants' counsel felt that, notwithstanding the large amounts of financial compensation available under the Settlement Agreement, the lasting transformative legacy of the Settlement Agreement would be the TRC. Canada has committed to passing Indigenous language legislation,[181] incorporating the United Nations Declaration on the Rights of Indigenous Peoples into domestic law[182] and provincial governments are making significant strides in changing the curricula of educational institutions across Canada.[183] The Canadian Bar Association has made commitments to fulfill the Calls to Action relevant to the bar[184]

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[180] The Calls to Action state: "We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

[181] Betty Harnum, CBC News, found at: http://www.cbc.ca/news/canada/north/betty-harnum-Indigenous-languages-act-1.3897121

[182] John Paul Tasker, CBC Liberal Government backs bill that demands full implementation of UN Indigenous Rights Declaration, found at: http://www.cbc.ca/news/politics/wilson-raybould-backs-undrip-bill-1.4412037

[183] See Kairos Canada, *Winds of Change: Read the Report Card: Provincial and Territorial Curriculum on Indigenous Peoples*, found at: https://www.kairoscanada.org/what-we-do/Indigenous-rights/windsofchange-report-cards See also, Saskatchewan School Board Association for their cross Canada survey on *Compliance with the 94 TRC Calls to Action*, found at: https://saskschoolboards.ca/wp-content/uploads/SSBA-Position-Paper-Mandatory-Curriculum-FNM.pdf

[184] Canadian Bar Association, *Responding to the Truth and Reconciliation Commission's Calls to Action*, found at: https://www.cba.org/CMSPages/GetFile.aspx?guid=73c612c4-41d6-4a39-b2a6-db9e72b7100d

and many universities are changing their admission and hiring practices as well as curriculum changes to adhere to the Calls to Action.[185]

B. Research Center

276. The Settlement Agreement required the TRC to establish a National Research Centre that will ensure the preservation of the TRC's archives. The Centre is required to "be accessible to former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula."[186] Anyone affected by the IRS legacy may file a personal statement in the research center with no time limitation.[187]

277. The objective in negotiating the Research Center was to ensure that it would carry on the work and spirit of the TRC long after the TRC closed its doors in 2014. The National Research Centre now houses the thousands of video and audio-recorded statements that the TRC gathered from survivors and others affected by the schools and their legacy; millions of digitized archival documents and photographs from the Government of Canada and Canadian church entities; works of art, artifacts and "expressions of reconciliation" presented at TRC events; all of the research and records collected and prepared by the TRC over the life of its mandate; and any additional material that the Centre will collect in future years.[188]

C. Apologies and Statements of Regret

278. As criticisms of the residential school system mounted and public awareness of the residential school legacy grew, several organizations issued apologies or statements

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[185] Sheila Cote-Meek, University Affairs, *Supporting the TRC's calls to action*, found at: https://www.universityaffairs.ca/opinion/from-the-admin-chair/supporting-trcs-calls-action/, Federation for the Humanities and Social Sciences, *Building Reconciliation: Universities Answering the TRC's Calls to Action*, found at: http://www.ideas-idees.ca/media/events/building-reconciliation-universities-answering-trcs-calls-action

[186] Schedule "N", section 12.

[187] Ibid., section 10(C), p. 10.

[188] National Centre for Truth and Reconciliation at: http://nctr.ca/about.php

of regret for their involvement.[189] The Settlement Agreement, which then AFN National Chief, Phil Fontaine, described as "an agreement for the ages" sought to make amends for the residential school experience and reflected the desire of all parties for a fair, comprehensive, and lasting resolution of the legacy of Indian residential schools.

279. On June 11, 2008, the Prime Minister of Canada, Stephen Harper, made a statement of apology in the House of Commons on behalf of the Government of Canada,[190] followed by apologies by all of the opposition parties in Parliament. On April 29, 2009, Pope Benedict XVI issued an expression of sorrow for the Catholic Church's role in abuse at residential schools.[191]

D. Chief Commissioner and the NAC

280. The Settlement Agreement established the unique relationship between the NAC and the TRC in section 4.11(12)(j) which states:

> (12) The mandate of the NAC is to:
> ...
> (j) review and determine references from the Truth and Reconciliation Commission made pursuant to Section 7.01(2) of this Agreement or may, without deciding the reference, refer it to any one of the Courts for a determination of the matter;

281. Section 7.01 (2) and (3) of the Settlement Agreement state:

> (2) The Truth and Reconciliation Commission may refer to the NAC for determination of disputes involving document production, document disposal and archiving, contents of the Commission's Report and Recommendations and Commission decisions regarding the scope of its research and issues to be examined. The Commission shall make best efforts to resolve the matter itself before referring it to the NAC.
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> (3) Where the NAC makes a decision in respect of a dispute or disagreement that arises in respect of the Truth and Reconciliation Commission as contemplated in Section 7.01(2), either or both the

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[189] The apologies are available at https://guides.library.utoronto.ca/c.php?g=527189&p=3698521
[190] The statement is available at: https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649
[191] The Pope's expression of sorrow is available at: https://www.cbc.ca/news/world/pope-expresses-sorrow-for-abuse-at-residential-schools-1.778019

> Church Organization and Canada may apply to any one of the Courts for a *hearing de novo*.

282. On June 22, 2010, the NAC held a teleconference with the Chief Commissioner of the TRC, Justice Murray Sinclair, and Commissioner Marie Wilson and the Executive Director of the TRC, Tom McMahon.[192] Following this meeting, and consistent with the views of the TRC, the NAC determined that it would continue to respect the Commission's important role and had no further substantive engagement with the Commission or its Commissioners. This remained the arrangement for the entirety of the term of the TRC's mandate.

283. The one notable exception was the critical role played by the NAC in extending the term of the TRC's mandate referred to below.

E. Extensions of the TRC Mandate

284. Although Schedule "N" of the Settlement Agreement[193] required the TRC to complete its work within five years of its creation, in January 2014, the TRC acknowledged that it would be unable to meet the deadline and sought a one-year extension to its mandate.

285. On Application to the British Columbia Supreme Court by the Attorney General of Canada and with the consent of the NAC, Brown J. granted the TRC a one-year extension to its mandate.[194]

286. Although the January 2014 Order contemplated no further extensions to the TRC's mandate, in June 2015, on the request of the Chair of the TRC, a further extension was sought and consented to by the NAC. Once again, the Court granted a further 6-month extension to the operating period of the TRC.

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[192] June 20, 2008 Meeting Minutes, see Appendix O.
[193] Schedule "N".
[194] *Fontaine v Canada (AG)*, 2014 (BCSC) L051875.

287. The June 2015 Order explicitly provided that no further extensions would occur, nor could the TRC move before the court to seek additional funding. The Order restricted the activities of the TRC during the period of extension including a prohibition on the commencement of any new litigation.[195] The Order permitted the TRC to continue its participation in any outstanding litigation until the expiration of its mandate on December 31, 2015. The TRC completed its mandate on December 15, 2015 in compliance with the Order.

VII. ARTICLE 12 AND OTHER APPLICATIONS REGARDING ELIGIBLE INSTITUTIONS

A. The Meaning of "Institution"

288. While the NAC did not bring forward any Article 12 applications, in 2008, prior to the first Article 12 application, the NAC sought administrative guidance from the then administrative judges, Chief Justice Winkler (ONCA) and Chief Justice Brenner (BCSC) on the discrete question of whether the class definition included persons who had attended institutions listed on Schedules "E" and "F" but resided elsewhere.

289. Specifically, the NAC sought guidance as to whether billeted students were included in the class definition. The ensuing *Administrative Judges Response to Request for Guidance by the National Administration Committee* concluded that because of implications to the class size, a formal process would have to be undertaken in order to determine the issue.[196] Given the rights of residual beneficiaries under the DAF, the judges directed that any formal process must be on notice to those residual beneficiaries. The administrative judges also directed the process and manner in which the matter could be heard.

290. Following the issuance of that guidance, the National Consortium's representative on the NAC volunteered to take the matter forward on a formal record as specified in the

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[195] *Fontaine v Canada (AG)*, 2015 (BCSC) L051875.
[196] The *Administrative Judges Response to Request for Guidance by the National Administration Committee* dated December 1, 2008 is appended as Appendix P.

guidance direction. In the ensuing years before the matter was ultimately heard and determined by Brown J., the NAC established a file for all billeted student CEP claims which might be implicated by a later decision.

291. In 2014 the "Beardy" matter came on for hearing before Brown J. who was called upon to determine whether eligible institutions could include ancillary facilities, like boarding and group homes affiliated with an Indian residential school.[197] Brown J. determined that residence at an actual Indian residential school was the *sine qua non* of CEP eligibility and, therefore, class membership. She rejected the notion that the word "institution" as used in the Settlement Agreement included boarding homes and other residences associated with an educational endeavor.

292. In the course of the Settlement Agreement's administration, hundreds of requests were brought to recognize new institutions as eligible Indian residential schools. Those requests proceeded under Article 12, resulting in nine discrete requests for direction before the courts. Article 12 proceedings were brought by individual requestors (including at least one NAC member).

B. Background

293. The Settlement Agreement specified the institutions recognized by the parties at the time of settlement as Indian residential schools. This was essential for the proper definition of the class. The recognized institutions were listed at Schedules "E" and "F" to the Settlement Agreement.[198]

294. The settling parties recognized that they had incomplete knowledge about eligible institutions and included Article 12 to permit individual requestors to seek the recognition of new institutions. The test under Article 12 required proof that Canada

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[197] *Fontaine v Canada (Attorney General)*, 2014 BCSC 941.

[198] Settlement Agreement, Schedules "E" and "F" http://www.residentialschoolsettlement.ca/Schedule_E-ResidentialSchools.PDF and http://www.residentialschoolsettlement.ca/Schedule_F-AdditionalResidentialSchools.PDF

placed students in the institution, exercised operational responsibility, and cared for children resident there.[199] In effect, Article 12 permitted the expansion of class membership.

295. Any individual or entity could serve as a requestor for the purposes of Article 12, and during the eligible timeframe, a total of 9,469 requestors sought the addition of 1,530 distinct institutions under the Settlement Agreement.[200] Ten of those requests proceeded before the courts.

296. The Settlement Agreement did not specify a deadline by which to bring or conclude an Article 12 application. However, the Settlement Agreement did contain timelines for CEP and IAP applications, as well as for the transfer of the DAF to the designated beneficiaries. As a result, upon an application by Canada in July 2015, Brown J. imposed a deadline for new Article 12 applications.

C. Institutions Added by Canada

297. By agreement, Canada added seven institutions under Article 12. Each institution was added with a specific period of operations. [201]

D. Institutions Added by the Courts

298. A total of four institutions were added by the courts under Article 12 bringing the total number of recognized institutions to 142.

i. Cristal Lake and Stirland Lake

299. In August 2011, the Eastern Administrative Judge, the Honourable Chief Justice of Ontario, W. Winkler, as he then was, issued a decision adding two institutions under

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[199] Settlement Agreement at Article 12.
[200] Indigenous and Northern Affairs Canada, Title "Eligible Indian Residential Schools" (22 April 2013), online: <https://www.aadnc-aandc.gc.ca/eng/1100100015594/1100100015595#sct1_4>.
[201] Ibid.

Schedule "F" of the Settlement Agreement.[202] Chief Justice Winkler accepted that all the Article 12 factors were met in the cases of Stirland Lake High School (or Wahbon Bay Academy) and Cristal Lake High School, both in northwestern Ontario. A public notice was circulated under court direction, informing eligible CEP and IAP recipients of their rights to apply before September 19, 2012.[203] Canada did not pursue an appeal.

ii. Kivalliq Hall

300. In December 2016, the Nunavut Supervisory Judge, the Honourable Madam Justice B. Tulloch, issued a decision adding Kivalliq Hall under Schedule "F". Tulloch J accepted that the Article 12 factors were sufficiently established in relation to the institution, located in Rankin Inlet, Nunavut.[204] Canada brought an unsuccessful appeal, which was dismissed in July 2018.[205] Canada did not seek leave to appeal this decision. On April 25, 2019, Brown, J. issued an order[206] specifying the terms for former Kivalliq Hall residents making CEP and IAP claims.

iii. Mistassini

301. In 2012, the Québec Supervisory Judge, the Honourable Chief Justice Rolland of the Québec Superior Court of Justice, issued an order adding the Mistassini Hostels under Schedule "F". Rolland CJ limited the eligible timeframe for residence at the Québec institution as falling between September 1, 1971 and June 30, 1978. A public notice was circulated under court direction, informing eligible CEP and IAP recipients of their rights to apply before September 2, 2013.[207] It further clarifies its scope as: "extend[ing] only to applications relating to residence at the Mistassini Hostels."

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[202] *Fontaine v Canada*, 2011 ONSC 4938.
[203] Ontario Superior Court of Justice, Schedule "A" Notice - Stirland Lake High School and Cristal Lake High School have been added to Schedule F of the IRSSA", online at: http://residentialschoolsettlement.ca/English_Main%20Page.pdf.
[204] *Fontaine v Canada (Attorney General)*, 2016 NUCJ 31.
[205] *Fontaine v Canada (Attorney General)*, 2018 NUCA 4.
[206] Order of Brown, J. dated April 25, 2019 re: Kivalliq CEP and IAP claims.
[207] Québec Superior Court of Justice, "Notice – The Mistassini Hostels have been added to Schedule F of the IRSSA" online: <http://residentialschoolsettlement.ca/Mistassini%20Poster%20-%20English.pdf >.

E. Institutions Not Added by the Courts

302. In September 2013, the Saskatchewan Supervisory Judge, the Honourable Mr. Justice Gabrielson, determined that the Timber Bay Children's Home did not meet the Article 12 criteria.[208] The decision was upheld by the Saskatchewan Court of Appeal in August 2017,[209] and leave to appeal was denied by the Supreme Court of Canada in August 2018.[210]

303. In January 2014, the Alberta Supervisory Judge, the Honourable Madam Justice R.E. Nation, determined that two institutions did not meet the Article 12 criteria.[211] Justice R.E. Nation concluded that neither the Grouard Vocational School/Moosehorn Lodge nor the Drumheller Vocational High School satisfied the applicable test. The decision was upheld by the Alberta Court of Appeal in April 2015.[212]

304. In October 2014, the Manitoba Supervisory Judge, the Honourable Mr. Justice P. Schulman, determined that the Teulon Residences did not meet the Article 12 criteria.[213] Justice Schulman accepted that Canada was involved in the welfare of students at Teulon, but did not find that that the Article 12 criteria were met. The decision was upheld by the Manitoba Court of Appeal in January 2017,[214] and leave to appeal was denied by the Supreme Court of Canada in August 2017. [215]

305. In 2014, Brown J., considered two applications involving Article 12 requests. The first sought to add approximately two dozen northern small-scale residences to the Settlement Agreement. In light of procedural deficiencies and delay, the request was

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[208] *Fontaine v Canada (AG)*, 2013 SKQB 323.
[209] *Lac La Ronge (Indian Band) v Canada (AG)*, 2017 SKCA 64.
[210] *Lac La Ronge (Indian Band) v Attorney General of Canada*, 2017 SKCA 64, leave to appeal to SCC dismissed, 37815 (09 August 2018).
[211] *Fontaine v Canada (Attorney General)*, 2014 ABQB 7.
[212] *Canada (Attorney General) v Alexis*, 2015 ABCA 132.
[213] *Fontaine v Canada (Attorney General)*, 2014 MBQB 209.
[214] *Assembly of Manitoba Chiefs v Canada (Attorney General) et al*, 2017 MBCA 2.
[215] *Assembly of Manitoba Chiefs v Attorney General of Canada*, 2017 MBCA 2, leave to appeal SCC dismissed, 37466 (17 August 2017).

dismissed.[216] The second sought to add a Belcher Islands tent hostel under Article 12. The request failed due to lack of evidence. [217]

306. In January 2018, the Eastern Administrative Judge, Justice P. Perell, determined that the Fort William Sanatorium did not meet the Article 12 criteria.[218] Perell J found that none of the Article 12 factors were met: Canada placed children there primarily for the purpose of medical treatment rather than education, and Canada's involvement in the institution was generally insufficient. No appeal was taken.

i. Coqualeetza, Lac La Biche and St. Augustine

307. One interpretive issue faced on CEP claims involved the dates of operation for institutions listed on Schedules "E" and "F" of the Settlement Agreement. In respect of Coqualeetza IRS, St. Augustine IRS and Lac La Biche IRS, Canada denied CEP claims on the basis that their operations as IRS institutions ceased at a particular time. The matter was judicially considered in 2013.

308. In the case of Coqualeetza IRS, Canada argued that it became an Indian Hospital after 1941. The applicant argued that there was no time limitation prescribed in Schedule "E" and that in any case, Canada remained in control once the institution became an Indian hospital. Brown J.[219] concluded that Coqualeetza was, in fact, two institutions. Prior to 1941, it was an Indian residential school but after that date it was no longer an Indian residential school. This finding confirmed that claimants were ineligible for CEP at Coqualeetza after 1941.

309. For Lac La Biche IRS, Brown J. determined that "Lac La Biche (Notre Dame des Victoires)" as listed on Schedule "E" was an Indian residential school up until 1898. When it re-opened in 1905 it was then a boarding home and not an eligible IRS.

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[216] *Fontaine v Canada (Attorney General)*, 2014 BCSC 1221.
[217] *Fontaine v Canada (Attorney General)*, 2014 BCSC 1939.
[218] *Fontaine v Canada (Attorney General)*, 2018 ONSC 24.
[219] *Fontaine v. The Attorney General of Canada*, 2013 BCSC 356.

310. In the same decision, Brown J. determined that St. Augustine IRS operated between 1900 and 1907 as a residential school and from 1907 until 1951 it was then a "Mission School" and not an eligible Indian residential school.

VIII. NAC INVOLVEMENT IN REQUESTS FOR DIRECTION

A. Counsel Conduct

311. In the course of administering the Settlement Agreement, the courts encountered and addressed various counsel conduct issues. The NAC's mandate did not specify any role *vis-à-vis* counsel conduct issues. However, as some of these issues were raised by the Chief Adjudicator or the AFN representative on the NAC, the NAC discussed and, through its members, participated in these matters. However, the NAC received notice of all related legal proceedings brought under the Settlement Agreement and its individual members have participated in those proceedings.

312. In dealing with counsel conduct issues, the supervising courts relied on their inherent jurisdiction and the following components of the Settlement Agreement:

    a. The rule against assignments at Article 18.01 of the Settlement Agreement; and,

    b. The powers flowing from the appointment of the court monitor, as set out in the Implementation Orders.

313. In addition to the above, in June 2014, Brown J. appointed an Independent Special Advisor to consider complaints about IAP claimants' counsel and, where appropriate, to refer those complaints to the Court Monitor.[220] In November 2014, the two Administrative Judges of the Settlement Agreement jointly endorsed a protocol regarding the processing of complaints about IAP claimants' counsel.[221]

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[220] *Fontaine v Canada (Attorney General)* (23 June 2014), Vancouver L051875 (BCSC) (order).

[221] *Fontaine v Canada* (25 November 2014), BCSC & Ont Sup Ct (joint direction, Brown, J and Perell, J).

B. *Levesque* and the rules against assignments

314. One of the first matters to move forward on a Request for Direction under the Court Administration Protocol resulted in the December 2007 *Levesque* decision of the Supreme Court of British Columbia.[222] The case involved a lawyer who was engaged in securing loans for 45 clients using their anticipated CEP compensation awards as collateral. The lawyer, Ms. Levesque, was a signatory to the IRSSA who prepared a variety of documentation (Directions to Pay, Assignments of Proceeds of Claim, and Irrevocable Assignments of Proceeds) that purported to direct Canada to pay all or part of a CEP award to a third-party lender.

315. In *Levesque*, Chief Justice Brenner declared the lawyer's directions to be null and void, given their contradiction of Article 18.01 of the Settlement Agreement (the rule against assignments). Canada could not pay CEP awards to third parties, nor could CEP claimants assign their interests in such awards to third parties. The rule against assignments was in place to cure the potential mischief of having eligible recipients "fleeced of their funds." Chief Justice Brenner's decision was subsequently upheld on appeal.[223]

316. The *Levesque* decisions were early landmarks in the jurisprudence relating to the Settlement Agreement. The interpretive principles established in *Levesque* were influential in a number of future decisions, including *Daniels* (MBQB)[224] and *MLG/J.W. Fees* (BCSC, BCCA, SCC leave denied).[225]

C. *Blott:* Court protection from "unscrupulous conduct"

317. In 2011, circumstances involving claimant counsel David Blott became a watershed of conduct issues under the Settlement Agreement. Mr. Blott propounded a practice

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[222] *Fontaine v Canada (Attorney General)*, 2007 BCSC 1841.
[223] *Fontaine v Canada (Attorney General)*, 2008 BCCA 329.
[224] *Daniels v Daniels et al.*, 2010 MBQB 46.
[225] *Fontaine v Canada (Attorney General)*, 2016 BCSC 1306; *Canada (Attorney General) v Merchant Law Group LLP*, 2017 BCCA 198.

model where counsel could charge fees without demonstrating any of the hallmarks of a solicitor-client relationship.

318. In the fall of 2011, concerns about Mr. Blott's conduct first emerged as a result of communications between the Blood Band Council and Kathleen Mahoney, the AFN representative on the NAC. Following discussions with NAC, the former Court Counsel, Mr. Randy Bennett and the Court Monitor were apprised of the concerns.

319. In October 2011, the Court Monitor[226] sought court authorization to proceed with an investigation into Mr. Blott.[227] The Court Monitor then delivered the results of the investigation via a Final Report to the court in February 2012, followed by certain recommendations, including that Mr. Blott be barred from further participation in the IAP.

320. Parties to the settlement, including Canada, the AFN, the National Consortium, Merchant Law Group and Independent Counsel participated in the hearing to make submissions on the appropriate disposition of the matter.

321. On June 5, 2012, following six days of hearing, Brown J. released Reasons for Judgment prohibiting Mr. Blott's further involvement in the IAP.[228] Supplemental reasons dealing with costs, liability, and the creation of practice guidelines were issued in November 2012.[229]

322. The Court found that Mr. Blott maintained a close association with the private lender Honour Walk Ltd., on whose behalf he facilitated high interest loans to IAP clients.[230]

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[226] As the delegated authority under the Implementation Orders, the Court Monitor was best placed to make this application and to seek authorization to pursue an investigation. However, it should be noted that the Chief Adjudicator of the IAP had begun an investigation of his own in February 2011, following complaints and observations made by IAP adjudicators. Moreover, the Law Society of Alberta had been engaged since 2009.
[227] *Fontaine v Canada (AG)*, 2012 BCSC 839 ("*Blott #1*") at para 12.
[228] *Ibid* at para 27.
[229] *Fontaine v Canada (Attorney General)*, 2012 BCSC 1671.
[230] *Blott #1*, *supra* note 8.

Upon receipt of IAP compensation awards in trust for his client-borrowers, Mr. Blott would then purport to honour "directions to pay", forwarding portions of the compensation monies to Honour Walk Ltd. for recovery of the principle, fees, and interest on the underlying loans. The court also found that in many instances, legal counsel had not interviewed clients, filed or validated IAP applications, or overseen document collection, and instead relied heavily on form-fillers to fulfill these tasks.[231]

323. Significant remedial steps were adopted by the court, including the appointment of the former Justice Ian Pitfield as Transition Coordinator tasked with transferring over 2500 active IAP files to new counsel. The costs of the investigation of the conduct and the ultimate transition cost over $3 million dollars which was funded by Blott and successor counsel. In the case of successor counsel, the funding derived from a levy on the fees to which they would have been entitled on successful claims in the amount of 1.5% of the 15% guaranteed fee.

324. As the Transition Coordinator was winding up his work, there were about 147 DNQ files that Mr. Blott had characterized as "Do Not Qualify". The NAC, initially before the Court and ultimately by agreement with the Transition Coordinator took steps to ensure that those DNQ files were reviewed by Independent Counsel. As a result, 47 DNQ claimants were entered into the IAP process, some of which have succeeded.

325. In 2014, Mr. Blott was permitted to resign from the Law Society of Alberta in the face of disciplinary charges which might well have resulted in disbarment.[232]

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231 *Ibid* at paras 41-42.

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D. *Bronstein*: Limited Court Intervention

326. Following the Blott experience, the court was asked to consider issues arising from the conduct of claimant counsel Stephen Bronstein. Allegations about Mr. Bronstein's conduct followed in much the same manner as those regarding Mr. Blott: (i) that he relied excessively on form-fillers, (ii) that his practice model was unable to provide clients with adequate service, and (iii) that he was engaged in securing loans for clients in consideration of forthcoming IAP awards.[233] The Bronstein case was also characterized by Mr. Bronstein's reliance on an individual who "had been convicted and incarcerated for murder" as his form filler.[234] The individual, himself a former client of Mr. Bronstein, was alleged to have harassed IAP claimants who lived in the same area as the convicted murderer and to have demanded payment from them.[235]

327. Various court hearings were convened throughout the course of the Bronstein matter. A hearing on the merits was convened in March 2015 before the Brown J. who issued Reasons in May 2015, in which she declined to remove Mr. Bronstein from practicing in the IAP. She noted the deficiencies of his conduct, and required him to continue to submit to the supervision of a Practice Advisor.[236] Noting that her judgment should be "no exoneration" of Mr. Bronstein or his conduct, the court went on to require Mr. Bronstein to pay the reasonable costs of investigation.[237]

328. In June 2017, Mr. Bronstein was the subject of citation by the Law Society of British Columbia relating to his representation of his IAP clients. As of this date the Law Society of British Columbia indicates that a discipline hearing has not been concluded on the citation.

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[233] *Fontaine v Canada (Attorney General of Canada)*, 2015 BCSC 717 at para 90.
[234] *Ibid* at para 21.
[235] *Ibid* at paras 21-22.
[236] *Ibid* at para 4.
[237] *Ibid* at para 5.

E. Manitoba Form-Fillers

329. The Manitoba Court of Queen's Bench dealt with a separate issue of form-fillers in 2014, on request of the Chief Adjudicator of the IAP. That matter involved a wide scale practice throughout Manitoba where non-lawyers would provide IAP form-filling services for eligible claimants. The services were rendered in consideration of a contingency of the claimant's eventual IAP award, occasionally by way of a Direction to Pay the proceeds to the form-filler.

330. The Honourable Mr. Justice Schulman ruled that the various arrangements between IAP claimants and form-fillers *void ab initio* for public policy reasons. In particular, the form-fillers had stepped into a role properly held by legal counsel without a professional license to do so:

> [71] Prohibitions against the unauthorized practice of law are for the protection of the public, and are even more important in the context of the Settlement Agreement, where claimants are recovering from traumatic experiences and are more likely to be in a vulnerable position as a result.[238]

331. The Court also relied upon the rule against assignments, as expounded in *Levesque*, as reason to invalidate the underlying transaction.

F. Other matters

332. The Court Monitor and the Independent Special Advisor also considered and investigated other complaints arising from the administration of the Settlement Agreement. Some complaints led to disbarments or other sanctions imposed by law societies.[239]

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[238] *Fontaine v. Canada (Attorney General)*, 2014 MBQB 113 at para 71.
[239] For example, http://www.lawsociety.mb.ca/lawyer-regulation/discipline-case-digests/documents/2011/case_digest_11_09.pdf

G. Production of IRS Documents at Library and Archives Canada (LAC)

333. In the later years of the TRC, disputes arose regarding Canada's document disclosure obligations. In the LAC document dispute, Justice Goudge[240] interpreted Schedule "N" of the Settlement Agreement to determine the extent of Canada's documentary obligations to the TRC. Goudge, JA. concluded that Canada was obliged to search and produce documents housed at LAC to the TRC. He concluded that Canada was not required to produce documents which spoke to Canada's response to the legacy of Indian residential schools.[241]

334. Gouge JA. was asked to deny the TRC standing in the litigation on the basis that the TRC was not a party to the Agreement and should have brought the dispute relating to documents to the NAC pursuant to Section 7.01(2) of the Settlement Agreement. The Court held that the preliminary objection was moot as both the AFN and the Inuit Representatives were also demanding production of the documents and, as parties to the Settlement Agreement, had the right to do so.[242]

H. TRC Access to IAP Records and IAP Records Disposition

335. The TRC sought access to records generated in the IAP, including IAP applications, transcripts of testimony at IAP hearings and IAP decisions (IAP Documents). This raised the issue of the confidentiality attaching to IAP Documents and the ultimate disposition of such documents.

336. All parties to the Settlement Agreement and the Chief Adjudicator recognized the necessity for confidentiality in the IAP given the sensitive and personal nature of the information provided by participants in that process. The Chief Adjudicator unsuccessfully attempted to negotiate a plan with the Chief Commissioner of the TRC

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[240] While a Justice of the Ontario Court of Appeal, Justice Goudge sat *ad hoc* as a Justice of the Ontario Superior Court.
[241] *Fontaine v. Canada* 2013 ONSC 684, paras. 84-100. Justice Goudge said: "...Canada says that the TRC's mandate does not include examinations of responses Canada has made to address the IRS experience. In my view, Canada's position is correct."(paras.93-94)
[242] *Fontaine v. Canada,* 2013 ONSC 684 at paras. 50-52.

whereby the claimant would be asked if they consented to release IAP Documents to the TRC. The Chief Adjudicator, the TRC and Canada then sought court direction as to what was to be done with respect to the IAP Documents.

337. The only provision regarding the transfer of IAP Documents to the TRC was in s. 11 of Schedule "N" (the TRC Schedule) which stated:

> Insofar as agreed to by the individuals affected and as permitted by process requirements, information from the Independent Assessment Process (IAP), existing litigation and Dispute Resolution processes may be transferred to the Commission for research and archiving purposes.

338. In its Request for Directions, the TRC claimed entitlement to all IAP Documents. Five Parties to the Settlement Agreement; the AFN, the Inuit Representatives, Independent Counsel, the Catholic Church Entities and the Merchant Law Group responded to support non-disclosure of the documents, and their ultimate destruction, based on the promise of confidentiality set out in the Settlement Agreement.[243] Canada took the position that those records were Canada's documents and their disposition would be governed by Federal legislation, and Canada supported non-disclosure based on that legislation. The Chief Adjudicator advocated for the protection of the IAP Documents and their non-disclosure unless the individual claimant consented to their release to the TRC and, later, to the NCTR.

339. The matter proceeded before Perell J. who held that the documents could only be released to the TRC with the consent of the claimants and that it was necessary to establish a Notice Plan, to be implemented by the TRC, to determine whether claimants wished to give such consent. After a 15-year retention period, the IAP Documents to which no consent was given were to be destroyed.

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[243] The National Consortium and the Protestant Churches supported this position but did not appear in Court proceedings.

340. The Ontario Court of Appeal upheld Perell J.'s decision but amended his Order to include ADR records from the predecessor ADR process and to have the notice program conducted by the Chief Adjudicator rather than by the TRC.

341. The decision was then appealed to the Supreme Court of Canada. Five of seven NAC parties fully participated in the appeals, Canada on the one side and the AFN, Inuit Representatives, Independent Counsel and the Catholic Church Entities on the other side.

342. The Supreme Court of Canada[244] unanimously upheld the Perell J. Order, as modified by the Court of Appeal. It also held that the records of claimants who had died would be destroyed consistent with the promises of confidentiality made to them at the time of their IAP hearing.

I. Enhanced Notice Program Regarding IAP Records

343. The Supreme Court of Canada[245] accepted that a notice plan would be an appropriate process by which to determine the wishes of IAP claimants vis-à-vis the disposition of their IAP records. The SCC directed the Chief Adjudicator to "conduct the notice program without delay and with full cooperation from the parties, in order to give effect to the express wishes of the greatest number of IAP claimants possible".

344. Even before the SCC decision, the Chief Adjudicator held preliminary meetings with stakeholders to establish the framework for the notice plan. The NAC did not formally participate in the notice plan meetings, although some of its members did.[246]

345. In January 2018, the Chief Adjudicator brought Requests for Direction to seek court approval for his proposed notice plan. Participants in the ensuing litigation included Canada, the AFN, the Inuit Representatives, Independent Counsel, and the NCTR.

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[244] *Fontaine v Canada (Attorney General)*, 2017 SCC 47.
[245] Ibid. at paras 62-63.
[246] AFN, the Inuit Representatives, Independent Counsel and Canada.

The structure of the notice plan was largely settled during two counsel meetings and two court hearings, including:

- The content of the Records Disposition Notice Program (including notice products, the distribution phases, the integration of the Resolution Health Support Program, and Resource Line Liaisons for the AFN and Inuit Representatives);
- The Notice Program's cost estimate;
- The consent form to be sent to IAP and ADR claimants;
- Canada's responsibility to fund the Program;
- The disposition process for IAP Documents;
- The appointment of a records agent; and,
- The reporting and accounting requirements incumbent on the Indian Residential Schools Adjudication Secretariat vis-à-vis the Notice Program.[247]

346. On July 4, 2018, Perell J. released a decision approving the Notice Program consistent with counsels' agreement. Perell J. went on to reserve limited roles in the Notice Program for the AFN, the Inuit Representatives, and the NCTR, each of whom would participate in training sessions and staff information lines.[248] He reserved the rights of the AFN and the Inuit Representatives to return to seek more funding at the conclusion of the first year of the Notice Program.[249]Subsequent to his decision, one of the three Inuit Representatives withdrew from their reserved role in the Notice Program because the funding authorized by the Court was insufficient.

J. Procedural Fairness

347. Commencing in 2010 and continuing until 2017, the Chief Adjudicator and some of his designates began relying upon a construction of the legal concept of "procedural fairness" to re-open or reconsider decided IAP claims or to grant remedies which Canada considered were not provided for under the IAP model. On September 8, 2017, Canada brought an RFD challenging that pattern of decision-making as a misapplication of the IAP's terms. Several parties represented on the NAC, including Independent Counsel and the AFN participated in that proceeding opposing the relief sought by Canada.

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[247] *Fontaine v. Canada*, 2018 ONSC 4179 at paras 19 and 20.
[248] *Ibid.*, para 39.
[249] *Ibid.*, para 58.

348. On January 17, 2018, Brown J. allowed Canada's RFD and issued a prospective direction to the Chief Adjudicator and his designates, to adhere to the terms of the IAP model. The Court found that the concept of "IAP Model fairness" rather than 'procedural fairness' on which some adjudicators had been relying should inform considerations of fairness in IAP decision-making.

349. The AFN and Independent Counsel each appealed, alleging various errors of fact, law, and mixed fact and law. An appeal hearing proceeded before the British Columbia Court of Appeal in December 2018. A decision has yet to be rendered.

K. NAC Standing

350. The orders approving the IRSSA authorized the NAC, amongst other bodies, to apply to the Courts for directions concerning the implementation, administration and amendment of the Settlement Agreement.

351. An issue concerning limits on this authority arose in early 2018. A five-member majority of the NAC voted to bring forward an RFD seeking an interpretation of a provision in the Settlement Agreement. That provision concerned Canada's obligations to work with the other parties respecting admissions by Canada that might be relied on by persons advancing student-on-student abuse claims.[250] The RFD also sought a determination whether Canada had complied with those obligations, and, if not, a remedy that would allow affected claimants whose claims had been dismissed to have their claim re-opened by the Court.

352. Canada voted against bringing the RFD, and subsequently brought a preliminary motion to have it struck pursuant to s. 4.11(10) of the Settlement Agreement. That section requires that any NAC vote that would increase the costs of the settlement must have Canada's support. Canada's preliminary application alleged that the RFD would increase the costs of the settlement because it sought to re-open claims that had been

[250] See Section V.B – *Student-on-Student Claims*.

dismissed, and that Canada had not supported it. The NAC submitted that the re-opening of claims was sought as a remedy from an alleged breach of Canada's obligations and that s. 4.11(10) did not apply.

353. Brown J. allowed Canada's preliminary objection and declined to hear the RFD. She held that the remedy sought amounted to a change to the Settlement Agreement that would increase its cost and therefore could not be pursued without Canada's support. The NAC[251] appealed this decision to the British Columbia Court of Appeal, which was heard in December 2018. To date no decision has been released.

354. Shortly after this appeal was filed the issue of standing was raised again, this time by the Court itself. The Monitor had applied to have a group of Blott files dismissed without review or hearing.[252] The files were claims that the Blott office had decided did not qualify for the IAP, and for which no IAP application had ever been filed, referred to as the DNQ files. A majority of the NAC, with Canada abstaining, voted to participate in this application to oppose the dismissal of the claims without further action. The majority considered that some of the files likely qualified for the IAP, and should be reviewed by other counsel for that purpose.

355. When the RFD came before the supervising court, Brown J. questioned the NAC's standing to appear given Canada did not vote in favour of its participation. Brown J. ruled against the NAC's participation. She subsequently issued reasons holding that because the NAC's participation in the RFD would involve legal costs for counsel, and had not been supported by Canada, it therefore was barred by 4.11(10).

356. Following this decision, some members of the NAC participated individually in the RFD to advance the position advocated by the majority of the NAC, that the DNQ files in question should be reviewed. Ultimately all parties agreed to this, and a consent order was entered requiring that the DNQ files be reviewed by other counsel to determine

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[251] Based upon the vote of a majority of five members which did not include Canada.
[252] See Section VIII A. *Counsel Conduct.*

whether they qualified for the IAP. Given this outcome, the NAC did not appeal the decision on standing. However, that decision was referred to in written and oral argument on the existing appeal.

L. Judicial Recourse

357. Another litigation issue that has emerged post-settlement is the question of judicial intervention on individual IAP claims. In the later years of the IRSSA's administration, many IAP claimants have brought Requests for Direction seeking judicial intervention of that nature. In light of the resulting jurisprudence, such requests are commonly referred to as "judicial recourse".

358. The threshold for judicial recourse was established in the 2012 *Schachter* decision of the Court of Appeal for Ontario.[253] That decision confirmed that appeals and judicial reviews do not lie from IAP decisions. Instead, the supervising courts would only consider IAP decisions in exceptional circumstances, where there is a failure by the Chief Adjudicator or his designate to comply with the IRSSA.[254] Known as the *Schachter* threshold, this bright line legal test balanced the contractual goals of the IRSSA.[255]

359. Litigation in 2016 represented a watershed in judicial recourse applications. In November 2016, Brown J. jointly heard five Requests for Direction brought by claimants seeking judicial recourse. Many individual NAC members participated in the hearing. Later that month, Brown J. issued her Reasons for Decision dismissing all five Requests for Direction, affirming the *Schachter* threshold in the context of IAP

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[253] *Fontaine v Duboff Edwards Haight & Schachter* 2012 ONCA 471 [*Schachter ONCA*].
[254] *Ibid* at para 53.
[255] Settlement Agreement, at Preamble at para B.

compensation decisions and declining to find exceptional circumstances.[256] Brown J. also implemented timelines for future judicial recourse applications.[257]

360. In January 2017, the Court of Appeal for Ontario issued a decision again affirming the application of the *Schachter* threshold to IAP compensation decisions.[258] The Court accepted that the IAP Model was a "complete code" which envisioned a three-tiered decision-making process for IAP claims to be overseen by independent adjudicators with relative expertise.[259]

361. In October 2018, the SCC heard the *JW and Reo Law* case, which squarely raises the issue of judicial recourse, including the operative *Schachter* threshold.[260]

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[256] **Bundled RFDs #1** in *Fontaine v Canada (Attorney General)*, 2016 BCSC 2218 at paras 184, 230 (per Brown J). See also **N.N. and N.R. Appeal** in *N.N. v Canada (Attorney General)*, 2018 BCCA 105 (allowed in part by Groberman & MacKenzie JJA, with Hunter JA dissenting in part).

[257] **Bundled RFDs #1**, *ibid* at para 231.

[258] **Spanish Appeal** in *Fontaine v Canada (Attorney General)* 2017 ONCA 26 at paras 49-55 (allowed by Sharpe JA, Strathy CJO, and Hoy ACJO). See also **Spanish RFD** in *Fontaine v Canada (Attorney General)*, 2016 ONSC 4326 (per Perell J).

[259] **Spanish Appeal**, *ibid* at para 53.

[260] See, for example:

a) **REO Fees RFD** in *Fontaine v Canada (Attorney General)*, 2015 MBQB 158 at para 23 (per Schulman J).
b) **Bundled RFDs #2** in *Fontaine v Canada (Attorney General)*, 2017 BCSC 946 at paras 65-70 (per Brown J). See also **Tourville Appeal** in 2017 BCCA 325 at para 10 (per Savage JA dismissing a motion to extend time).
c) **REO/JW RFD** in *Fontaine v Canada (Attorney General)*, 2016 MBQB 159 (per Edmond J). See also **REO/JW Appeal** in *The Attorney General of Canada v JW and Reo Law Corporation et al*, 2017 MBCA 54 (per Beard, Monnin, and leMaistre JJA). Leave to appeal to Supreme Court of Canada was granted, and that appeal remains extant before the Supreme Court of Canada and is discussed below.
d) **H/M/K RFD** in *Fontaine v Canada (Attorney General)*, 2017 ONSC 2487 (per Perell J). See also **H/M/K Appeal** in *Fontaine v Canada (Attorney General)*, 2018 ONCA 421 (dismissed by Hoy ACJO and Juriansz and Miller JJA).
e) **Fairness RFD** in *Fontaine v. Canada (Attorney General)*, 2018 BCSC 63 at paras 76-77 (per Brown J). Note an appeal has been heard in relation to this matter, but a decision from the British Columbia Court of Appeal has yet to issue.
f) **Shisheesh and C-14114 RFD** in *Fontaine v Canada (Attorney General)*, 2018 ONSC 103 at paras 154, 159-160, 173 (per Perell J).
g) **A-16800 and H-12159 RFDs** in *Fontaine v Canada (Attorney General)*, 2018 BCSC 471 at paras 60-62 (per Brown J).
h) **K-14238 / Hess** in *Fontaine v Canada (Attorney General)*, 2018 BCSC 174 (per Brown J).
i) *Fontaine c Procureur général du Canada*, 2018 QCCS 998 and *Fontaine c Procureur général du Canada*, 2018 QCCS 997 (per Couriveau J).
j) **SSJSSM RFD** in *Fontaine v Canada (AG)* (September 26, 2011) (ONSC) 00-CV-192059CP (Direction per Winkler RSJ).
k) **J.C. RFD** in *Fontaine c Canada (Procureur général)*, 2013 QCCS 553 (per Rolland J).

362. In its decision released April 12, 2019,[261] the SCC by a 5-2 decision, allowed the claim for judicial recourse although the Judges in the majority gave differing rationales for their decision.

363. Three of the majority found that the adjudicators at all levels had imposed an evidentiary burden on the claimant that was not found in the IAP. This amounted to an unauthorized amendment of the Settlement Agreement, warranting judicial intervention under the *Schachter* principle to enforce the implementation of the Settlement Agreement.

364. The other two Justices, concurring in the result, supported intervention on the basis of the Chief Adjudicator's concession that the adjudicators' decisions were wrong but that he had no power to correct the error. The two justices held that this concession exposed a gap in the Settlement Agreement that justified the court stepping in to achieve a result consistent with the Settlement Agreement's objective of "promoting a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools."

365. In contrast, the dissenting Justices were of the view that the Settlement Agreement allowed Adjudicators the final word on the interpretation of the IAP provisions and that there was no "gap" requiring the Court's intervention.

IX. CONCLUSION

366. The foregoing constitutes the report of the NAC to the supervising Courts with respect to the fulfillment of its mandate under the IRSSA. In accordance with the joint directions of the Administrative Judges, the NAC will bring a Request for Directions before them

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l) In October 2018, the SCC heard the *JW and Reo Law* case, which squarely raises the issue of judicial recourse, including the operative *Schachter* threshold.
m) Grouard RFD in *Fontaine v Canada (Attorney General)*, 2015 ABQB 225 (per Nation J).
[261] *J.W. v. Canada (Attorney General)*, 2019 SCC 20, 2019 SCC 20, available at: https://www.canlii.org/en/ca/scc/doc/2019/2019scc20/2019scc20.html

respecting the conclusion of the NAC's duties and its discharge at such time and place as may please the Courts.

All of which is respectfully submitted this 6th day of May, 2019.

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Michel Thibault
Catholic Church Organizations

respecting the conclusion of the NAC's duties and its discharge at such time and place as may please the Courts.

All of which is respectfully submitted this 6th day of May, 2019.

Catherine Coughlan
The Attorney General of Canada

Peter Grant
Independent Counsel

Hugo Prud'homme
Inuit Representatives

Kathleen Mahoney
Assembly of First Nations

Jon Faulds
National Consortium

Alex Pettingill
Protestant Church Organizations

Anthony Merchant
Merchant Law Group

Michel Thibault
Catholic Church Organizations

Appendix A

Political Agreement

Whereas Canada and First Nations are committed to reconciling the residential schools tragedy in a manner that respects the principles of human dignity and promotes transformative change;

Whereas Canada has developed an Alternative Dispute Resolution (ADR) process aimed at achieving that objective;

Whereas the Assembly of First Nations prepared "The Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools" (the AFN Report) identifying the problems with the ADR process and suggesting practical and economical changes that would better achieve reconciliation with former students;

Whereas the Assembly of First Nations participated in several months of discussion with Canada, the churches and the consortium of lawyers with respect to the AFN Report, moving the process towards settlement and providing education and leadership for all the people in the residential schools legacy;

Whereas Canada and the Assembly of First Nations recognize that the current ADR process does not fully achieve reconciliation between Canada and the former students of residential schools;

Whereas Canada and the Assembly of First Nations recognize the need to develop a new approach to achieve reconciliation on the basis of the AFN Report;

Whereas Canada announced today that the first step in implementing this new approach is the appointment of the Honourable Frank Iacobucci as its representative to negotiate with plaintiffs' counsel, and work and consult with the Assembly of First Nations and counsel for the churches, in order to recommend, as soon as feasible, but no later than March 31, 2006, to the Cabinet through the Minister Responsible for Indian Residential Schools Resolution Canada, a settlement package that will address a redress payment for all former students of Indian residential schools, a truth and reconciliation process, community based healing, commemoration, an appropriate ADR process that will address serious abuse, as well as legal fees;

Whereas the Government of Canada is committed to a comprehensive approach that will bring together the interested parties and achieve a fair and just resolution of the Indian Residential Schools legacy, it also recognizes that there is a need for an apology that will provide a broader recognition of the Indian Residential Schools legacy and its effect upon First Nation communities; and

Whereas the Assembly of First Nations wishes to achieve certainty and comfort that the understandings reached in this Accord will be upheld by Canada:

The Parties agree as follows:

1) Canada recognizes the need to continue to involve the Assembly of First Nations in a key and central way for the purpose of achieving a lasting resolution of the IRS legacy, and commits to do so. The Government of Canada and the Assembly of First Nations firmly believe that reconciliation will only be achieved if they continue to work together;

2) That they are committed to achieving a just and fair resolution of the Indian Residential school legacy;

3) That the main element of a broad reconciliation package will be a payment to former students along the lines referred to in the AFN Report;

4) That the proportion of any settlement allocated for legal fees will be restricted;

5) That the Federal Representative will have the flexibility to explore collective and programmatic elements to a broad reconciliation package as recommended by the AFN;

6) That the Federal Representative will ensure that the sick and elderly receive their payment as soon as possible; and

7) That the Federal Representative will work and consult with the AFN to ensure the acceptability of the comprehensive resolution, to develop truth and reconciliation processes, commemoration and healing elements and to look at improvements to the Alternative Dispute Resolution process.

Signed on May 30, 2005 in the City of Ottawa, Ontario,

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Deputy Prime Minister
The Honourable A. Anne McLellan

ON BEHALF OF THE ASSEMBLY OF FIRST NATIONS

National Chief Phil Fontaine
Assembly of First Nations

Appendix B

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[1], the United Church of Canada, the Presbyterian Church in Canada;

"Common Experience Payment" means the lump sum payment described herein ;

"Designated Amount" means $1,900,000,000.00;

"DR Model" means the dispute resolution model offered by Canada since November 2003;

"Eligible CEP Recipient" means all former students who resided at Indian Residential Schools.

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

"Federal Representative" means the Honourable Frank Iacobucci;

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

---

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

"Indian Residential Schools" means the following:

1. Institutions listed on List "A" to IRSRC's Dispute Resolution Process attached as Schedule "C" (Whitehorse Baptist Mission to be re-added);

2. Institutions listed in Schedule "D" ("Additional Residential Schools") which may be amended from time to time; and,

3. any institution which is determined to meet the following criteria:

   (a) The child was placed in a residence away from the family home by or under the authority of the federal government for the purposes of education; and,

   (b) The federal government was jointly or solely responsible for the operation of the residence and care of the children resident there.

   (c) Indicators that the residence was federal in nature include, but are not limited to, whether:

      (i) The institution was federally owned;

      (ii) The federal government stood as the parent to the child;

      (iii) The federal government was at least partially responsible for the administration of the institution;

      (iv) The federal government inspected or had a right to inspect the institution; or,

      (v) The federal government did or did not stipulate that the institution was an IRS.

"NAC" means the national administration committee as described herein.

II. COMPENSATION TO ELIGIBLE CEP RECIPIENTS

1. Canada will make a Common Experience Payment to every Eligible CEP Recipient who was alive on May 30, 2005.

2. The amount of the Common Experience Payment will be:

   (a) $10,000 to every Eligible CEP Recipient who attended an Indian Residential School for one school year or part thereof.

   (b) $3,000 for each school year (or part thereof) thereafter that an Eligible CEP Recipient attended a residential school.

   (c) An Eligible CEP Recipient who accepts the Common Experience Payment will be deemed pursuant to the court orders contemplated by this Agreement in Principle

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

3. To effectuate the distribution of the Common Experience Payments, Canada will transfer the Designated Amount to Service Canada and will develop application procedures for Eligible CEP Recipients that will reflect the need for simplicity of form, expedition of payments, and an appropriate form of audit verification in consultation with all parties.

4. The Federal Representative will recommend to the Deputy Prime Minister that the Minister of Finance designate that the Designated Amount be entitled to earn interest pursuant to Canada's policy applicable thereto; any interest would be added to the Designated Amount.

5. In the event that the Designated Amount is insufficient to pay all Eligible CEP Recipients the Common Experience Payments to which they are entitled, Canada agrees to add a sufficient amount to remedy any deficiency in this respect.

6. In the event the Designated Amount proves to be in excess by more than $40,000,000 of the total amount required to pay all Eligible CEP Recipients their Common Experience Payments, Canada agrees to cause Service Canada to credit each Eligible Recipient with an amount up to $3,000 for each Eligible CEP Recipient for Personal Healing (the "Personalized Healing Amount") services from a list of healing entities or groups jointly approved by Canada and the AFN pursuant to terms and conditions to be developed by Canada and the AFN with input from all the parties that will reflect ease of access to any genuine programmes for healing among other factors. A similar set of terms and conditions will be developed by Canada and Inuit organizations for Eligible CEP Recipients who are Inuit. If the excess after payment of the Common Experience Payments is less than $40,000,000, such lesser amount will be paid to the Aboriginal Healing Foundation.

7. In the further event that the Designated Amount proves to be in excess of the amount required to pay the Personalized Healing Amounts, Canada agrees that Service Canada will transfer any such excess to the Aboriginal Healing Foundation.

8. It is agreed that Canada will assume the costs of verifying claims for the Common Experience Payments and administrative expenses relating to their distribution.

III. SETTLEMENT AGREEMENT PROVISIONS FOR THE INDEPENDENT ASSESSMENT PROCESS

1. The parties agree that the only IRS claims which may be pursued by former students of Indian Residential Schools and the compensation to be paid for such claims when proven, are as set out at pages 2-6 of the IAP attached as Schedule "B".

2. The parties further agree that the Instructions set out at pages 29-35 of the IAP are approved, subject to minor wording changes consistent with the intended meaning.

3. The parties further agree that the remaining standards for the IAP shall be substantially as set out in Schedule "B".

4. No limitations defence will be advanced in any continuing claim diverted by the Chief Adjudicator to the courts. Canada will rely on Crown immunity in such claims where applicable.

5. It is agreed that Canada will provide sufficient resources to permit, after a 6 month lead-in period, the resolution of no fewer than 2500 continuing claims per year, and to maintain the current standard of offering an IAP hearing, or to resolve an IAP claim, within nine months of an application having been screened in, provided the delay is not the responsibility of the claimant. Where these goals are not achieved the NAC may request that the government provide additional resources for claims processing, or may apply to the court for an order making changes to the IAP process sufficient to permit the realization of these goals.

IV. TRUTH AND RECONCILIATION

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

V. COMMEMORATION

1. Canada will provide funding for commemoration initiatives, events, projects and memorials with respect to Indian Residential Schools at both the national and community level.

2. Such funding will be approximately $20 million covering both national commemorative and community-based activities and projects including funding already authorized.

VI. HEALING

1. Canada will provide one hundred and twenty-five million dollars ($125,000,000) as an endowment to the Aboriginal Healing Foundation to fund healing programmes over a five year period to address the legacy of harms including the physical and sexual abuse suffered in Indian Residential Schools.

2. In the fourth year after the court orders approving the settlement package, Canada agrees to have an evaluation of the healing initiatives and programmes undertaken by the Aboriginal Healing Foundation to determine the efficacy of such initiatives and programmes and to recommend whether and to what extent funding should continue.

VII. INUIT AND INUVIALUIT

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

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

VIII. CHURCH PROVISIONS

The churches[2] and church entities agree that, as parties to the Settlement Agreement, they will:

1. Provide, at their own expense, assistance with witnesses and access to documents for the resolution of continuing claims on terms substantially similar to the following:

   -comply with all reasonable requests from Canada for information and assistance during the proceedings;

   -provide counsel for Canada and any researchers or experts retained by it, with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the defence of the continuing claim or claims for which the information was sought unless otherwise agreed in writing; and

   -in litigation, provide disclosure and production of relevant documents in their possession or control, provide witness statements on request, attend as appropriate at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within their employ.

2. Provide along with Canada for the provision of all relevant documents to and for the use of the Truth and Reconciliation Commission, subject only to overriding concerns about the privacy interests of an individual. In such cases, researchers for the Commission shall have access to such documents provided privacy is respected.

3. Refrain from advancing or relying upon any limitations or laches defence in any continuing claim for which the Chief Adjudicator authorizes recourse to the courts, and pay any judgement in such claims to which they are a party and in which the Crown is immune from liability, provided that the Crown has agreed to indemnify the Church.

4. The Crown may settle any continuing claims without a hearing, subject to any rights of consultation set out in an applicable Church/Crown agreement.

5. Binding financial and other commitments will be entered into with the Crown concerning the resolution of the IRS legacy on terms substantially similar to existing letters of understanding with the Crown and certain denominations and the Memorandum of Understanding between the Crown and the Catholic entities.

---

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

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

IX. ADDITIONAL INDIAN RESIDENTIAL SCHOOLS

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

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

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

X. IMPLEMENTATION

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

XI. SOCIAL BENEFITS OR SOCIAL ASSISTANCE BENEFITS

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

XII. LEGAL FEES

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

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

2. Each lawyer, other than lawyers representing the Churches, who attended the settlement negotiations beginning July 2005 leading to the Agreement in Principle shall be compensated for time spent up to the date of the Agreement in Principle in respect of the settlement negotiations at his or her normal hourly rate, plus reasonable disbursements, and GST and PST, if applicable.

3. Each lawyer shall provide to the Federal Representative an affidavit or statutory declaration that attests to the number of Retainer Agreements he or she had with Eligible Recipients as of May 30, 2005 and the amount of outstanding Work-in-Progress in respect of each of those Retainer Agreements as docketed or determined by review. The Federal Representative shall rely on these affidavits to verify the amounts being paid to lawyers and shall engage in such further verification processes with individual lawyers as circumstances require with the consent of the lawyers involved, such consent not to be unreasonably withheld.

4. The National Consortium and the Merchant Law Group shall each be paid $40,000,000 plus reasonable disbursements, and GST and PST, if applicable, in recognition of the substantial number of Eligible CEP Recipients each of them represents and the class action work they have done on behalf of Eligible CEP Recipients. Paragraphs 1, 2 and 3 above shall not apply to any lawyer who is a partner of, employed by or otherwise affiliated with a National Consortium member law firm or the Merchant Law Group.

5. The Federal Representative shall engage in such further verification processes with respect to the amounts payable to the Merchant Law Group and National Consortium as have been agreed to.

6. No lawyer or law firm that has taken part in these settlement negotiations or who accepts a payment for legal fees from the Canada shall charge an Eligible CEP Recipient any fees or disbursements in respect of the Common Experience Payment paid to that Eligible CEP Recipient.

7. Legal fees payable to legal counsel from November 20 forward shall be paid in accordance with the terms set out in Articles 44 and 45 of Schedule "G" to this Agreement in Principle.

8. All legal fees payable under the above provisions shall be paid no later than 60 days after the expiry of the latest applicable opt-out period.

9. The National Consortium member law firms are as follows:

Thomson, Rogers	Troniak Law Office
Richard W. Courtis Law Office	Koskie Minsky
Field LLP	Leslie R. Meiklejohn Law Office

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

XIII. TRANSITION PROVISIONS

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

1. All Eligible CEP Recipients are entitled to receive the CEP regardless of whether a release has been signed or a judgment received for their IRS claim.

2. Where a release of an IRS claim was signed after May 30, 2005 in order to receive the payment of an award under the DR Model:

   (a) the government will recalibrate the award in light of the compensation scale set out at page 6 of Schedule "B";

   (b) the claimant may have their hearing re-opened to reconsider the assignment of points under the Consequential Loss of Opportunity category in Schedule "B", and pursuant to the standards of the IAP, in any case where the adjudicator assessed their claim as falling within the highest level in the Consequential Loss of Opportunity scale in the DR Model;

   (c) a claimant who alleges sexual abuse by another student at the SL4 or SL5 category, where such abuse if proven would be the most serious proven abuse in their case, may have their hearing re-opened to consider such an allegation in accordance with the standards of the IAP.

3. Following the coming into force of a final settlement agreement, Canada will, at the request of a claimant whose IRS abuse claim was settled by Canada without contribution

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

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

XIV. CONFIDENTIALITY

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

XV. COMMUNICATIONS

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

XVI. FINAL SETTLEMENT AGREEMENT

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

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

Signed this 20th day of November, 2005.

THE FEDERAL REPRESENTATIVE

By: _____
The Honourable Frank Iacobucci

ASSEMBLY OF FIRST NATIONS

By: _____
Phil Fontaine, National Chief

By: _____
Kathleen Mahoney

CABOTT & CABOTT

By: _____
for Laura Cabott

COHEN HIGHLY LLP

By: _____
Russell Raikes

HEATHER SADLER JENKINS

By: _____
Sandra Staats

HUTCHINS, GRANT & ASSOCIATES

By: _____
Peter R. Grant

INUVIALUIT CORPORATION

By: _____
Hugo Prud'homme

KESHEN & MAJOR

By: _____
Greg Rickford

MERCHANT LAW GROUP

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

NATIONAL CONSORTIUM

By: _____
Craig Brown

NELLIGAN O'BRIEN PAYNE

By: _____
Lori O'Neill

THE PRESBYTERIAN CHURCH IN CANADA

By: _____
S. John Page

CATHOLIC ENTITIES

By: _____
W. Roderick Donlevy

By: _____
Pierre L. Baribeau

THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

By: _____
S. John Page

THE UNITED CHURCH OF CANADA

By: _____
Alexander D. Pettingill

FULTON & COMPANY

By: _____
Leonard S. Marchand

MARVIR CORPORATION

per: _____
GILLES GAGNÉ

Appendix C

May 8, 2006

CANADA, as represented by the Honourable Frank Iacobucci

-and-

PLAINTIFFS, as represented by the National Consortium
and the Merchant Law Group

-and-

Independent Counsel

-and-

THE ASSEMBLY OF FIRST NATIONS and INUIT REPRESENTATIVES

-and-

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

INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

May 8, 2006

INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

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ARTICLE FOUR
IMPLEMENTATION OF THIS AGREEMENT

4.01 Class Actions

The Parties agree that all existing class action statements of claim and representative actions, except the Cloud Class Action, filed against Canada in relation to Indian Residential Schools in any court in any Canadian jurisdiction except the Federal Court of Canada (the "original claims") will be merged into a uniform omnibus Statement of Claim in each jurisdiction (the "Class Actions"). The omnibus Statement of Claim will name all plaintiffs named in the original claims and will name as Defendants, Canada and the Church Organizations.

4.02 Content of Class Actions

(1) The Class Actions will assert common causes of action encompassing and incorporating all claims and causes of action asserted in the original claims.

(2) Subject to Section 4.04, the Class Actions will subsume all classes contained in the original claims with such modification as is necessary to limit the scope of the classes and subclasses certified by each of the Courts to the provincial or territorial boundaries of that Court save and except the Aboriginal Sub-class as set out and defined in the *Fontaine v. Attorney General*

(4) The composition of the NCC will be one (1) counsel from each of the following groups:

a) Canada;
b) Church Organizations;
c) Assembly of First Nations;
d) The National Consortium;
e) Merchant Law Group;
f) Inuit Representatives; and
g) Independent Counsel

(5) The NCC will be dissolved on the Implementation Date.

(6) Notwithstanding Section 4.09(4) the Church Organizations may designate a second counsel to attend and participate in meetings of the NCC. Designated second counsel will not participate in any vote conducted under Section 4.09(3).

4.10 Administration Committees

(1) In order to implement the Approval Orders the Parties agree to the establishment of administrative committees as follows:

a) one National Administration Committee ("NAC"); and

b) three Regional Administration Committees ("RACs").

(2) Notwithstanding Section 4.10(1) neither the NAC nor the RAC's will meet or conduct any business whatsoever prior to the Implementation Date, unless Canada agrees otherwise.

4.11 National Administration Committee

(1) The composition of the NAC will be one (1) representative counsel from each of the groups set out at section 4.09(4):

(2) The first NAC member from each group will be named by that group on or before the execution of this Agreement.

(3) Each NAC member may name a designate to attend meetings of the NAC and act on their behalf and the designate will have the powers, authorities and responsibilities of the NAC member while in attendance.

(4) Upon the resignation, death or expiration of the term of any NAC member or where the Court otherwise directs in accordance with 4.11(6) of this Agreement, a replacement NAC member will be named by the group represented by that member.

(5) Membership on the NAC will be for a term of two (2) years.

(6) In the event of any dispute related to the appointment or service

of an individual as a member of the NAC, the affected group or individual may apply to the court of the jurisdiction where the affected individual resides for advice and directions.

(7) The Parties agree that Canada will not be liable for any costs associated with an application contemplated in Section 4.11(6) that relates to the appointment of an individual as a member of the NAC.

(8) No NAC member may serve as a member of a RAC or as a member of the Oversight Committee during their term on the NAC.

(9) Decisions of the NAC will be made by consensus and where consensus can not be reached, a majority of five (5) of the seven (7) members is required to make any decision. In the event that a majority of five (5) members can not be reached the dispute may be referred by a simple majority of four (4) NAC members to the Appropriate Court in the jurisdiction where the dispute arose by way of reference styled as *In Re Residential Schools*.

(10) Notwithstanding Section 4.11(9), where a vote would increase the costs of the Approval Orders whether for compensation or procedural matters, the representative for Canada must be one (1) of the five (5) member majority.

(11) There will not be reference to the Courts for any dispute arising under Section 4.11(10**)**.

(12) The mandate of the NAC is to:

(a) interpret the Approval Orders;

(b) consult with and provide input to the Trustee with respect to the Common Experience Payment;

(c) ensure national consistency with respect to implementation of the Approval Orders to the greatest extent possible;

(d) produce and implement a policy protocol document with respect to implementation of the Approval Orders;

(e) produce a standard operating procedures document with respect to implementation of the Approval Orders;

(f) act as the appellate forum from the RACs;

(g) review the continuation of RACs as set out in Section 4.13;

(h) assume the RACs mandate in the event that the RACs cease to operate pursuant to Section 4.13;

(i) hear applications from the RACs arising from a dispute

related to the appointment or service of an individual as a member of the RACs;

(j) review and determine references from the Truth and Reconciliation Commission made pursuant to Section 7.01(2) of this Agreement or may, without deciding the reference, refer it to any one of the Courts for a determination of the matter;

(k) hear appeals from an Eligible CEP Recipient as set out in Section 5.09(1) and recommend costs as set out in Section 5.09(3) of this Agreement;

(l) apply to any one of the Courts for determination with respect to a refusal to add an institution as set out in Section 12.01 of this Agreement;

(m) retain and instruct counsel as directed by Canada for the purpose of fulfilling its mandate as set out in Sections 4.11(12)(j),(l) and(q) and Section 4.11(13) of this Agreement;

(n) develop a list of counsel with active Indian Residential Schools claims who agree to be bound by the terms of this Agreement as set out in Section 4.08(5) of this Agreement;

(o) exercise all the necessary powers to fulfill its functions

under the IAP;

(p) request additional funding from Canada for the IAP as set out in Section 6.03(3) of this Agreement;

(q) apply to the Courts for orders modifying the IAP as set out in Section 6.03(3) of this Agreement.

(r) recommend to Canada the provision of one additional notice of the IAP Application Deadline to Class Members and Cloud Class Members in accordance with Section 6.04 of this Agreement.

(13) Where there is a disagreement between the Trustee and the NAC, with respect to the terms of the Approval Orders the NAC or the Trustee may refer the dispute to the Appropriate Court in the jurisdiction where the dispute arose by way of reference styled as *In Re Residential Schools.*

(14) Subject to Section 6.03(3), no material amendment to the Approval Orders can occur without the unanimous consent of the NAC ratified by the unanimous approval of the Courts.

(15) Canada's representative on the NAC will serve as Secretary of the NAC.

(16) Notwithstanding Section 4.11(1) the Church Organizations may

designate a second counsel to attend and participate in meetings of the NAC. Designated second counsel will not participate in any vote conducted under Section 4.11(9).

4.12 Regional Administration Committees

(1) One (1) RAC will operate for the benefit of both the Class Members, as defined in Section 4.04, and Cloud Class Members in each of the following three (3) regions:

a) British Columbia, Alberta, Northwest Territories and the Yukon Territory;

b) Saskatchewan and Manitoba; and

c) Ontario, Quebec and Nunavut.

(2) Each of the three (3) RACs will have three (3) members chosen from the four (4) plaintiff's representative groups set out in Sections 4.09**(**4)(d),(e),(f) and (g) of this Agreement.

(3) Initial members of each of the three (3) RAC's will be named by the groups set out in sections 4.09(4)(d),(e),(f) and(g) of this Agreement on or before the execution of this Agreement and Canada will be advised of the names of the initial members.

(4) Upon the resignation, death or expiration of the term of any

RAC member or where the Court otherwise directs in accordance with 4.12(7) of this Agreement, a replacement RAC member will be named by the group represented by that member.

(5) Membership on each of the RACs will be for a two (2) year term.

(6) Each RAC member may name a designate to attend meetings of the RAC and the designate will have the powers, authorities and responsibilities of the RAC member while in attendance.

(7) In the event of any dispute related to the appointment or service of an individual as a member of the RAC, the affected group or individual may apply to the NAC for a determination of the issue.

(8) No RAC member may serve as a member of the NAC or as a member of the Oversight Committee during their term on a RAC.

(9) Each RAC will operate independently of the other RACs. Each RAC will make its decisions by consensus among its three members. Where consensus can not be reached, a majority is required to make a decision.

(10) In the event that an Eligible CEP Recipient, a member of a

RAC, or a member of the NAC is not satisfied with a decision of a RAC that individual may submit the dispute to the NAC for resolution.

(11) The RACs will deal only with the day-to-day operational issues relating to implementation of the Approval Orders arising within their individual regions which do not have national significance. In no circumstance will a RAC have authority to review any decision related to the IAP.

4.13 Review by NAC

Eighteen months following the Implementation Date, the NAC will consider and determine the necessity for the continuation of the operation of any or all of the 3 RACs provided that any determination made by the NAC must be unanimous.

4.14 Opt Out Threshold

In the event that the number of Eligible CEP Recipients opting out or deemed to have opted out under the Approval Orders exceeds five thousand (5,000), this Agreement will be rendered void and the Approval Orders set aside in their entirety subject only to the right of Canada, in its sole discretion, to waive compliance with this Section of this Agreement. Canada has the right to waive compliance with this Section of the Agreement until thirty (30) days after the end of the Opt Out Periods.

Appendix D

RECORD OF DECISION (NAC)

Record No.: 001
Date: September 28, 2007

ISSUE

Addition to paragraph 2 of the CEP Appeal Protocol as follows:

"or in the case of a Cloud Class Member, the person for whom the claim is made died prior to October 5, 1996."

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)				X
INUIT (Gilles Gagne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)				X
NATIONAL CONSORTIUM (Alan Farrer)	X			

DETERMINATION

Motion carried with a five (5) member vote.

Please note that each member has five (5) days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 002
Date: October 12, 2007

ISSUE

Service Canada Identity Validation (Guarantor's Delcaration) - issue with respect to the identity documents used to prove identity: SC proposes to resolve this issue by accepting a Guarantor's Declaration where the applicant has two of the requisite identity documents, neither of which has a photograph. The guarantor's declaration would be used to establish identity. The guarantor declaration is similar to the one being used for a change of name and the guarantor would have to attest to knowing the claimant for at least two years by the names used on the application and appearing on the identity documents.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)				X
INUIT (Gilles Gagne/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)				X
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a five (5) member vote.

Please note that each member has five (5) days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 003
Date: October 18, 2007

ISSUE

IAP Neutral Chair: Unanimous consent of the NAC is required to support Justice Iacobucci's nomination Ms. Mayo Moran as the IAP Neutral Chair.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)		X		
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion Carried with six (6) member votes.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 004
Date: October 29, 2007

ISSUE

Proposed Amendment to CEP Appeal Protocol: The proposal calls for the deletion of the words "after stage three reconsideration" contained at paragraph 1 of the CEP Appeal Protocol.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

CEP Appeal Protocol

Entitlement to Appeal

1. Subject to paragraph 2, an applicant who has been denied his or her claim, in whole or in part, may appeal to the NAC for a determination as set out in the CEP Process and Assessment Protocol.

2. There shall be no right of appeal for applicants who have had a CEP Application denied because (a) the school for which they have applied is not an Indian Residential School as defined in the Settlement Agreement, or (b) the person for whom the claim is made died prior to May 30, 2005, or for the Cloud Class Members who died prior to October 5, 1996.

Initiation of Appeal

3. An applicant may initiate an appeal to the NAC by filing an Appeal Form with the Trustee[1]. The form shall:
   (a) ask the applicant to explain why he or she disagrees with the decision of the Trustee,
   (b) invite the applicant to provide any information he or she may have to support the claim; and
   (c) provide any further information that may be relevant to the consideration of the appeal (ie. if information is not available, why it is not available).

4. Upon receipt of an Appeal Form, the Trustee shall:
   (a) Record the fact of the receipt of the Appeal Form, the date of receipt, and acknowledge receipt to the applicant by way of standard form letter;
   (b) compile a record for the NAC consisting of the correspondence exchanged with the applicant, notes of any discussion with the applicant during the reconsideration process, copies of any student records that referred to the applicant, and documents submitted by the applicant, if any; and
   (c) complete a form to accompany the file which indicates:
      (i) the reason the claim or part thereof was denied;
      (ii) whether there is a gap in Primary Documents during the period of the application and the extent of that gap;
      (iii) what type of records exist in respect of the school for the period in which the claim has been made, and what if

---

1 Form to be drafted

anything, they disclosed relevant to the information provided by the applicant or the application;

(iv) what additional records were available, whether they were reviewed and what information the additional records disclosed; and

(v) whether a telephone discussion was held with the applicant, and if not, why not.

(d) The NAC may, on a majority vote, request any additional documents from the Trustee, which request the government may deny. If the government denies the request, the NAC may apply to the Court.

NAC Hearing Schedule

5. NAC hearings may be conducted by telephone.
6. During the first year, the NAC hearings shall occur on the third Thursday of every month, with the first hearing to be held on the first such day following the Implementation Date.
7. If a member of the NAC is unable to attend, he or she shall designate a proxy to exercise his or her vote. Such proxy may be legal counsel who does not ordinarily participate in the NAC, or another member of the NAC, but such member must be familiar with the appeals process and have reviewed the appeal materials. Individuals designated must be from a disclosed pool of acceptable individuals. If a qualified person is not available, a proxy for the NAC member must be provided to another member of the NAC.
8. A member who is unable to attend shall inform the other members of the NAC as soon as possible, and indicate the name of the person who has been designated on their behalf, or the member of the NAC who has been provided with the missing NAC member's proxy.

Coordination of Appeals

9. The Trustee shall submit a list of appeals to the members of the NAC as well as the appeal files, on or about the first of each month, to be heard at the next scheduled hearing date.
10. Appeal lists and files shall be disseminated to the NAC members in electronic format.
11. Appeals will normally be heard in the order in which they are filed.
12. The scheduling and coordination of the hearing of appeals, as set out herein, shall be revisited if circumstances warrant.

Hearing of Appeals by the NAC

13. The appeal procedure shall be in writing. The NAC will not hold oral appeals.
14. An applicant shall not be entitled to more than one appeal in respect of a claim.

15. An appeal to the NAC of a decision by the Trustee may be brought as of right within the time periods set out in the CEP Process and Assessment Protocol. Appeals to the NAC may be brought after that period only upon the favourable vote of at least five members of the NAC, one of which is the representative for Canada or for the Churches, or with leave of the court.

Grounds for an Appeal – the NAC Jurisdiction

16. The NAC shall review the decision of the Trustee to ascertain whether a material error has been made with respect to:
    (a) The interpretation of the Settlement Agreement;
    (b) The interpretation or application of the CEP Verification principles;
    (c) The evaluation of the evidence or information presented; or
    (d) Any other material grounds raised by the applicant.

Remedies available from the NAC

17. The NAC may:
    (a) Substitute its own decision, allowing the appeal and approving some or all of the applicant's claim if there is a material error;
    (b) Send the application back to the Trustee for reconsideration, with directions, which may include specific questions to be asked of the applicant, or a request to the court, through court counsel, to direct the monitor to review the application or documents; or
    (c) Dismiss the appeal.
18. The NAC may recommend to Canada that the costs of the appeal be borne by Canada. In exceptional circumstances, the NAC may apply to the court for an order that the costs of an appeal be borne by Canada.

Decision of the NAC

19. If the legal firm of a member of the NAC is also counsel for an applicant whose appeal is being heard by the NAC, that NAC member shall recuse himself or herself from hearing that appeal and designate another member of the NAC to exercise his or her vote on the appeal.
20. The NAC shall designate a member of the NAC to act as responsible for stating and recording the Reasons for Decision. That person shall state the Reasons for Decision at the conclusion of the appeal, and be responsible for transcribing and circulating those Reasons for Decision.
21. The Reasons for Decision shall be circulated by the responsible member to the other members of the NAC following each hearing, for review and correction. The members of the NAC shall provide any corrections within 10 days of receipt of the Reasons for Decision, failing which the Reasons for Decision shall be deemed final. The approved or corrected Reasons for Decision shall then be provided to the Trustee, which shall be responsible for communicating the Reasons for Decision to the applicant,

and where necessary, acting on the Reasons for Decision by carrying out reconsideration steps or making a CEP payment.

22. The Trustee shall maintain records of all NAC appeal decisions which shall be accessible to the NAC members. The Trustee shall also maintain a copy of the record provided to the NAC.

23. Members of the NAC shall delete or destroy all appeal records within 30 days of providing a final decision on the appeal.

Processing Timeframes

24. The following time periods are set as targets for the processing of appeals:
    (a) Receipt by Trustee of an Appeal Form to delivery to NAC of appeal file: not more than 30 days;
    (b) From receipt of appeal file by NAC to hearing: not more than 60 days;
    (c) From Hearing of appeal to delivery by NAC of Reasons for Decision to the Trustee: not more than 30 days;
    (d) From receipt by Trustee of Reasons for Decision to delivery of Reasons for Decision to applicant: not more than 15 days; and
    (e) Total number of days elapsed from receipt of the Appeal Form to delivery of Reasons for Decision: 135 days.

Appeals from the NAC

25. Applicants who are unsuccessful (either in whole or in part) on appeal to the NAC shall be informed of their right to appeal to the court at the same time that they are made aware of the Reasons for Decision, all by way of standard form letter. The standard form letter shall further inform applicants that, should they chose to initiate an appeal to the court, they should request an information package from the Trustee.

26. The Information Package for applicants seeking to appeal to the court shall include basic instructions for initiating an appeal and a Court CEP Appeal Form to be used in connection with the appeal.

27. The basic instructions relating to the appeal shall include:
    (a) The appeal shall be directed to the two supervising judges under the Court Administration Protocol;
    (b) The need to make the application by way of notice of motion to the court under the class proceeding court file number;
    (c) The requirement to complete the Court CEP Appeal Form initiating the appeal in addition to the notice of motion;
    (d) The requirement to file court fees, where applicable; and
    (e) The requirement to serve the notice of motion, together with the Court CEP Appeal Form, on the Trustee.

28. The Trustee shall provide copies of the appeal documentation to counsel for the courts, and shall coordinate with counsel in arranging for hearings of the appeals where oral hearings have been requested.

Fees to NAC Members

29. With respect to the NAC funding as provided in the Settlement Agreement, no plaintiff member representative shall be entitled to more than 1/5 of the amount available for legal fees and disbursements for services performed in that month.

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 005
Date: October 30, 2007

ISSUE

Prioritization of Elder CEP applications: With respect to the proposition that CEP applications should be processed based on the age of the applicant (65 years or older) rather than in the order in which applications were received, IRSRC will prioritize applications on this basis. The CARS programme has the capacity flag all applications where the applicant is aged 65 years and older.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)				X
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 006/C
Date: November 29, 2007

ISSUE

The claims of those individual who received the Advance Payment would be processed without further validation. This issue is proposed on two grounds: first, that group of claimants have already been verified as to residence and second, given that they are the older population of claimants, it much more likely that the records relating to the duration of their attendance will be missing. Hence, the inference and interpolation policies will likely see most of their claims paid in full.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 007/C
Date: November 30, 2007

ISSUE

The "Proposal For Resolution of Exceptional Cases" and new "Guarantor Declaration" form from Service Canada were circulated to the NAC Members for review. Please vote as to whether you favour the proposal as made.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	☐	☐	☐	X
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X	☐	☐	☐

DETERMINATION

Motion carried with a six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

Common Experience Payment

PROPOSAL FOR RESOLUTION OF EXCEPTIONAL CASES FOR APPLICANTS WITHOUT REQUIRED IDENTITY DOCUMENTS

Issue

Service Canada is encountering exceptional cases where:

a) The applicant has insufficient identity documents (e.g. does not have a birth certificate and has only one of the four other required identity documents) and/or;
b) The applicant does not have any of the required identity documents (e.g. homeless/transient/incarcerated).

Proposed Resolution:

When encountering such situations, Service Canada's first step is to recommend that the clients attempt to obtain the required identity documents. This however is not always possible.

Service Canada is proposing to validate the identity of applicants without the required documents initially using Service Canada databases and, if these do not return any information regarding the applicant, then we are proposing that other federal departments/agencies be asked to assist in validating the applicant's identity.

A. Service Canada will obtain the applicant's written consent to verify the applicant's personal information by accessing the following Service Canada databases:

- Old Age Security (OAS) database– covers population 65 years and older;
- Canada Pension Plan (CPP) database– covers population who have contributed or are contributing to the CPP, recipients of disability benefits, and/or survivors benefits and those over 60 years of age;
- Employment Insurance (EI) database (OLIS –Online Insurance System) – covers population currently unemployed and collecting benefits.

The following personal information will be validated:

- First Name (and initial if available)
- Last Name

- Date of Birth
- Mother's last Name at birth
- Father's first name
- Gender
- Address

Once the applicant's identity has been validated the applicant would be required to submit a Guarantor Declaration, demonstrating that the applicant is known by the name being used on the application.

B. If the Service Canada databases do not return any information regarding the applicant, then we are proposing that the following federal departments/agencies be asked to assist in validating the applicant's identity:

- Indian and Northern Affairs Canada (INAC) using the Indian Register database – covers First Nations
- Health Canada (HC) using the Status Verification System database– covers Inuit population receiving health care benefits
- Canada Revenue Agency (CRA) using the IDENT database – covers all Aboriginal tax payers and those in receipt of Child Tax Benefits
- Correctional Service Canada (CSC) using the Offender Management System – covers incarcerated, recently paroled

Written consent of the applicant would be obtained. The database to be used in the identity validation will be dependent upon the outcome of the discussion with the applicant.

Similar data elements as outlined for Service Canada would be validated. The specific elements to be validated would depend on their presence in the database(s) of the respective department.

Letters of Understanding would be entered into between Service Canada and each relevant federal department / agency to describe the process and agree to provisions surrounding the protection of personal information.

Given the increasing number of Guarantor Declarations used in the CEP application process, Service Canada is proposing to amalgamate all Guarantor Declaration forms into one Guarantor Declaration that could be used in any scenario which requires a guarantor declaration (refer to Annex A for the proposed new draft Guarantor Declaration).

Government of Canada / Gouvernement du Canada

ANNEX A
DRAFT
Protected B When Completed

MMON EXPERIENCE PAYMENT FOR FORMER STUDENTS WHO RESIDED AT INDIAN RESIDENTIAL SCHOOL(S)

PLEASE PRINT

GUARANTOR DECLARATION

Used to support Identity validation of Applicant (Former Student or Personal Representative)
Must be accompanied by CEP application

This Guarantor Declaration will be accepted to establish that the current name used by the applicant in the CEP application is the same name by which the applicant is known to the guarantor. Service Canada may contact the guarantor to verify their declaration.

Please place a check mark against the statement below that applies to your situation.

This Guarantor Declaration is submitted when the Common Experience Payment (CEP) applicant **cannot:**

- ☐ **Submit an identity document with a photograph as required in support of the CEP application.**
- ☐ **Obtain the identity document(s) required in support of the CEP application.**
- ☐ **Obtain the identity documents outlined in the CEP application that support a change of name.**

Please ensure that a completed and signed application for the Common Experience Payment along with the supporting documentation (e.g. identity documents) where relevant, is also submitted. Service Canada may contact the persons identified in this form to verify their declaration.

1. APPLICANT'S INFORMATION

☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms.

First Name(s) | **Middle Name(s) (if applicable)** | **Last Name(s)** | **Year/Month/Day**

Current Address:

(P.O. Box, Street No., Street, Apt., R.R.) | **City/Town/Community**

Province/Territory/State | **Postal/Zip Code** | **Country**

( ) -

e of Birth (YYYY/MM/DD) | **Telephone Number** | **CEP Application Reference Number** *(if known)*

For assistance completing this form, please call Service Canada at 1-866-699-1742 (TTY 1-800-926-9105).

Canada

2. SIGNATURE

My signature/mark indicates that the information I have provided in this form is true and accurate. I acknowledge that knowingly making a false or fraudulent statement could result in criminal prosecution. I understand that every form is subject to verification.

_____ _____

Signature **Year / Month / Day**

I understand that the information requested in this form is required for the administration of the Common Experience Payment. I understand that personal information is protected under the Privacy Act and the Department of Social Development Act (DSD Act). I have the right to request access to my personal information pursuant to the Privacy Act, and I am aware that the information may be used or disclosed within the conditions set out in the Privacy Act, DSD Act and outlined in the Personal Information Bank (HRSDC PPU 100).

3. SIGNATURE WITH A MARK

If signed with a mark (for example symbol/"X"), the mark must be made in the presence of a witness. A witness may be a relative.

The witness must provide the following information:

WITNESS'S INFORMATION

_____

First Name(s) **Middle Name(s) (if applicable)** **Last Name(s)**

Relationship to the Applicant: _____

Address of Witness:

_____ _____

(P.O. Box, Street No., Street, Apt., R.R.) **City/Town/Community**

_____ _____ _____ ( ) -

Province/Territory/State **Postal/Zip Code** **Country** **Telephone Number**

If signed with a mark, the witness must also sign the following declaration:

I have read the content of this form to the applicant who understands and confirms the complete content and who made his or her mark in my presence.

_____ _____

Signature of Witness **Year / Month / Day**

GUARANTOR INFORMATION | **LANGUAGE PREFERENCE**

☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms. ☐ English ☐ french

First Name(s) | **Middle Name (if applicable)** | **Last Name(s)**

5. MAILING ADDRESS OF GUARANTOR

Name of organization (if applicable)

(P.O. Box, Street No., Street, Apt., R.R.) | **City/Town/Community**

Province/Territory/State | **Postal/Zip Code** | **Country**

TELEPHONE NUMBERS OF GUARANTOR

( ) - **Home** | ( ) - **Business** | ( ) - **Cell/Other**

7. OCCUPATION OF GUARANTOR

Please indicate your occupation:

- ☐ Chief or Councillor of First Nations Band Council
- ☐ Council of the Métis Settlements General Council and Members of the Saskatchewan Provincial Métis Council
- ☐ Members of the Saskatchewan Provincial Métis Council
- ☐ Dentist
- ☐ Executive Officer of Nunavut Tungavik Inc
- ☐ Executive Officer of Inuvialuit Regional Corporation and of the six (6) Inuvialuit Community Corporations (Northwest Territories)
- ☐ Executive Officer of Makivik (Northern Quebec)
- ☐ Judge
- ☐ Lawyer (member of a provincial bar association)
- ☐ Notary in Quebec
- ☐ Magistrate
- ☐ Medical doctor
- ☐ Minister of religion authorized under provincial law to perform marriages
- ☐ Notary public
- ☐ Optometrist
- ☐ Pharmacist
- ☐ Police officer (municipal, provincial or RCMP)
- ☐ Postmaster
- ☐ Principal of a primary or secondary school
- ☐ Professional accountant (APA, CA, CGA, CMA, PS, RPA)
- ☐ Professional engineer (P. Eng., Eng. In Quebec)
- ☐ Senior administrator in a community college (includes CEGEPs)
- ☐ Senior administrator or teacher in a university
- ☐ Social Worker with MSW (Masters in Social Work)

☐ Mayor	☐ Veterinarian

8. GUARANTOR DECLARATION

I hereby declare that I have known the applicant as _____ (PLEASE INSERT APPLICANT'S FULL NAME) personally for at least TWO years. My signature indicates that the information I have provided in this form is true and accurate. I acknowledge that knowingly making a false or fraudulent statement could result in criminal prosecution. I understand that every form is subject to verification.

Name (print) **Guarantor's Signature** **Year/Month/Day**

I understand that the information requested in this form is required for the administration of the Common Experience Payment. I understand that personal information is protected under the Privacy Act and Department of Social Development Act (DSD Act). I have the right to request access to my personal information and am aware that the information may be used or disclosed within the conditions set out in the Privacy Act, DSD Act and outlined in the Personal Information Bank (HRSDC PPU 100).

To be mailed to:

CEP Processing Centre
706 Yates St.
P.O. Box 8729 Stn Central
Victoria, BC V8W 3S3

RECORD OF DECISION (NAC)

Record No.: 008/C
Date: January 17, 2008

ISSUE

The Oversight Committee of the Independent Assessment Process is seeking approval of the National Administration Committee for a Practice Direction as outlined in the memorandum from Daniel Ish, Chief Adjudicator, IAP, dated January 16, 2008:

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

Memo to: Alan Farrer,
Chair, National Administration Committee

Catherine Coughlan,
Secretary, National Administration Committee

From: Daniel Ish,
Chief Adjudicator, IAP

Date: January 16, 2008

Re: Practice Direction

The Oversight Committee of the Independent Assessment Process is seeking approval of the National Administration Committee for a Practice Direction that it approved at a meeting on January 15, 2008. If approved by the NAC, the Practice Direction will be issued by the Chief Adjudicator IAP to all adjudicators. This approval is being sought under para. III, r, of Schedule "D" (the IAP Model), which is found at page 16.

The proposed Practice Direction is intended to govern the application of the preliminary case assessment provisions found at para. III, n, viii of the IAP Model (page 8). The members of the Oversight Committee are unanimous in their approval of this direction. It will have the effect of compressing into one hearing evidence with respect to whether a *prima facie* case exists to justify a complex track hearing and evidence with respect to the substantive issues.

The Practice Direction reads as follows:

> In the complex issues track, when a case is ready to proceed to hearing:
>
> - **The IAP Secretariat will arrange the initial hearing for the taking of all of the Claimant's evidence. The Claimant will answer all questions put by the adjudicator. Based on the Claimant's evidence, the adjudicator will make an assessment of credibility and determine whether there is a *prima facie* basis to support a claim within the complex track.**
> - **If a *prima facie* basis to support a claim within the complex track is not made out, then the claim will continue (in the same hearing) under the standard track unless the only allegation in the claim is in the Other Wrongful Act category in which case the claim will not proceed.**

- **If a *prima facie* basis to support a claim within the complex track is made out, then the adjudicator shall arrange for expert assessments required by the standards set in this IAP. The IAP Secretariat will also make arrangements for hearing the evidence of any witness in relation to the claim or any alleged perpetrator.**
- **On the receipt of expert and/or medical evidence or at any point if such have been waived, the government and the Claimant may attempt to settle the claim having regard to the available evidence, the preliminary assessment of credibility, and all other evidence.**
- **If attempts to settle are not made, or if attempts are unsuccessful, then the claim will proceed to conclusion and decision, including recalling the claimant if appropriate circumstances exist.**
- **It is intended that this direction, or any interpretation of it, should not detract from any procedural or substantive rights of a claimant or other party that are provided in the IAP.**

This proposed Practice Direction accomplishes the following:

- Cases will flow smoothly through the entire IAP. Every case ready for hearing, whether in the standard or complex track, will first proceed with the claimant's evidence. If it turns out that a complex issues track claim should have proceeded under the standard track, it can move in that direction immediately after the claimant's evidence without the need to recall the claimant or have another hearing.

- In many cases the parties will only have to get together once, for the claimant's evidence, rather than for a preliminary assessment hearing and a final hearing later. This will avoid unnecessary delays due to scheduling of two hearings instead of one. Benefits of this include less time to the conclusion of a case, lower cost hearings, and less potential to re-victimize the claimant.

- The process avoids the unnecessary delays that might result from new or more detailed disclosures of abuses or harms late in the process at the second hearing.

- The process allows for witness and POI testimony to proceed without having to wait for the second hearing with the claimant, which second hearing occurs later in the process under the current b.viii.

- Adjudicators will have detailed evidence with which to assess the claim and on which to instruct experts. Preparation of directions to experts will take less time and will therefore be less costly. Experts will make their assessments based on detailed evidence. Expert assessments will likely take less time because the expert will already have detailed information from the transcript. Directions to the experts will, therefore, be based on concrete evidence already heard rather than possibilities.

- This process results in a proper record of all proceedings, thereby meeting the procedural fairness requirements in administrative law. The proposed process will result in all claimants' having a right of review under the IAP.

- The hearing process will be completely transparent and the risk of inconsistencies will be greatly reduced.

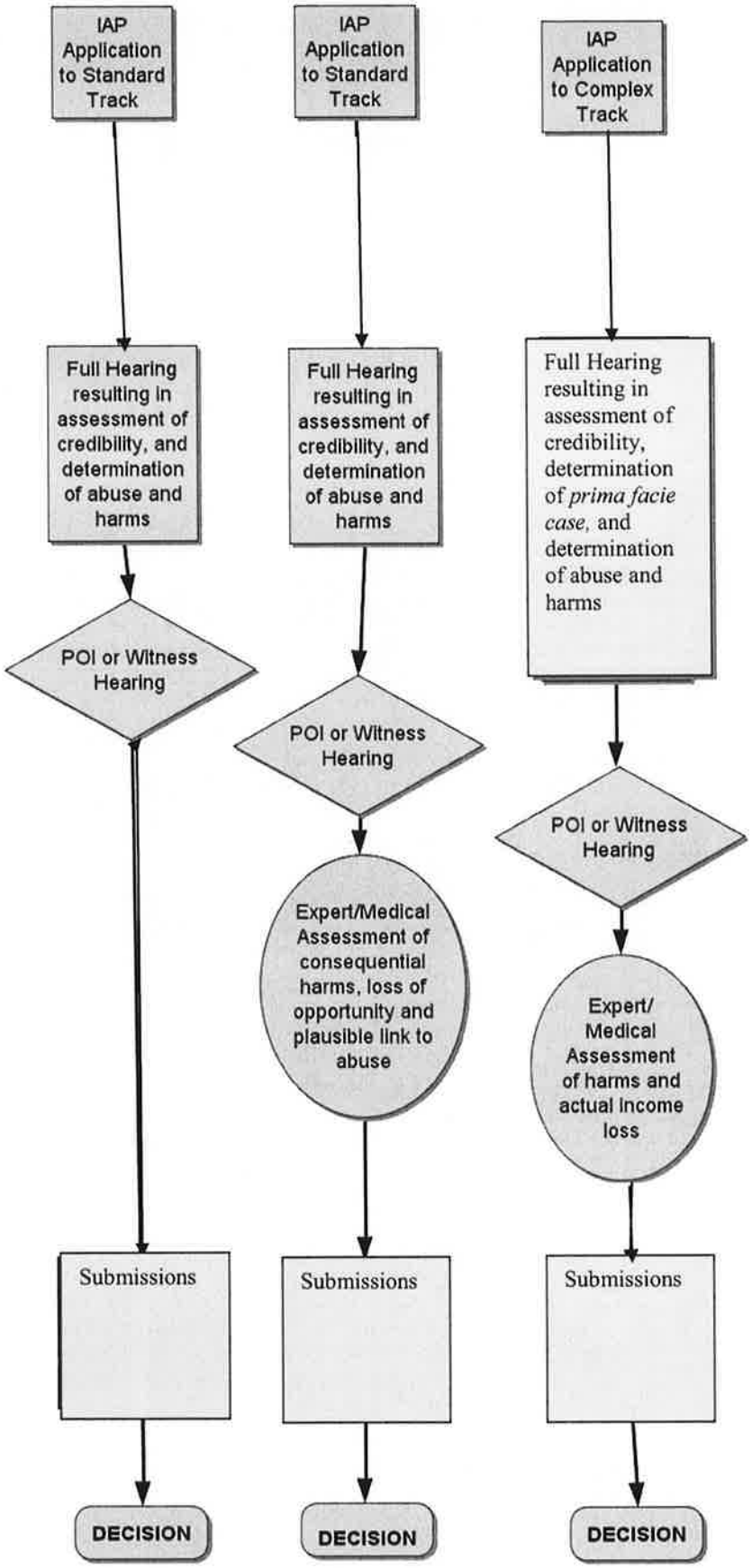
- In addition, a pre-hearing management conference (normally by conference call) is contemplated to allow the parties and the adjudicator to assess the readiness of the claim to proceed in the complex track.

Overall, this amendment will maintain the spirit and intent of the complex issues track provisions while at the same time creating a more streamlined, more sensitive, timelier, and less costly process.

Attached as Appendix "A" is a graphic illustration of the proposed process.

If further information is required, or a more complete justification is sought, please advise me. We ask that this matter be given a high priority status for the NAC since IAP cases are now being scheduled and heard.

Schemata of Hearing Process and Options for IAP



RECORD OF DECISION (NAC)

Record No.: 009/C
Date: February 15, 2008

ISSUE

The National Administration Committee approved the form of the CEP Protocols (as circulated on February 15, 2008) for delivery to the Courts:

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 010/C
Date: March 20, 2008

ISSUE

Service Canada is proposing certain amendments to the current identity documentation requirements with respect to a Common Experience Payment (CEP) application. The amendments will clarify identity requirements and establish alternative documentation to expedite the processing of CEP applications. The proposal from Service Canada (with minor additions from the NAC) outlining the specifics is attached to this Record of Decision.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	☐	☐	☐	X
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X	☐	☐	☐

DETERMINATION

Motion carried with six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

Service Canada is proposing certain amendments to the current identity documentation requirements with respect to a Common Experience Payment (CEP) application. Amendments will clarify identity requirements and establish alternative documentation to expedite the processing of CEP applications. Specifically, Service Canada is seeking the NACs concurrence with the proposals set out below on the following issues:

1) Public Guardian and Trustee (PGT)
   - i- Validation of Identity of PGT official/ Employee cards
   - ii- Documentation in support of Mental Incompetence (including medical notes older than two years)

2) Certification of Former Residents' Identity Documents - PGT and Indian and Northern Affairs Canada (INAC)
   - i- Guarantor statement

3) Proof of Death
   - i- Acceptance of alternate documents

1- Public Guardian and Trustee (PGT)

Background

The PGT's across Canada operate under provincial or territorial law to protect the legal rights and financial interests of children, to provide assistance to adults who need support for financial and personal decision making, and to administer the estates of deceased and missing persons where there is no one else able to do so.

When managing the financial affairs of an individual, estate or trust, the PGT observes prudent business practices and is bound by both common law and statutory fiduciary principles associated with a Trustee or Agent.

Issues

With respect to CEP applications made by a provincial or territorial PGT on behalf on their clients, Service Canada has encountered issues with respect to:

- The types of identity documents that must be submitted by provincial or territorial PGTs acting as the Personal Representative for former IRS resident; and
- The types of documentation that may be accepted as proof of mental incompetence.

i- Validation of Identity of PGT official

The CEP Application for Personal Representatives and Estates states in Section B, # 4, that the Personal Representative applying on behalf of a minor, mentally incompetent or estate must submit certain identity documents supporting their own identity, in addition to submitting the required identity documents in support of the former student's identity. In particular, the application requires Personal Representatives to submit an original birth certificate or a copy of Government ID or a certified true copy of two (2) of the four (4) identity documents stipulated on the application (one must have a photograph).

Proposed Solution for PGT Identification

As it is not clearly specified in the CEP application, Service Canada is proposing that PGT employees, when acting as personal representatives of former students, can submit a copy of their Government ID as proof of their identity. In addition, Service Canada will require a letter, on PGT departmental letterhead, from an authorized provincial or territorial government official listing those employees who, in their capacity as caseworkers, may submit CEP applications on behalf of their clients. The letter will include:

- Employee's full name,
- Employee ID number,
- Employee contact telephone number, and
- Signature of the provincial or territorial Public Guardian and Trustee.

In the event the PGT organisation is not able to meet the requirements listed above, the PGT employees applying on behalf of former IRS residents will be required to provide personal identity documents as stipulated with the application form.

Note: the reference to a copy of Government ID listed on the CEP Application Form was intended for officials with the Federal Department of Indian and Northern Affairs only. With respect to government identity documents for the various PGT organisations, the content of the different identity documents varied widely from province or territorial to province or territorial and did not necessarily meet Federal identity standards. Hence, the additional safeguard of the confirmation letter signed by the Provincial Public Guardian and Trustee was added to the validation process.

ii- Documentation in support of Mental Incompetence

The CEP Application for Personal Representatives or Estate states, in Section A, # 5, that "a signed medical statement by the attending physician must be submitted with your application form if you are applying as the legal Personal Representative for the former student who is mentally incompetent." The applicant is required to check a box confirming that they have attached a copy of this signed medical statement. In addition, section C of the application form states the following:

"To apply for the Common Experience Payment on behalf of a former student who is mentally incompetent, an attending physician must attest to the former student's incompetence. A signed medical statement or report must be submitted on the attending physician's letterhead attesting to the former student's incapacity to self-represent due to being mentally incompetent. The signed statement or report must be dated no earlier than two years prior to the submission of the Common Experience Payment application form". (Underlining added).

Service Canada has been advised by provincial PGTs that they may not always be in a position to meet these requirements and have provided samples of the documentation that they are proposing to submit with CEP applications in lieu of the physician's statement that is current to two (2) years.

Proposed Solution

Service Canada is proposing that the PGTs be authorized to submit, depending on the circumstances,

- a court order declaring an individual, by reason of mental infirmity arising from disease, age or otherwise, incapable of managing his/her affairs.
- a physician's statement that is current to five (5) years as opposed to every two (2) years.

- a certificate of incapacity declaring the individual incapable of managing his/her financial and legal affairs because of mental infirmity issued pursuant to provincial or territorial statutes (e.g. Province of B.C. Certificate of Incapacity). The effect of these Certificates is that the provincial or territorial PGT is the declared the legal personal representative of the applicant.

Service Canada is recommending the implementation of this approach.

2- Certification of Former Residents' Identity Documents - PGT and Indian and Northern Affairs Canada (INAC) -

i- Guarantor statement

As stipulated in the application, the applicant applying on behalf of a former student must provide identity documents for the former resident. In cases where the original Birth Certificate is not provided, original or certified copies of two (2) of the four (4) secondary identity documents may be provided. It is anticipated that most PGT applications will be submitted by mail. Hence, it is most likely that secondary identity documents provided will be certified copies as opposed to originals.

In discussion with PGT organisations, it became evident the most likely source for the certification of the former residents' secondary identity documents are lawyers or Commissioners of Oaths working for the PGTs. However, PGT caseworkers, lawyers and Commissioners may not personally know the clients in question or, as is often the case, have not known them for at least two (2) years. We recommend an amendment to the guarantor statement in these cases.

Proposed Solution

The proposed Guarantor statement is:

"I certify this is a true copy of the original and that the image is a true likeness of the applicant. I am a Canadian citizen."

In cases where PGT employees can not get a guarantor to certify documents, they can go in-person to a Service Canada Centre to hand deliver all the CEP applications along with original identity documents to a Service Canada agent. The agent would then process the applications and return the original documents immediately to the case worker. Copies certified by a guarantor would then not be needed.

3- Proof of Death

i- Acceptance of alternate documents

The CEP Application specifies the list of documents that may be submitted with a CEP application as proof of death. Other forms of Proof of Death however have been submitted with CEP Applications and that, while not on the list of acceptable documentation, would provide sufficient proof of death.

Proposed Solution

Service Canada is proposing to accept the following documentation as acceptable proof of death as they clearly demonstrate that a particular individual is deceased:

- Coroner's Certificate,
- Certificate of Cremation, or
- Burial Permit

- Letter from the Director of a funeral home or an administrator of a hospital or clinic

RECORD OF DECISION (NAC)

Record No.: 011/C
Date: April 17, 2008

ISSUE

The Oversight Committee is proposing to make the following changes to the text of the original Schedule P release as follows:

- Remove paragraph 13 of the original Schedule P that can pose a problem to claimants who may be eligible for a Common Experience Payment (CEP)
- Correct a terminology error: references to the "Individual Assessment Process" to be changed to "Independent Assessment Process"

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)				X
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (E.F.A. Merchant)				X
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a five (5) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 012/C
Date: September 12, 2008

ISSUE

All files currently under Reconsideration will be reviewed by INAC Research with a view to reconsidering the additional materials or information provided by applicants and in the cases where names are provided by applicants of individuals who attended or were employed at the Residential School, those names will be researched to determine if they resided or were employed at the school during the years under reconsideration and the results of such research shall be provided to the NAC.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (E.F.A. Merchant/Evatt Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 013/C
Date: September 12, 2008

ISSUE

All files currently under Appeal will be reviewed by INAC Research with a view to reconsidering the additional materials or information provided by applicants either at Reconsideration or on the Appeal Applications and in the cases where names are provided by applicants of individuals who attended or were employed at the Residential School, those names will be researched to determine if they resided or were employed at the school during the years under appeal and the results of such research shall be provided to the NAC.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (E.F.A. Merchant/Evatt Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 014/C
Date: September 12, 2008

ISSUE

In all cases either under Reconsideration or under Appeal, where applicants have provided names of supporting individuals, the Trustee will advise the applicants that the supporting individuals must provide INAC Research or the Trustee with the supporting information in writing.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (E.F.A. Merchant/Evatt Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) – AMENDED - CLARIFIED

Record No.: 015/C
Date: January 16, 2009
Date (Amendment No. 1): February 22, 2010

ISSUE

Where INAC recommends that an appeal be allowed in full, INAC will send a letter to the applicant advising that his claim is allowed in full and his appeal is deemed withdrawn. INAC will provide the NAC, through its Secretary, with a list of all appeals so disposed of on a monthly basis.

AMENDMENT NO.1

Where an appeal comprises only years already paid and years which INAC research recommends be paid in full, INAC will send a letter to the applicant advising that his/her claim for additional years, other than those already paid, is allowed in full and his/her appeal is deemed withdrawn.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant/ Brian O'Reilly)	X			
MERCHANT LAW GROUP (E.F.A. Merchant/Jane Ann Summers/ Owen Falquero)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 016/C
Date: August 27, 2010

ISSUE

Pursuant to section 4.13 of the IRSSA, the members of the NAC unanimously agree that by reason of the failure of the three RACs referred to in section 4.12 of the IRSSA to commence or continue in operation following the Implementation Date, there is no necessity for any of the RACs, to commence or continue in operation after the date of this ROD.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			
MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 017/C
Date: January 28, 2011

ISSUE

On January 28, 2011 the National Administration Committee consented to the request of [redacted] of [redacted], [redacted] to withdraw his opt out so that he may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits of a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 018/C
Date: April 15, 2011

ISSUE

All CEP appeals brought beyond the prescribed 12 month period from reconsideration may be brought to the NAC without recourse to the procedure set out in the attached Record of Decision, dated September 2, 2010, as long as they are received on or before September 19, 2012. After September 19, 2012, late appeals will only be considered by the NAC upon leave being granted by the Administrative judges.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/ Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant/Evatt Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 019/C
Date: September 15, 2011

ISSUE

On September 15, 2011 the National Administration Committee consent that [redacted] of [redacted], [redacted], [redacted] of [redacted], [redacted] of [redacted], [redacted], [redacted] of [redacted], [redacted], [redacted] of [redacted], [redacted] of [redacted], [redacted] and [redacted] of [redacted], [redacted], may withdraw their opt outs so that they may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement").

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 020/C
Date: January 12, 2012

ISSUE

On January 12, 2012 the National Administration Committee consent that [redacted] of [redacted], [redacted], may withdraw her opt out so that she may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement").

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 021/C
Date: September 11, 2012

ISSUE

On September 11, 2012 the National Administration Committee consent that [redacted] of [redacted], [redacted], may withdraw her opt out so that she may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement").

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 001/IC
Date: January 17, 2008

ISSUE

Motion proposed by Peter Grant: For the NAC to bring a Request for Direction to the Courts for interpretation of the Settlement Agreement in relation to residential school students placed into billeted/boarded homes as defined in a question that Alex Pettingill delivered to all members during the NAC meeting.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)		X		
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 002/IC
Date: October 23, 2009

ISSUE

On October 23, 2009 the National Administration Committee consent that [redacted] of [redacted], [redacted] may withdraw his opt out so that he may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits of a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	x			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	x			
INUIT (Gilles Gagné/Janice Payne)	x			
CHURCHES (Alex Pettingill)	x			
INDEPENDENT COUNSEL (Peter Grant)	x			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	x			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	x			

DETERMINATION

Motion carried with a seven (7) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 003/IC
Date: August 27, 2010

ISSUE

On August 27th, 2010, the National Administration Committee consented to [redacted] application to rescind his opt out, filed May 8, 2007, so that he may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits as a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a seven (7) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 004/IC
Date: September 10, 2010

ISSUE

On September 10th, 2010, the National Administration Committee unanimously consented to [redacted] application to rescind his opt out, filed May 28th, 2007, so that he may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits as a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a seven (7) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 005/IC
Date: January 4, 2011

ISSUE

On January 4, 2011, the National Administration Committee unanimously consented to [redacted] application to rescind her opt out, filed July 16, 2007 and October 8, 2007, so that she may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits as a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a seven (7) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 006/IC
Date: December 15, 2010

ISSUE

On December 15, 2010, the National Administration Committee unanimously consented to [redacted] application to rescind his opt out so that he may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits as a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a seven (7) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 007/IC
Date: October 29, 2010

ISSUE

On October 29th, 2010, the National Administration Committee unanimously consented to [redacted] application to rescind his opt out so that he may apply for the Common Experience Payment and the Independent Assessment Process under the Indian Residential School Settlement Agreement ("Settlement Agreement") and be entitled to any other benefits as a class member under the Settlement Agreement.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X			

DETERMINATION

Motion carried with a seven (7) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 008/IC
Date: December 6, 2013

ISSUE

Pursuant to Section 4.11(12)(n), the National Administration Committee unanimously consented to Candace Parker, Barrister and Solicitor, of 1484 Draycott Rd., North Vancouver, B.C. V7J 3N8. ph: (604) 998-0203, fax: (604) 998-0204, email: cpparker@shaw.ca and David Schulze of Dionne Schulze at 507 Place d'Armes, #1100, Montréal, Québec H2Y 2W8, Téléphone: (514) 842-0748 / 228, Fax : (514) 842-9983, email: dschulze@dionneschulze.ca to be added to the list of counsel who are on the Approved List of Counsel regarding the Independent Assessment Process. Both Candace Parker and David Schulze agree to be bound by the Law Society of Upper Canada Guidelines as directed by Madam Justice Brown in the Blott proceedings, as they both applied to be Independent Counsel prior to that decision they have both complied with those guidelines.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 009/IC
Date: January 31, 2014

ISSUE

The National Administration Committee (NAC) is empowered under Section 4.11(12)(n) of the Settlement Agreement to develop a list of legal counsel who agree to be bound by the terms of the Settlement Agreement. The NAC has been requested by the Chief Adjudicator to advise regarding steps to update this list. The NAC unanimously decided as follows:

1. The name of any legal counsel currently on the list of approved counsel shall be removed upon advice from the Chief Adjudicator's office or a member of the NAC directed to Canada's representative with the NAC and Crawford Class Action Services that such counsel is no longer engaged in representing clients in the Independent Assessment Process (IAP), or upon their being the subject of a subsisting order of a court that they may no longer represent clients in the IAP;

2. The name of any legal counsel may be added to the list upon their providing an undertaking directed to the NAC that they shall be bound by the terms of the Settlement Agreement, Implementation Orders and shall not charge any client a fee in connection with services relating to the Common Experience Payment (CEP);

3. Any legal counsel providing such undertaking shall be provided by the Chief Adjudicator's office with copies of the Chief Adjudicators Expectations of Legal Practise in the IAP; the Canadian Bar Association Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools, August, 2000, and the Reasons for Judgement of Madame Justice Brown of the B.C. Supreme Court respecting practise in the IAP and the voluntary guidelines established by the Law Society of Upper Canada, as set out in her decision of November 9, 2012 in *Fontaine et al v Attorney General of Canada et al* 2012 BCSC 1671 (CanLII).

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (Jane Ann Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 010/IC
Date: April 16, 2014

ISSUE

The NAC has voted to remove the Legal Counsel List from the Indian Residential Schools Settlement-Official Court Website and substitute the coordinates for each provincial or territorial Lawyer Referral Service or its equivalent as provided or endorsed by the Law Societies of each Province or Territory.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant)			X	

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Anne Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a Six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 011/IC
Date: April 16, 2014

ISSUE

On April 16, 2014, the National Administration Committee voted, as recorded below, to endorse the Integrity Framework Protocol of March 26, 2014.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Anne Summers/E.F.A. Merchant)	☐	☐	X	☐
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X	☐	☐	☐

DETERMINATION

Motion carried with a Six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 012/IC
Date: December 17, 2015

ISSUE

On December 17, 2015, the National Administration Committee ("NAC") moved that the NAC bring forward an application to the court to clarify that the NCTR and the documents held by it are bound by the confidentiality terms of the IRSSA, including Schedule N.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)			X	
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Michel Thibault)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (Jane Anne Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a Six (6) member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 013/IC
Date: March 27, 2018

ISSUE

The NAC advanced a RFD to the Courts for (1) an interpretation of the Settlement Agreement and Approval Orders as to whether SOS claims are entitled to be determined based on the complete record of admissions by Canada and, if so, (2) how claims dismissed upon the basis of an incomplete record that would have succeeded on the basis the complete record should be addressed. Preliminary issues, namely whether the NAC had standing to bring an RFD, were argued before Justice Brown on February 15, 2018. *Fontaine v. Canada (Attorney General),* 2018 BCSC 376 (the "Decision"), was released on March 12, 2018.

The majority of the NAC are of the view that the Decision prevents the members of the NAC from fulfilling their mandate as set out in Section 4.11(12)(a)(b) of the Indian Residential Schools Settlement Agreement. Accordingly, the NAC agrees to appeal the Decision with the British Columbia Court of Appeal as soon as possible.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)				X
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill)				X

1 Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (Jane Anne Summers/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a five (5) member vote.

1 Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - REVISED

Record No.: 001/NC
Date: April 17, 2008 – Original Record
May 7, 2008 – Revised Date

ISSUE

The oral information provided by the claimants in the CEP process is to be withheld and redacted from information provided by Canada to the IAP Secretariat and the conversation will not be used by Canada in the IAP process.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	☐	☐	☐	☐
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	☐	☐	☐	☐
INUIT (Gilles Gagné/Janice Payne)	☐	☐	☐	☐
CHURCHES (Alex Pettingill/Rod Donlevy)	☐	☐	☐	☐
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	☐	☐	☐	☐

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	☐	☐	☐	☐
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	☐	☐	☐	☐

DETERMINATION

Unanimous consensus on this Decision was reached at the May 7, 2008 meeting in Toronto, Ontario.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 002/NC
Date: August 21, 2008

ISSUE

Appeals identified to have an aged or infirm applicant will be given priority in the appeal process.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 003/NC
Date: August 21, 2008

ISSUE

When a post appeal reconsideration is rejected the NAC will be informed by Crawford Class Actions Services ("Crawford"). Crawford will repost the original record together with the new material for review by the NAC members.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC)

Record No.: 004/NC
Date: August 21, 2008

ISSUE

The Reconsideration Protocol as discussed and amended on August 21, 2008 is now considered the finalized version (attached is copy of this version). The only change from the July 11, 2008 version is to pages 14 and 15 changing the wording "two pieces" to "a piece".

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a unanimous member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

CEP

RECONSIDERATION PROCESS

August 21, 2008

Acronyms

AP	Advance Payment
CARS	Computer Assisted Research System
CEP	Common Experience Payment
DR	Daily Register
ER	Enrolment Return
IRS	Indian Residential School
NAC	National Administration Committee
QR	Quarterly Return
RECON	Reconsideration
SA	Indian Residential Schools Settlement Agreement

CEP Reconsideration Process

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1 Executive Summary

Former Indian Residential School students who have received a Common Experience Payment (CEP) and have been denied in whole or in part, may apply to have the decision reconsidered by Indian Residential Schools Resolution Canada. CEP recipients can initiate a reconsideration of their claim by filling out a reconsideration form and mailing, faxing or e-mailing it to the CEP Response Centre, or by calling the CEP Response Centre directly.

It is important to note that applicants do not need to provide additional information in order to have their file reconsidered. However, we encourage applicants to provide any information they may have that might help researchers to confirm residence and years of residence. There is space on the reconsideration form for additional information, or it can be provided by telephone to the CEP Response Centre.

Following reconsideration, if the applicant still disagrees with the decision that has been made he/she has the right to appeal to the National Administration Committee (NAC). The NAC oversees the administration of the Indian Residential Schools Settlement Agreement (SA). Additional details on this process will be made available following reconsideration.

Applications for schools that are not recognized under the Settlement Agreement will not be reviewed as part of the reconsideration process. Former students who would like to apply to have a school added to the list can do so by submitting a request to the Settlement Agreement web site.

To be eligible for reconsideration, the former student for whom the application is made must have:

- Have applied for CEP
- Have applied for reconsideration within six months from the date of the decision denying their CEP Application in whole or in part
- Resided at a recognized Indian Residential School(s) and was alive on May 30, 2005, OR,
- Resided at the Mohawk Institute Residential Boarding School in Brantford, Ontario between 1922 and 1969, and was alive on October 5, 1996.

2 Definition of Terms

Ancillary Documents:	All other Student Records that are not considered Primary Documents are considered Ancillary Documents.
Applicant	A former student applying for a CEP, including those represented by a Personal Representative as defined in the SA.
Assessment	Assessment refers to the determination of an application, whether resulting in approval or denial of the application.
Attendance:	The Applicant attended the educational program at the school, participated in activities at the IRS (although not a student there), or ate lunch at the IRS. Attendance neither confirms nor negates residency.
Document Gap:	A period of one or more Unconfirmed Years for which there are incomplete Primary Documents or for which the Primary Documents do not apply to the Applicant, as in the case of Applicants who were not Status Indians (e.g. non-status Indian, Métis, Inuit, and non-Aboriginal).
Eligible Year:	A School Year, or part thereof for which an Applicant's Residence is confirmed.
Ineligible Year:	A School Year for which an Applicant's Residence has not been confirmed.
Middle-Year Indicator	Probability distribution model used to infer the likelihood that an Applicant should appear on Primary Documents had they been in Residence at any time.
Primary Documents:	A document is considered primary if the document was created for the purposes of being a complete list of all status residential students and subject to audit by the Federal Government. These documents are Quarterly Returns and Enrolment Returns. Quarterly Returns ("QRs") were intended to be comprehensive lists of all (status) students who Resided at the IRS, and as such, they are the primary documents used for Assessment of Residence. They were filed for calendar quarters ending on March 31st, June 30th, September 30th and December 31st. They listed the students who were in Residence in order to obtain the per capita grants paid to IRSs. Usually, the students are listed with their registration number, their band and date of birth; often, their date of admission is also noted. Effective September 1971, Enrolment Returns ("ERs") replaced the QRs; they were issued twice a year, in March and September, but had essentially the same purpose. Primary Documents are considered to be complete if there are full QRs or ERs for all the School Years that the Applicant requests. Primary Documents were used by most IRSs and principally used for former students who were status. Persons who were not Status Indians may not have been reported in the same manner. Some Quarterly Returns also list day school students (or students who received lunches at the IRS), but they are identified separately from the resident students.

Reasoned Assumption:	Refers to the situation where Assessment of Residence is not possible due to Document Gaps, but through use of contextual information and based on the totality of the information available, conclusions can be drawn. *e.g., Where Assessment of Residence is not possible due to Document Gaps, but the Applicant was found to have attended the IRS, and it has been confirmed that the specific IRS did not have day school facilities for the specific period, the Trustee will make the Reasoned Assumption that the Applicant was Resident at the IRS while he or she attended.*
Residence:	The Applicant resided overnight at an IRS for one or more nights in a School Year and may have attended classes at the IRS, a public school or a federal day school.
School Year:	A School Year is defined as September 1st of any given year to August 31st of the following year.
Student Records:	Any records or documents that identify one or more former IRS students by name that may assist with the Assessment of an Applicant's Residency and/or duration at an IRS. These records may include Primary, Ancillary or other types of documents.
Unconfirmed Year	A School Year for which the Applicant has applied for CEP but for which Residence has not been determined.

3 CEP Process Flow

The CEP is a lump-sum payment that recognizes the experience of residing at an IRS, and its impacts. Upon Assessment, each eligible former student who applies for the CEP will receive $10,000 for the first School Year or part thereof of Residence plus an additional $3,000 for each subsequent School Year or part thereof after the first School Year (subject to deduction if the Applicant received an Advance Payment ("AP")). All former students who resided at an IRS who were alive on May 30, 2005 will be eligible for the CEP. Those eligible include but are not limited to First Nations, Métis, and Inuit former students.

The process begins with collecting Applicant information, confirming its completeness and performing a preliminary assessment by verifying the Applicant's identity against the required identity documents.

The Trustee will implement an escalating Assessment process for assessing the eligibility of Applicants. This Assessment process will assess two elements: Residence at an IRS, and duration of Residence. This process relies on the available records which are more complete for some categories of Applicants than others. Therefore, it is important for the Applicant to self-identify on the application form that they were Status, non-Status, Métis, Inuit or non-Aboriginal while at IRS to ensure proper Assessment of their application form.

In cases of Personal Representatives applying on behalf of former students, and where basic information is not available from the former student (e.g., name of school), the Trustee will communicate with the Personal Representative to seek specific information that will assist in the validation of identity and/or Assessment of Residency.

The Trustee will also quality control a random sample of all CEP applications to ensure the accuracy of the CEP research process and results. The files to be quality controlled will be randomly selected and the results verified by research prior to forwarding findings to the Applicant. The planning assumption for the sample amount has been set at 10% of all applications but will be raised or lowered based on a more detailed statistical analysis to ensure the appropriate sample. Quality control reports, including any variance to the 10% sample, will be provided to the Trustee and to the Court Appointed Monitor.

STAGE 1: CARS

Initial processing of applications will be performed by CARS. For School Years where all Primary Documents are available, CARS may Assess CEP applications without requiring manual involvement. In the cases where there are Document Gaps, Assessment of applications by CARS will be based on Interpolation or using the Middle-Year Indicator.

STAGE 2a: Manual Review

Generally, where CARS cannot Assess and/or Document Gaps exist, manual review will result.
Assessment by manual review will involve:

1. Analysis of Ancillary Documents and additional information that CARS did not consider (e.g. a date of admission on a later Primary Document), including information obtained through other Applicants when authorized);
2. Reasoned Assumption where Assessment of Residence is not possible due to Document Gaps, but a Reasoned Assumption can be made based on contextual information from the totality of the information available;
3. Where the analysis of the Ancillary Documents and additional information warrants, Interpolation will be applied; and/or,
4. Mathematically-based Inferences can be made to calculate the duration where Residence is confirmed and either a start or end date is confirmed.

STAGE 2b: Request for Additional Information

The Trustee intends to seek documentation and/or information from Applicants that will enable Assessment of eligibility in instances where there is a complete gap in the Student Records or Residence cannot be Assessed after manual review, Inference, Interpolation and Reasoned Assumptions are considered. Where information provided by Applicants can be verified against time-specific information known about each relevant IRS (e.g. the Applicant is able to provide the name(s) of their dorm supervisor(s), or name(s) of other staff and/or students who were at the IRS at the same time and this is corroborated by the historical records), such supplementation would permit Assessment at this stage to be performed according to the same standards used for Stages 1 and 2a. This process will be applied where the Student Records are incomplete or Residence cannot be Assessed so that the benefit of the doubt will be given to the Applicant in Assessment of Residency. Any/All information provided orally (over the phone, to call centre agents in the CEP Response Centre) by a CEP Applicant or his/her Estate or Representative, cannot be incorporated into research products related to IAP/ADR.

STAGE 3: Reconsideration

Applicants will be able to initiate Reconsideration of their application in instances when their application is denied, in whole or in part, whether they are able to provide additional information or documents or not.. Additional information could be another name to search against available records, or the provision of documents that put the Applicant at an IRS during their cited time period. Every Applicant (with the exceptions noted below in Stage 4) has the right to Reconsideration so long as they are able to initiate their request before the CEP period has expired.

STAGE 4: Appeal

Applicants who have been denied their application, in whole or in part, after reconsideration may appeal to the National Administration Committee ("NAC") for a determination. Applicants may not appeal to the NAC unless reconsideration has occurred.

All Applicants will have the right of appeal except in cases where:

1. The Applicant has not applied for and received a decision on reconsideration;
2. The school for which they have applied is not an IRS as defined in the SA; or,
3. The person for whom the application is made died prior to May 30, 2005 or, for Cloud Class Members died prior to October 5, 1996.

An appeal to the NAC of a decision by the Trustee may be brought as of right within 12 months of the date upon which the Applicant received the decision denying their reconsideration request. Appeals to the NAC may be brought after that period only with leave of the court. The appeal procedure shall be in writing. The NAC will not hold oral appeals. An Applicant shall not be entitled to more than one appeal in respect of an Application, except where a file has been affected by an amendment to the CEP process.

4 CEP Validation Principles

The principles by which CEP validation will be conducted are as follows:

1. Validation is intended to confirm eligibility, not refute it;

2. Validation must accommodate the reality that in some cases records may be incomplete;

3. Validation must be based on the totality of the information available concerning the application;

4. Inferences to the benefit of the Applicant may be made based on the totality of the information available concerning the application;

5. If information is ambiguous, interpretation should favour the Applicant;

6. This principle (6) shall apply to Applicants who identify themselves as having been status Indians at the time of residency in a residential school. The absence of such an Applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non Residence that year. An Applicant whose application is denied on this basis may seek reconsideration based on the provision of further information;

7. Where an application is not accepted in whole or in part, the Applicant will be advised of the reasons and may seek reconsideration based on the provision of additional information that relates to the rejection, including evidence that may be provided by the Applicant personally which may include:

    - photographs;
    - other documentary evidence of a connection with the school;
    - affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school;
    - an affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events;

8. An application will not be validated based on the applicant's bare declaration of Residence alone.

5 Reconsideration Process

Once a Common Experience Payment application is processed, applicants receive a detailed letter explaining the result of their assessment, as well as the reasons for denial, and how to proceed if they do not agree with the Trustee's decision.

This process is called Reconsideration. Every Applicant has the right to Reconsideration, except cases where:

- The school for which they have applied is not an IRS as defined in the SA; or,
- The person for whom the application is made died prior to May 30, 2005 or, for Cloud Class Members, prior to October 5, 1996.

Reconsideration will be initiated by the Applicant. As per the CEP Validation Principles 7 and 8, an Applicant will be given an opportunity for reconsideration when their application is denied in whole or in part.

Applicants do not need to provide additional information in order to have their file reconsidered. However, applicants are encouraged to provide any information they many have that might help researchers to confirm residence and years of residence.

Examples of such information could include:

- additional names or nicknames that the Applicant may have used while at IRS;
- photographs;
- other documentary evidence of a connection with the school;
- affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school
- an affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events.

An application will not be approved based on the Applicant's bare declaration of Residence alone.

The Trustee will review any and all information and documents provided by the Applicant. New information will be reviewed in the context of all available information. Where a clear discrepancy arises between the new information provided and other material previously reviewed such that there is a balanced case supporting either approval or rejection, the Assessment will be made in favor of the Applicant.

Applicants dissatisfied with the outcome of their request for reconsideration rendered by the Trustee, will have the right to appeal the decision to the National Administration Commission (NAC).

Information Intake / Processing

Reconsideration will involve the intake of new and additional information in both written form and orally through the IRSRC Response Centre. Applicants have access to the Reconsideration Request Form on the Trustee's website. Requests for Reconsideration and additional information will be received by the Trustee through the following avenues:

1. Via Mail (including internal mail, courier, etc)
2. Via Fax
3. Via E-Mail
4. Via Response Centre

The requests for reconsideration and information received by the Trustee, will be tracked, monitored and managed in an efficient and time sensitive manner by following the Reconsideration Document Management Procedures developed by the Trustee, to ensure that the complexity of the issues have been captured and considered. The requests will be processed by order of date received to ensure fairness and transparency. Also, priority will be given to elderly applicants requesting reconsideration.

Information provided orally to the IRSRC Response Centre will be documented during the conversation with the applicant. This information will be recorded in SADRE and transferred to the Trustee upon completion of the phone call. The oral information provided by the applicants in the CEP process is to be withheld from information provided by Canada to the IAP Secretariat and the conversation will not be used by Canada in the IAP Process

Priority and Timelines

In an effort to ensure fairness and transparency while balancing the urgency associated with the most elderly, reconsideration requests will be processed based on the following priority:

1. Elderly (where the Applicant was 65 or older as of May 30, 2005);
2. In order of date received, while at the same time dedicating a small team to address the files that can be processed quickly (ie. quick hits).

It is important to note that although some requests may be processed within a few days, on average, the majority of files will be processed within 90 days. At the same time, some files will be extremely complex and may take up to 160 days in order to be processed.

If after 90 days, the Trustee still has not rendered a decision, a system's flag will trigger a letter that will be sent to the Applicant notifying them that the Trustee is still working on their file and additional time is required.

6 Documents Provided by Applicants Which Might Be Used to Confirm Residence

These documents will be examined in order to evaluate if they can confirm either Residence or Attendance, depending on the context. These records are reviewed with the totality of findings and contextual knowledge about the IRS, and the Applicant's information is incorporated into the assessment. For example, if it is known that there were no day school students present during the Applicant's time at an IRS, a document need only show Attendance at the IRS. Many of the types of records listed have been provided by Advance Payment ("AP") Applicants. This list is not meant to be exhaustive.

- Documents from other government sources, which reference Applicant's place of Residence being an IRS (Children's Aid Society records, RCMP records on truancy, Social Services records, etc.)
- Counsellors' monthly reports
- Medical records, physical exams
- Newsletters, yearbooks, journals
- Photographs (sent with enough contextual info on photo or archival description itself [e.g., name of student and date clearly listed], and always reviewed alongside other documents and knowledge about the school)
- Student Records
- School Ledger
- Vocational Class Lists
- Correspondence (from school, government, student, or parents in which date and/or postage is present)
- Class reports
- Transportation Lists
- Contemporaneous secondary source documents (articles from local newspapers)
- Census records
- Band Membership Lists
- Inuit Disc List
- Affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school
- An affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events

Applicants providing one or more of the documents listed above in support of their Reconsideration request but which also concerns, covers or mentions other former students, wherein acquisition of such records would assist the Trustee in supplementing incomplete record collections, will be asked if he or she consents to have such documents used by the Trustee and IRSRC to confirm the residence of those other former students. If the answer of the Applicant is positive, then such documents will be added to the Ancillary Documents database and used to confirm residence as applicable.

7 Guidelines to Assess Applicant's Documents

Documents provided by Applicants will be analyzed by the Trustee. The content of the document is equally important as the type of document provided. Ultimately, final decisions are within the Trustee's authority, subject to appeal to the NAC and the court.

The following guidelines, though neither exhaustive nor universally applicable, are meant to give an overview of the type of information that will be looked for, in order to assess whether or not the new document will confirm Residence for the School Year(s) in question:

- Does the document speak specifically to Residence at the IRS, rather than just Attendance?
- What is the source of the document? Is it an original copy or a certified copy provided by another level of government, Church, or perhaps a Band or Community Repository?
- Does the document list the Applicant's name?
- Does the document list the name of the IRS?
- Does the document contain a contemporaneous reference to the date?
- If the document was created after the time period it covers, was it created prior to commencement of negotiations for the SA?
- If the document does not specify Residence on its own, can it be reviewed in light of IRS-specific knowledge (e.g. does the Trustee know there were no day students at the IRS, when the document was created) to confirm Residence?
- If the document does not specify Residence on its own, can it be reviewed in light of information provided by the Applicant and by other applicants (e.g. does the Trustee know that the Applicant's home was too far from the school in question to allow for Attendance as a day student?) to confirm Residence?

8 Reconsideration Assessment Process

Prior to reviewing any additional information provided by an applicant, the original research findings will be revisited in SADRE.

The School Attendances Analysis tab will be reviewed to determine whether the original assessment of the file was done by CARS, or by a manual researcher in either Stage 2a or Stage 2b, and on what date the application was originally assessed.

If the original research was conducted manually, the reconsideration assessment will be conducted by a different researcher, wherever possible and practical.

The researcher will determine if the application was originally assessed prior to the release of CARS v.2 and/or prior to the implementation of Streamlined Research procedures for Stage 2a Assessment.

A review of all CARS decisions, application of Interpolation and/or Inference models, reasoned assumptions or notes which indicate the basis of the original assessment, in whole or in part will be performed. This analysis will ensure the application is subjected to the current research protocols and standards for assessment.

A new instance will be opened in SADRE School Attendances Analysis tab, and a new search will be performed using the manual CARS interface.

A search of ancillary records (using manual CARS interface, research databases, and/or review of other records in the possession of the Trustee) will be performed. Particular attention will be paid to locate and review records received after the application was originally assessed, including records received through ongoing document collection and through the reconsideration process itself.

The researcher will check SADRE to determine if additional documents or information have been provided by the applicant. The researcher will review scanned images of all such documents in SADRE.

Documents provided by the applicant will be reviewed to assess eligibility for any years which have not been assessed through the review of original research findings and the review of ancillary records (*see also Section 7: Guidelines to Assess Applicants Documents)*.

Where additional information is provided by the applicant (verbal information provided to the CEP Response Centre over the phone and/or statement notes about the applicant's time at the IRS submitted on the Reconsideration form), assessment will be performed according to the same standards used in Stages 1, 2a, and 2b.

In instances where there is a complete gap in the student records, or where residency cannot be assessed after review of original research findings, the review of ancillary records or of documents provided by the applicant, a review of any/all additional information provided by the applicant will be performed.

A piece of information provided by the applicant which can be verified against time-specific information known about each relevant IRS (e.g. the applicant is able to provide the name(s) of their dorm supervisor(s), or name(s) of other staff and/or students who were at the IRS at the

same time and this is corroborated by the historical records), would permit assessment at this stage to be performed according to the same standards used for Stages 1 (CARS) and 2a.

Assessment of a piece of information and this process of review is only applied where the student records are incomplete or residence cannot be assessed so that the benefit of the doubt will be given to the applicant in assessment of residency.

Wherein any portion of the application is deemed eligible for payment after this review, the School Attendances Analysis Tab will be updated to generate a supplemental payment. Service Canada will then process the supplemental payment. After reconsideration is complete (whether a supplemental payment was approved or not) Service Canada will send a letter which advises the applicant of the outcome of the reconsideration process, and of the opportunity to appeal the decision.

If the full assessment of the application is not complete after these steps are performed (e.g. applicant provided information pertained to IRS "x" only, where records are complete and the application was fully assessed, but additional information is required for IRS "y" in order to complete the reconsideration process), the researcher will request a "follow-up" applicant contact, using the SADRE communications tab to provide more specific instructions to the CEP Response Centre agents in order to guide the applicant to provide information that may assist in the assessment of eligibility.

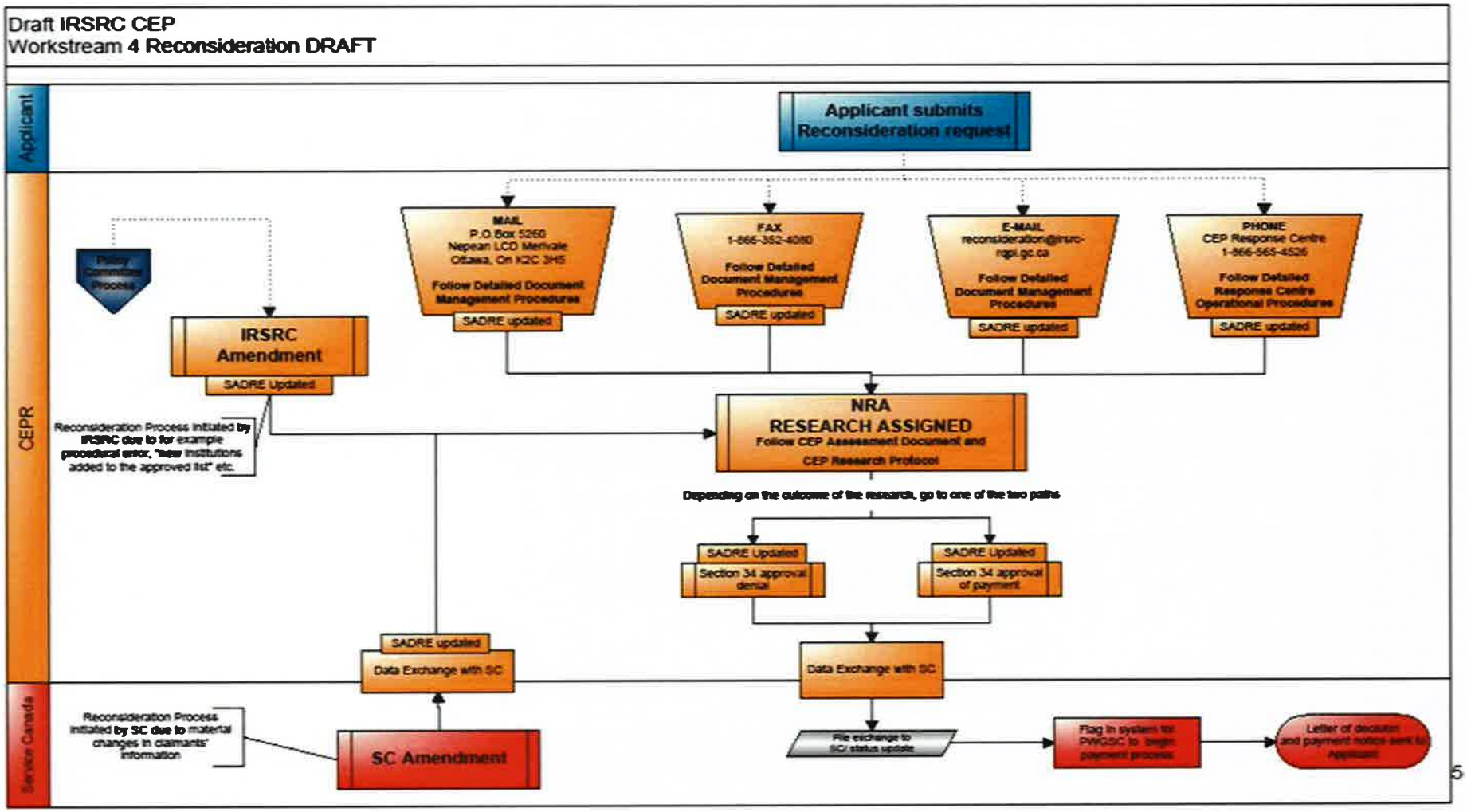
9 Reasons for Denial of Payment at Reconsideration

Based on the rules set out in this document, an application may be denied, in whole or in part, if one of the following is found:

- The Applicant's Residence could not be confirmed.
- An Applicant who was a Status Indian is not found on documents but the Primary Documents are complete (or sufficiently complete) for all School Year(s) requested.
- The Applicant applied for a school that is not an IRS.
- The Applicant submitted multiple application forms. The duplicate(s) will not be approved.
- The IRS was not open during the time periods specified by the Applicant.

Appendices

Appendix A – CEP Reconsideration Workstream



Appendix B – Reconsideration Form - sample

Indian Residential Schools Resolution Canada

Résolution des questions des pensionats indiens Canada

CEP – Request for Reconsideration

CEP Transaction ID		**WIID**	
Last Name		**Given Names**	
Nicknames or other traditional names not indicated on your application		**Date of Birth**	
Indian Residential School(s) at which you lived		**Years lived there**	
Years confirmed		**Years denied**	

If you wish to apply for a reconsideration of your CEP application, please provide any additional information that might help us confirm that you lived at the Indian Residential School(s) indicated on your application form.

Please mail completed forms to:
Common Experience Payment Response Centre
P.O. Box 5260
Nepean LCD Merivale
Ottawa, ON K2C 3H5
(or) Fax: 1-866-352-4080
(or) E-mail: reconsideration@irsr-rqpi.gc.ca

RECORD OF DECISION (NAC) - RESCINDED

Record No.: 005/NC
Date: April 29, 2009

ON JUNE 19, 2009 THE NAC UNANIMOUSLY RESCINDED RECORD OF DECISION NO.: 005/NC.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

MERCHANT LAW GROUP (E.F.A. Merchant/Jane Ann Summer)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

RECORD OF DECISION (NAC)

Record No.: 006/NC
Date: September 2, 2010

ISSUE

The CEP appeal protocol provides a 12 month limitation period for bringing an appeal from reconsideration to the NAC. CEP Appeals beyond the 12 month limitation may be brought only with leave of the NAC. The attached document sets forth the procedure adopted by the NAC with respect to any applications for such leave.

VOTES

	FOR	AGAINST	ABSTAIN/ NO RESPONSE
CANADA (Catherine A. Coughlan)	X		
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X		
INUIT (Gilles Gagné)	X		
CHURCHES (Alex Pettingill/Rod Donlevy)	X		
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X		

MERCHANT LAW GROUP (E.F.A. Merchant)	X		
NATIONAL CONSORTIUM (Jon Faulds/Dan Carroll)	X		

DETERMINATION

The attached procedure was approved unanimously.

In the interests of establishing an appropriate procedure for considering leave applications, where a CEP appeal is brought after the expiry of the twelve month period, the following procedure shall apply.

First, a summary of the reasons for delay shall be provided to the NAC. The summary shall include:

1. Where contact is made with the Appellant, the reasons given by the Appellant for the delay;

2. Where contact is not made with the Appellant, a summary of Crawford's efforts to contact the Appellant to inquire about the reasons for the delay and the results thereof. Crawford shall attempt to contact Appellants in accordance with the following contact procedure, which is hereby approved for that purpose:

Crawford contact procedure.

- Crawford will make five call attempts over a two-week period to speak with the appellant to verbally obtain the required information;
- If these calls are unsuccessful, Crawford shall send a contact letter and allow 30 days for a reply from the appellant;
- If no reply is received Crawford shall make an additional five call attempts.
- If unsuccessful Crawford will allow a further another 16 days for a reply from the appellant, following which the appellant's file will be returned to INAC for further handling as is.

3. The Application for Appeal and any letter or notes attached to the Application for Appeal. Note: The full appeal package shall <u>not</u> be included; and

4. The length of time by which the Appeal exceeds the 12 month time period.

Second, in deciding whether to grant leave to the Appellant the NAC will consider the above, and the explanation for the delay, if any.

Third, unless otherwise ordered by the Court the NAC shall not allow any extension of an appeal period beyond September 19, 2012.

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 007/NC
Date: January 18, 2013

ISSUE

The NAC has reviewed their mandate under the Settlement Agreement, particularly Articles 4 and 6, with respect to issues of concern regarding timelines and commitments made to survivors and resolved that the attached Resolution be directed to the Indian Residential Schools Secretariat, the Chief Adjudicator and the Oversight Committee to plan and meet the performance standards as set out therein.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan/Paul Vickery)		X		
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			
INUIT (Gilles Gagné/Janice Payne)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)		X		
INDEPENDENT COUNSEL (Peter Grant/Brian O'Reilly)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

MERCHANT LAW GROUP (E.F.A. Merchant/Jane Ann Summer)	X			
NATIONAL CONSORTIUM (Alan Farrer/Darcy Merkur)	X			

DETERMINATION

Motion carried with a five member vote.

RECORD OF DECISION (NAC)

Record No.: 008/NC
Date: January 18, 2013

ISSUE

WHEREAS the Indian Residential Schools Settlement Agreement ("IRSSA") requires that Canada provide sufficient resources to the IAP process to ensure that certain standards for processing IAP claims are met, including the 9 month deadline after a claim has been screened in for an offer of hearing date and the 6 year deadline from Implementation Date for all IAP Applications to be processed;

AND WHEREAS it is apparent that in the present circumstances neither of these two deadlines has been or can be met;

AND WHEREAS it is also apparent that the failure to meet these deadlines is due to the lack of sufficient resources for the IAP claims process, as evidenced, inter alia, by minutes of the Oversight Committee and by the 2011 Annual Report of the Chief Adjudicator;

AND WHEREAS it is possible that it may take until 2017 for all IAP Applications to be processed; "processed" defined by having had a first adjudication hearing, with final adjudication and payment of a successful application potentially taking up to an additional year or more;

AND WHEREAS the increase in resources to complete the IAP process earlier may not increase overall costs as an extension to 2017 will lead to an increase in costs in any case and increasing resources to complete earlier may even lead to a net saving;

AND WHEREAS many survivors are elderly or ill and the number of survivors who will not live to have their IAP claim adjudicated continues to mount as time passes;

AND WHEREAS all Parties to the IRSSA recognized at the time of the Settlement and the Court Approvals that it was critical to complete the IAP process in a timely manner due to the age and health of the survivors of the Residential Schools, which led to the requirement to complete the IAP process by 2015;

AND WHEREAS no IAP claimant ought to be faced with the spectre of a four to five year wait for his or her claim to be resolved, and such a delay is unacceptable to the National Administration Committee ("NAC");

AND WHEREAS the NAC has an overall supervisory role in relation to the IRSSA generally and in relation to resources for the IAP specifically;

THEREFORE BE IT HEREBY RESOLVED THAT:

1. The Indian Residential Schools Secretariat, the Chief Adjudicator and the Oversight Committee are hereby requested to plan and act to accelerate the IAP timetable to meet the following performance standards:

    a. That every claim be offered a hearing date within 9 months of having been screened in, unless a claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that o bjective, in fulfillment of Article 6.03(1)(c) of the IRSSA; and

    b. That all IAP Applications filed before the application of the IAP Application Deadline be processed prior to December 31, 2015 unless a claimant's failure to meet one or more of the requirements of the IAP frustrates compliance with that objective; and

    c. That in any event, no fewer than 6,000 IAP claims per year (including NSP resolutions) be processed commencing September 1, 2013.

2. Canada is hereby requested to provide the resources for an accelerated timetable for IAP claims processing necessary to achieve the foregoing performance standards, including but not limited to:

    a. Relaxation or modification of impediments to staffing identified in minutes of the Oversight Committee and in the 2011 Annual Report of the Chief Adjudicator;

    b. Assistance otherwise to the Indian Residential Schools Secretariat and the Chief Adjudicator by way of increase in budget allocation of monies, staff and other resources as necessary or advised to meet the performance standards set out above;

    c. Assignment of additional resources, including but not limited to budget allocation of monies, staff and other resources to Canada departments and agencies participating in and supporting the IAP claims process either directly or indirectly, such as expedited provision of mandatory documents by federal document holding agencies and additional provision of Justice and other hearing and NSP-related staff

that may be required to satisfy the increased demand for same arising in connection with meeting the performance standards set out above.

3. The Indian Residential Schools Secretariat, the Chief Adjudicator, the Oversight Committee and Canada are hereby requested to:

   a. respond to the NAC on or before March 31, 2013 with their plans to meet these requests, and

   b. incorporate their plans to meet these requests in any application to the Court to extend or modify the 9 month and the 6 year deadlines, or either of them.

VOTES

RESPONSE	FOR	AGAINST	ABSTAIN	NO
CANADA (Catherine A. Coughlan/Paul Vickery)	☐	☐	X	☐
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X	☐	☐	☐
INUIT (Hugo Prud'homme/Gilles Gagne)	X	☐	☐	☐
CHURCHES (Alex Pettingill/Rod Donlevy)	☐	X	☐	☐

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (E.F.A. Merchant/Jane Ann Summer)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a five member vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

RECORD OF DECISION (NAC) - CLARIFIED

Record No.: 009/NC
Date: November 27, 2013

ISSUE

In connection with the Adjudication Secretariat's IAP completion plan, the IAP Oversight Committee has approved on April 24, 2013, amended May 28, 2013, an "Incomplete File Resolution Procedure" to address case management and in some cases dismissal of IAP claims where the file is unable to proceed to hearing because it is incomplete. That procedure was discussed in a meeting of the NAC with the Chief Adjudicator and the Secretariat on September 17, 2013 and at a NAC meeting on November 27, 2013. Because that procedure provides for dismissal of a claim without a hearing, the NAC has been asked to approve the procedure.

THEREFORE BE IT HEREBY RESOLVED THAT:

1. The NAC hereby approves in principle the Incomplete File Resolution Procedure subject to the following.

2. The NAC does not support paragraph 22.6 of the Incomplete File Resolution Procedure. The NAC would support an expedited process for application to the supervising courts for directions where the Chief Adjudicator reasonably believes the conduct or caseload of a counsel would interfere with achieving the proposed completion deadlines.

3. This approval in principle shall not operate as a bar in any way to members of the NAC and those represented by members of the NAC from raising specific concerns or objections to portions of the Incomplete File Resolution Procedure.

VOTES

	FOR	AGAINST	ABSTAIN	NO RESPONSE
CANADA (Catherine A. Coughlan)	X			
ASSEMBLY OF FIRST NATIONS (Kathleen Mahoney)	X			

Please note that each member has five (5) business days from the date of receipt to clarify the Record

INUIT (Hugo Prud'homme)	X			
CHURCHES (Alex Pettingill/Rod Donlevy)	X			
INDEPENDENT COUNSEL (Peter Grant)	X			
MERCHANT LAW GROUP (Jane Ann Summer/E.F.A. Merchant)	X			
NATIONAL CONSORTIUM (Dan Carroll/Jon Faulds)	X			

DETERMINATION

Motion carried with a unanimous vote.

Please note that each member has five (5) business days from the date of receipt to clarify the Record

Appendix E

COMMON EXPERIENCE PAYMENT

PROCESS & ASSESSMENT

February 15, 2008

Acronyms

AP	Advance Payment
CARS	Computer Assisted Research System
CEP	Common Experience Payment
DR	Daily Register
ER	Enrolment Return
IRS	Indian Residential School
NAC	National Administration Committee
QR	Quarterly Return
SA	Settlement Agreement

Common Experience Payment – Process & Assessment

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1 Executive Summary

For many former students of Indian Residential Schools (as defined in the Settlement Agreement and referred to as “IRS”), the Common Experience Payment (“CEP”) will be their entry point into the services provided by the broader Settlement Agreement (“SA”). To ensure that the spirit of reconciliation and healing that is the ultimate aim of the SA is reflected in the delivery of the CEP, the Courts have approved Assessment principles to ensure that every eligible Applicant receives the correct amount of compensation and that this compensation reaches the intended recipients. At the same time, Assessment must be fair, objective, timely, and practical, minimize the onus placed on Applicants, be efficient, and executed with a minimum of errors.

The Assessment of CEP applications poses many complex challenges for the Trustee of the CEP funds (i.e., the Government of Canada), namely the sheer volume of applications and service standard requirements. Essential to the ability to respond to these challenges is the deployment of the Computer Assisted Research System (“CARS”). This expert system was developed in-house for the express purpose of capturing the expertise of a researcher. CARS consistently deploys this expertise at a fraction of the time and cost of manual research. This step was necessary in order to meet the anticipated volume of applications to be received.

The Trustee is implementing an escalating Assessment process for assessing eligibility of Applicants. CARS deploys many advanced techniques to enable initial processing of applications. To support this capability, CARS will be supplemented by a team of expert researchers who will manually determine inconclusive or incomplete findings by CARS.

2 Definition of Terms

Ancillary Documents:	All other Student Records that are not considered Primary Documents are considered Ancillary Documents.
Applicant:	A former student applying for a CEP, including those represented by a Personal Representative as defined in the SA.
Attendance:	The Applicant attended the educational program at the school, participated in activities at the IRS (although not a student there), or ate lunch at the IRS. Attendance neither confirms nor negates residency.
Denial / Rejection:	Refers to a CEP Application which is refused either in whole or in part in that the CEP payment approved and paid is less than that requested by the Applicant.
Document Gap:	A period of one or more Unconfirmed Years for which there are incomplete Primary Documents or for which the Primary Documents do not apply to the Applicant as in the case of Applicants who were not Status Indians (e.g. non-status Indian, Métis, Inuit, and non-Aboriginal).
Eligible Year:	A School Year, or part thereof for which an Applicant's Residence is confirmed.
Ineligible Year:	A School Year for which an Applicant's Residence has been denied.
Inference:	Refers to a calculation of duration of stay where Residence is confirmed, and either a start or end date is confirmed, but due to a Document Gap, the duration is unknown. In this instance, the duration of stay is calculated based on the model set out in Appendix B.1. (see Appendix B for a discussion of Inference).
Interpolation:	The approval of Unconfirmed Years occurring where there is a Document Gap for any School Years between Eligible Years (see Appendix B).
Middle-Year Indicator	Probability distribution model used to infer the likelihood that an Applicant should appear on Primary Documents had they been in Residence at any time. This model is set out in Appendix B.2 (see Appendix B for a discussion of the Middle-Year Indicator).
Primary Documents:	A document is considered primary if the document was created for the purposes of being a complete list of all status residential students and subject to audit by the Federal Government. These documents are Quarterly Returns and Enrolment Returns. Quarterly Returns ("QRs") were intended to be comprehensive lists of all (status) students who Resided at the IRS, and as such, they are the primary documents used for Assessment of Residence. They were filed for calendar quarters ending on March 31st, June 30th, September 30th and December 31st. They listed the students who were in Residence in order to obtain the per capita grants paid to IRSs. Usually, the students are listed with their registration number, their band and date of birth; often, their date of admission is also noted.

	Effective September 1971, Enrolment Returns ("ERs") replaced the QRs; they were issued twice a year, in March and September, but had essentially the same purpose. Primary Documents are considered to be complete if there are full QRs or ERs for all the School Years that the Applicant requests. Primary Documents were used by most IRSs and principally used for former students who were status. Persons who were not Status Indians may not have been reported in the same manner. Some Quarterly Returns also list day school students (or students who received lunches at the IRS), but they are identified separately from the resident students.
Reasoned Assumption:	Refers to the situation where Assessment of Residence is not possible due to Document Gaps, but through use of contextual information and based on the totality of the information available, conclusions can be drawn. (see Appendix B). *e.g., Where Assessment of Residence is not possible due to Document Gaps, but the Applicant was found to have attended the IRS, and it has been confirmed that the specific IRS did not have day school facilities for the specific period, the Trustee will make the Reasoned Assumption that the Applicant was Resident at the IRS while he or she attended.*
Residence:	The Applicant resided overnight at an IRS for one or more nights in a School Year and may have attended classes at the IRS, a public school or a federal day school.
School Year:	A School Year is defined as September 1st of any given year to August 31st of the following year.
Student Records:	Any records or documents that identify one or more former IRS students by name that may assist with the Assessment of an Applicant's Residency and/or duration at an IRS. These records may include Primary, Ancillary or other types of documents.
Assessment	Assessment refers to the determination of an application, whether resulting in approval or denial of the application period.
Unconfirmed Year	A School Year for which the Applicant has applied for CEP but for which Residence has not been determined.

3 CEP Process Flow

The CEP is a lump-sum payment that recognizes the experience of residing at an IRS, and its impacts. Upon Assessment, each eligible former student who applies for the CEP will receive $10,000 for the first School Year or part thereof of Residence plus an additional $3,000 for each subsequent School Year or part thereof after the first School Year (subject to deduction if the Applicant received an Advance Payment ("AP")). All former students who resided at an IRS who were alive on May 30, 2005 will be eligible for the CEP. Those eligible include but are not limited to First Nations, Métis, and Inuit former students.

The process begins with collecting Applicant information, confirming its completeness and performing a preliminary assessment by verifying the Applicant's identity against the required identity documents (see Section B of the Application Form at Appendix C).

The Trustee will implement an escalating Assessment process for assessing the eligibility of Applicants (illustrated in Appendix A). This Assessment process will assess two elements: Residence at an IRS, and duration of Residence. This process relies on the available records which are more complete for some categories of Applicants than others. Therefore, it is important for the Applicant to self-identify on the application form that they were Status, non-Status, Métis, Inuit or non-Aboriginal while at IRS to ensure proper Assessment of their application form.

In cases of Personal Representatives applying on behalf of former students, and where basic information is not available from the former student (e.g., name of school), the Trustee will communicate with the Personal Representative to seek specific information that will assist in the validation of identity and/or Assessment of Residency.

The Trustee will also quality control a random sample of all CEP applications to ensure the accuracy of the CEP research process and results. The files to be quality controlled will be randomly selected and the results verified by research prior to forwarding findings to the Applicant. The planning assumption for the sample amount has been set at 10% of all applications but will be raised or lowered based on a more detailed statistical analysis to ensure the appropriate sample. Quality control reports, including any variance to the 10% sample, will be provided to the Trustee and to the Court Appointed Monitor.

STAGE 1: CARS

Initial processing of applications will be performed by CARS. For School Years where all Primary Documents are available, CARS may Assess CEP applications without requiring manual involvement. In the cases where there are Document Gaps, Assessment of applications by CARS will be based on Interpolation or using the Middle-Year Indicator. (See Appendix B.2)

STAGE 2a: Manual Review

Generally, where CARS cannot Assess and/or Document Gaps exist, manual review will result.
Assessment by manual review will involve:

1. Analysis of Ancillary Documents and additional information that CARS did not consider (e.g. a date of admission on a later Primary Document);
2. Reasoned Assumption where Assessment of Residence is not possible due to Document Gaps, but a Reasoned Assumption can be made based on contextual information from the totality of the information available;
3. Where the analysis of the Ancillary Documents and additional information warrants, Interpolation will be applied; and/or,
4. Mathematically-based Inferences can be made to calculate the duration where Residence is confirmed and either a start or end date is confirmed.

STAGE 2b: Request for Additional Information

The Trustee intends to seek documentation and/or information from Applicants that will enable Assessment of eligibility in instances where there is a complete gap in the Student Records or Residence cannot be Assessed after manual review, Inference, Interpolation and Reasoned Assumptions are considered. Where information provided by Applicants can be verified against time-specific information known about each relevant IRS (e.g. the Applicant is able to provide the name(s) of their dorm supervisor(s), or name(s) of other staff and/or students who were at the IRS at the same time and this is corroborated by the historical records), such supplementation would permit Assessment at this stage to be performed according to the same standards used for Stages 1 and 2a. This process will be applied where the Student Records are incomplete or Residence cannot be Assessed so that the benefit of the doubt will be given to the Applicant in Assessment of Residency.

STAGE 3: Reconsideration

Applicants will be offered by the Trustee the opportunity to initiate Reconsideration of their application in instances when their application is Denied. Applicants whose claims have been Denied will be advised in writing of the specific reasons for the Denial, that they have six (6) months to request a reconsideration in writing, and that applying for reconsideration is a precondition for appeal to the NAC. The 6-month period may be extended by the Trustee, acting reasonably. Within 60 days of receipt of the request for reconsideration, the Trustee will send a letter to the Applicant advising of receipt of the request for reconsideration and providing a date on which his or her request for reconsideration will be finalized. If the Trustee still Denies the claim after reconsideration, the applicant will be advised in the decision following reconsideration that he or she has 12 months from the receipt of the reconsideration denial to appeal to the NAC.

STAGE 4: Appeal

Applicants whose request for Reconsideration has been Denied may appeal to the National Administration Committee ("NAC") for a determination.

All Applicants having sought and been denied their claim after Reconsideration will have the right of appeal except in cases where:

1. The school for which they have applied is not an IRS as defined in the SA; or,
2. The person for whom the application is made died prior to May 30, 2005 or, for Cloud Class Members died prior to October 5, 1996.

The appeal procedure shall be in writing. The NAC will not hold oral appeals. An Applicant shall not be entitled to more than one appeal in respect of an Application. An appeal to the NAC of a decision by the Trustee may be brought as of right within 12 months from the receipt of the reconsideration denial. Appeals to the NAC may be brought after that period only with leave of the court or with leave of five members of the NAC as set out in the Appeal Protocol.

TRANSITIONAL PROVISIONS

All CEP Applicants who have been denied their claim and sent a decision letter by the Trustee prior to the Court approval of the present Protocol shall be informed in writing by the Trustee as soon as possible that their right to a Reconsideration of their denial is available to them within the then next six (6) months from the receipt of the written Advisory, respectively, without the requirement to supply new evidence or documentation.

Applications from denial decisions mistakenly addressed directly to the NAC shall be treated by Trustee as if they had been correctly sent for reconsideration.

4 CEP Assessment Principles

The principles by which CEP Assessment will be conducted are as follows:

1. Assessment is intended to confirm eligibility, not refute it;

2. Assessment must accommodate the reality that in some cases records may be incomplete;

3. Assessment must be based on the totality of the information available concerning the application;

4. Inferences to the benefit of the Applicant may be made based on the totality of the information available concerning the application;

5. If information is ambiguous, interpretation should favour the Applicant;

6. This principle (6) shall apply to Applicants who identify themselves as having been status Indians at the time of residency in a residential school. The absence of such an Applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non Residence that year. An Applicant whose application is denied on this basis may seek reconsideration;

7. Where an application is denied, the Applicant will be advised of the reasons and may seek reconsideration. The Applicant may provide additional information that relates to his or her claim, including :

    - photographs;
    - other documentary evidence of a connection with the school;
    - affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school;
    - an affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events;

8. An application will not be approved based on the applicant's bare declaration of Residence alone.

5 CEP Assessment Process

5.1 STAGES OF REVIEW

5.1.1 Stage 1: Computer Assisted Research System (CARS): Electronic Search of Records in Accordance with CARS Business Rules

- At Stage 1, all available Primary Documents for the IRS (s) cited in the application within 10 years on either side of the period cited are reviewed for possible matches to the Applicant (based on name(s), date of birth, age, and/or gender).

- When there are complete Primary Documents for each IRS and School Year requested by an Applicant who was Status Indian, the result yielded by CARS determines the Assessment of the application, in whole or in part (applications by persons who were not Status Indians will generally require further investigation).

- Where there are Document Gaps, CARS applies Interpolation. An example would be when an Applicant states that they were in Residence from 1960 to 1968. CARS is able to Assess 1960 to 1963, and 1967 to 1968. Residence cannot be Assessed between 1964 and 1966 due to Document Gaps. In this instance, CARS will approve the School Years that fall in the period of the Document Gap (i.e. 1964 to 1966), allowing Assessment of all years cited..

- CARS can only confirm Eligible Years during this stage when an Applicant is found on a Primary Document, or when Residence can be Interpolated.

- If there are issues in matching, an application is flagged for Manual Review. An example would be where there are multiple dates of birth, inconsistent student numbers, or two potential name matches in a given School Year.

- In accordance with Assessment Principle 6, CARS will determine a School Year to be an Ineligible Year where an Applicant who was Status Indian, is:

    - not found on a Primary Document when records for the School Year(s) applied for are complete;
    - not found on the Student Records and any Document Gaps are small enough that there is high certainty (20:1) the Applicant was not Resident (see Appendix B.2);
    - found on a Primary Document but is listed as a day student; or,
    - found on a Primary Document but identified as being absent for the entire School Year.

- For Applicants who were not Status Indians during the time they resided at IRS, CARS can confirm Residence if he/she appears on Primary Documents; however, CARS cannot deny the Applicant at this stage and will instead flag the application for manual review.
- Any application not determined at Stage 1 will be sent to Stage 2a, with the exception of:
    - where there is a complete gap in the Primary Documents and the Applicant is not found on any Ancillary Documents for the School Years of the IRS requested, CARS will flag the application for Request for Additional Information. (Stage 2b).

5.1.2 Stage 2: Manual Review

5.1.2.1 Stage 2a: Manual Review

- At Stage 2a, the Trustee may determine an application based on information contained in any Student Record, not only on Primary Documents as in Stage 1.

- If flags were raised during Stage 1, the output of Stage 1 is analyzed by an expert researcher.

- The expert researcher will endeavour to confirm Residence in the following ways:
  - assessment of the content and/or context of the Student Records (e.g. a discharge form that gives initial date of entrance);
  - assessment of whether the content and/or context of the Student Records enables a Reasoned Assumption to made with respect to Residence (e.g. a laundry list only includes residential students);
  - assessment of whether day students attended the IRS in question; and/or
  - assessment of other sources of information.

    "Other sources of information" refers to additional resources that may be available to the Trustee. An example of this might be where an Applicant's home community was situated at such a distance from the IRS it precludes reasonable daily commuting to and from the IRS, in which case, a Reasoned Assumption can be made the Applicant was resident at the IRS.

- During the Manual Review process, all available Primary Documents and Ancillary Documents will be analyzed. Reasoned Assumptions, Interpolation and Inference will be applied as appropriate.

- If one or more School Year(s) is determined to be Eligible, the application is processed for payment for the Eligible Year(s). The Applicant will also be advised of any School Year(s) deemed to be Ineligible Years and provided with information explaining the Stage 3 – Reconsideration process.

- After Stage 2a Manual Review, where Assessment of Residence is not possible, the Applicant is contacted and more information is requested.

5.1.2.2 Stage 2b: Request for Additional Information

- At Stage 2b the Applicant will be able to establish Residence by providing two pieces of information that confirm Residence and this can be verified against time-specific information known about the IRS. The Applicant will be contacted and given opportunity to:
  - provide information in a written form (no need for it to be sworn, but affidavits will be accepted if sent) that helps confirm they lived at the IRS; and/or
  - answer questions by telephone regarding their memories from their time at the IRS.

- Applicants are not expected to provide perfect information about events that, in most cases, happened several decades ago. The kind of information that will be particularly helpful will be information about dorms, night staff, various evening routines, travel to and from school, etc. The focus in reviewing this information will be looking for information that is consistent with what is already known about the school and community. Keeping in mind that this process applies where the document record is insufficient, the benefit of the doubt will be given to the Applicant in the Assessment of Residence.

- Once Residence is confirmed, Interpolation, Inference and Reasoned Assumption will be applied to determine duration.

- Particular attention will be paid to Applications from Personal Representatives at this Stage.

- If the Applicant is deemed ineligible for one or more Schools Year(s) requested or Residence cannot be confirmed, the results will be communicated to the Applicant who will be advised of the Reconsideration process.

5.1.3 Stage 3: Reconsideration

- Reconsideration is available to all Applicants regardless of their status except in cases where:
  - The school for which they have applied is not an IRS as defined in the SA; or,
  - The person for whom the application is made died prior to May 30, 2005 or, for Cloud Class Members, prior to October 5, 1996.

- Reconsideration will be initiated by the Applicant. As per Assessment Principles 7 and 8, an Applicant will be given an opportunity for reconsideration when their application is denied and, if he or she wishes to do so, the applicant may provide additional information **but is not required to do so**. Examples of such additional information could include:
  - additional names or nicknames that the Applicant may have used while at IRS;
  - photographs;
  - other documentary evidence of a connection with the school;
  - affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school
  - an affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events;
  - An application will not be approved based on the Applicant's bare declaration of Residence alone.

- The Trustee will review any and all information and documents provided by the Applicant. New information will be reviewed in the context of all available information (per Principle 3). Where a clear discrepancy arises between the information provided and other material previously reviewed such that there is a balanced case supporting either approval or rejection, the Assessment will be made in favour of the Applicant.

- Applicants may appeal to the NAC from the reconsideration decisions denying their claim, and will be so informed by the Trustee of this right of Appeal

6 Documents Provided by Applicants Which Might Be Used to Confirm Residence

These documents will be examined in order to evaluate if they can confirm either Residence or Attendance, depending on the context. These records are reviewed with the totality of findings and contextual knowledge about the IRS, and the Applicant's information is incorporated into the assessment. For example, if it is known that there were no day school students present during the Applicant's time at an IRS, a document need only show Attendance at the IRS. Many of the types of records listed have been provided by Advance Payment ("AP") Applicants. This list is not meant to be exhaustive.

- Documents from other government sources, which reference Applicant's place of Residence being an IRS (Children's Aid Society records, RCMP records on truancy, Social Services records, etc.)
- Counsellors' monthly reports
- Medical records, physical exams
- Newsletters, yearbooks, journals
- Photographs (sent with enough contextual info on photo or archival description itself [e.g., name of student and date clearly listed], and always reviewed alongside other documents and knowledge about the school)
- Student Records
- School Ledger
- Vocational Class Lists
- Correspondence (from school, government, student, or parents in which date and/or postage is present)
- Class reports
- Transportation Lists
- Contemporaneous secondary source documents (articles from local newspapers)
- Census records
- Band Membership Lists
- Inuit Disc List
- Affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school
- An affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events

7 Guidelines to Assess Applicant's Documents

Documents provided by Applicants will be analyzed by the Trustee. The content of the document is equally important as the type of document provided. Ultimately, final decisions are within the Trustee's authority, subject to appeal to the NAC and the court.

The following guidelines, though neither exhaustive nor universally applicable, are meant to give an overview of the type of information that will be looked for, in order to assess whether or not the new document will confirm Residence for the School Year(s) in question:

- Does the document speak specifically to Residence at the IRS, rather than just Attendance?
- What is the source of the document? Is it an original copy or a certified copy provided by another level of government, Church, or perhaps a Band or Community Repository?
- Does the document list the Applicant's name?
- Does the document list the name of the IRS?
- Does the document contain a contemporaneous reference to the date?
- If the document was created after the time period it covers, was it created prior to commencement of negotiations for the SA?
- If the document does not specify Residence on its own, can it be reviewed in light of IRS-specific knowledge (e.g. does the Trustee know there were no day students at the IRS, when the document was created) to confirm Residence?
- If the document does not specify Residence on its own, can it be reviewed in light of information provided by the Applicant (e.g. does the Trustee know that the Applicant's home was too far from the school in question to allow for Attendance as a day student?) to confirm Residence?

8 Reasons for Denial

Based on the rules set out in this document, an application may be denied if one of the following is found:

- The Applicant's Residence could not be confirmed.
- An Applicant who was a Status Indian is not found on documents but the Primary Documents are complete (or sufficiently complete, as explained in Appendix B.2, Middle-Year Indicator) for all School Year(s) requested.
- The Applicant applied for a school that is not an IRS.
- Where the Applicant submitted multiple application forms, the duplicate will not be approved. If a duplicate includes a changed claim the changed claim will be addressed as an amendment to the original application to the extent that it refers to a claim for years in residence not previously applied for.
- The IRS was not open during the time periods specified by the Applicant.

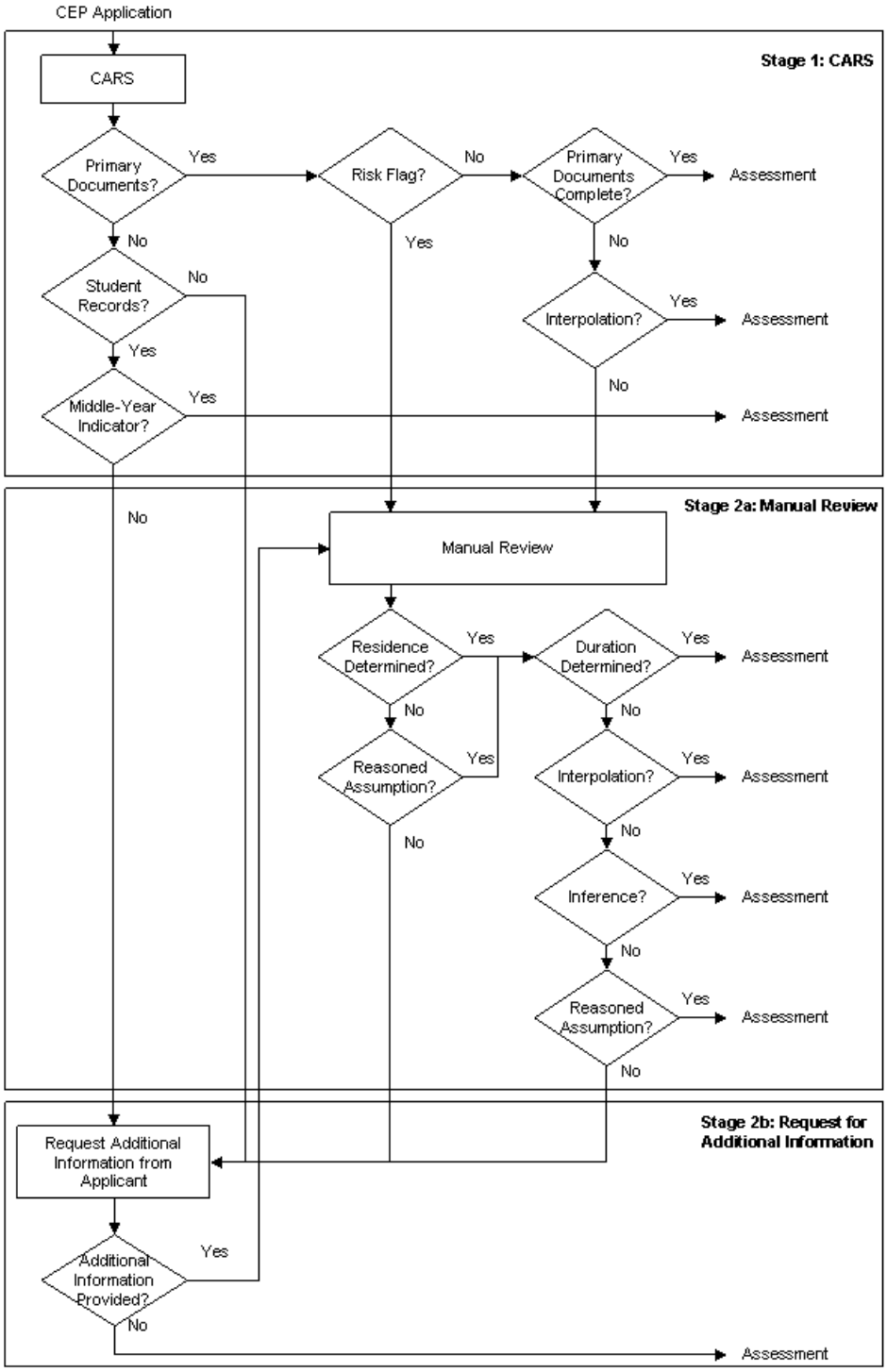
9 Threshold for closing file

Applicants are able to bring forward new information relevant to either Residence or duration of Residence at any time until the CEP period has expired.

Applicants wishing to provide new information, i.e. information not provided in their first CEP Application process, in respect of either schools or years of attendance not previously the subject matter of an application by them may provide this information to the Trustee at any time before the CEP Application Deadline. The Trustee shall then add this information to the information already provided by the Applicant and reassess the Application as a whole and communicate a reasoned decision to the Applicant.

Appendices

Appendix A – CEP Assessment Process Map[1]



[1] Assessment refers to the determination of an application, whether resulting in approval or denial of the application period.

Appendix B – Interpolation & Inference Policy

Stage 1 (CARS)

Interpolation

Interpolation is the approval of Unconfirmed Years occurring where there is a Document Gap for any School Years between Eligible Years. Stated another way, where Residence is confirmed on both sides of a Document Gap, CARS will Interpolate the in-between years. Interpolation at Stage 1 applies only to Applicants who are found on Primary Documents and primarily applies to Applicants who self-identify as Status Indians. Assessment is determined at this stage based on CARS Interpolation results.

e.g. If an Applicant states that they were in Residence from 1960 to 1968, and CARS is able to Assess 1960 to 1963, and 1967 to 1968, are Eligible Years. Residence cannot be Assessed between 1964 and 1966 due to Document Gaps. In this instance, CARS will approve the School Years that fall in the period of the Document Gap (i.e. 1964 to 1966) giving the applicant a total CEP representing 9 years.

Middle-Year Indicator

Middle-Year Indicator refers to a probability distribution model that infers the likelihood that an Applicant should appear on Primary Documents had they been in Residence at any time. This model is set out in Appendix B.2. For this model to be applied, the Applicant cannot be found, or is found to be not in Residence, on one or more Primary Documents for middle years where there is a 20:1 probability that the Applicant would have appeared on them as being resident, had they been in Residence. The Monitor will be advised to monitor the on-going use of the Middle-Year Indicator.

Assessment of applications by CARS will be based on the Middle-Year Indicator in the case where there are sufficient Student Records to apply this model (i.e. the Primary Documents for the middle years). This model is not applied if an Applicant is found on Ancillary Documents.

Stage 2 (Manual review)

Stages 2a, 2b, & Reconsideration:

Interpolation

The approval of Unconfirmed Years occurring where there is a Document Gap for any School Years between Eligible Years. Stated another way, where Residence is confirmed on both sides of a Document Gap, CARS will Interpolate the in-between years. Interpolation at Stage 2 applies to Applicants who are found on Student Records and applies to all Applicants. Assessment is determined at this stage based on manual review results.

Inference

Where CARS Inference results have been manually reviewed and verified or where, through the review of Student Records, Residence is confirmed and either a start date or end date has been confirmed, Residence will be confirmed for the period covered by the Document Gap in accordance with the rules referred to above.

Inference refers to a calculation of duration of stay where Residence is confirmed, and either a start or end date is confirmed, but due to a Document Gap, the duration is unknown. In this

instance, the duration of stay is calculated based on the model set out in Appendix B.1. This model relies on the alignment of the Applicant provided information to the period confirmed against the Student Records.

Reasoned Assumptions

Refers to the situation where Assessment of Residence is not possible due to Document Gaps, but through use of contextual information and based on the totality of the information available, conclusions can be drawn..

e.g., Where Assessment of Residence is not possible due to Document Gaps, but the Applicant was found to have attended the IRS, and it has been confirmed that the specific IRS did not have day school facilities for the specific period, the Trustee will make the Reasoned Assumption that the Applicant was Resident at the IRS while he or she attended.

Appendix B.1 - Inference Model

There are 3 reasons why an Applicant's cited School Years may not align with the Student Records;

1. Shift – where the duration aligns with the Student Records, but the start and end date do not.

2. Over-estimation – where the duration cited is greater than the number of Eligible Years confirmed.

3. Under-estimation – where the duration cited is less than the number of Eligible Years confirmed.

Where there are Document Gaps, this Inference model takes account of all 3 of these possibilities and balances their weight to determine duration of Residence in an unknown period where only a start date **or** end date can be confirmed against Student Records or via a Reasoned Assumption. The duration of the period (# of years) that will be confirmed is based on the alignment of the Applicant provided information to the period confirmed against Student Records and/or a Reasoned Assumption.

- Where the Applicant provided start date is earlier than the confirmed start date, the Applicant provided end date will be accepted.

- Where the Applicant provided start date is later than the confirmed start date, the Applicant provided duration will be accepted.

- Where the Applicant provided start date is the confirmed start date, the Applicant provided end date will be accepted.

- Where the Applicant provided end date is earlier than the confirmed end date, the Applicant provided duration is accepted

- Where the Applicant provided end date is later than the confirmed end date, the Applicant provided start date is accepted.

- Where the Applicant provided end date is the same as the confirmed end date, the Applicant provided duration is accepted.

- Where the Applicant's start date or end date cannot be confirmed but it is confirmed that the Applicant was in Residence (according to documentation or via a Reasoned Assumption), the Applicant provided duration is accepted.

Appendix B.2 – Middle-Year Indicator

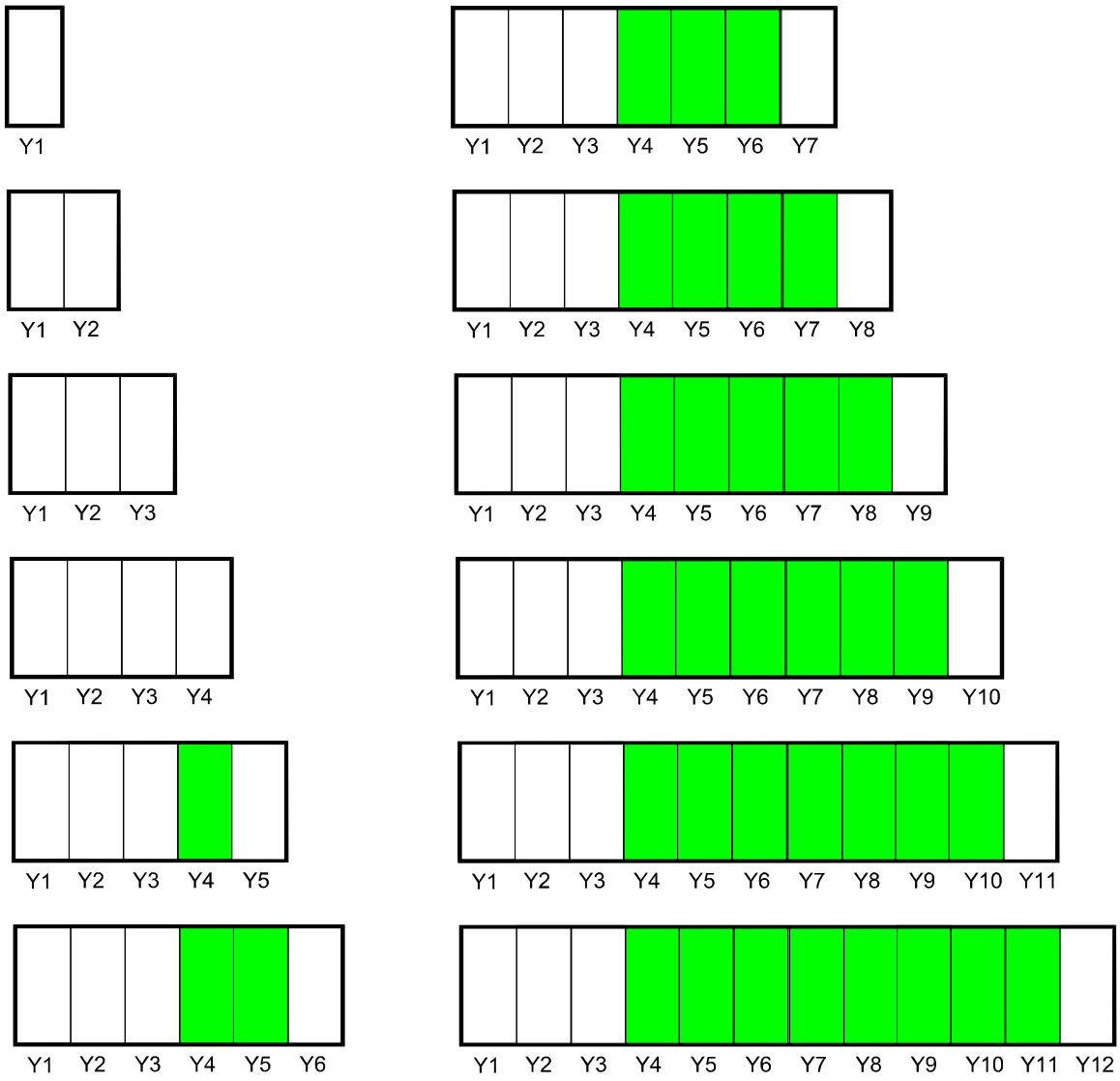
Due to the passage of time and memory issues, former students are likely to be mistaken about their years at IRS, therefore although every Applicant will provide the duration of their time at IRS; former students are more likely than not to misstate their years at IRS. In fact, research indicates that Applicants will be off by at least one year 80% of the time. Knowing this, the Trustee took a sample of over 300 former IRS students (based on ADR claims and ATIP requests) whose periods of Residence had been manually Assessed against the dates they provided. For each of the former students in the sample, the School Years cited by the former students as their duration at IRS was analyzed.

The analysis consisted of looking at each School Year cited (e.g. year before first year cited, first year cited, second year, ... , second to last year, last year, year after last year cited, etc...). The School Years cited were compared with the School Years Assessed by research. For each School Year it was possible to determine the statistical likelihood that a School Year cited would be confirmed as an actual School Year in Residence. The likelihood of a School Year being confirmed increased to almost 100% in the middle of the duration cited by the Applicant. Conversely, as one moved further from the middle years towards the start year or end year, the likelihood of Residence being confirmed dropped markedly. For example, if an Applicant cited 7 years of Residence, the likelihood of the 4th year being confirmed is much higher than the likelihood of either year 1 or year 7 being confirmed.

Stated another way, middle years are least impacted by shifts, exaggeration and under-reporting.

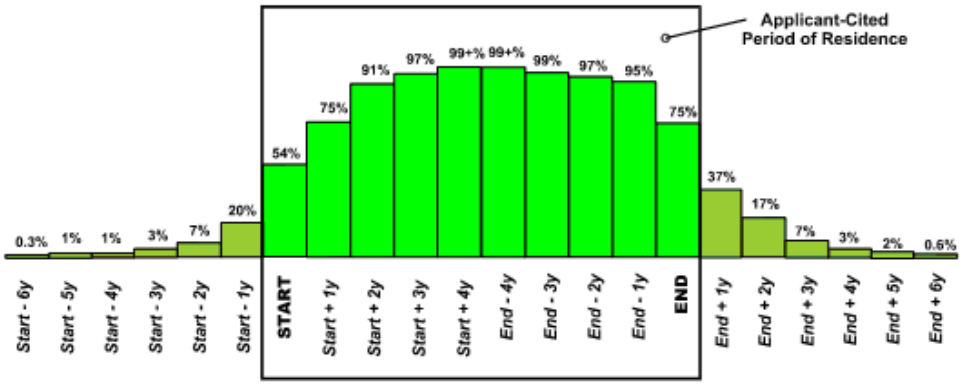
If the Trustee has the complete set of Primary Documents for one or more of the middle years, there is an exceedingly high probability that the Applicant will appear on those documents as being resident (particularly for Applicants who were Status Indian). Therefore, probability distribution can be used to infer the likelihood that the Applicant would have appeared on those documents had they been in Residence at any time.

Where the duration cited by the Applicant is 4 years or higher and complete Primary Documents exist for one or more of the middle years, there is a better than 95% chance that the Primary Documents for the middle years will be conclusive with respect to Residence. The Applicant must appear on the Primary Documents as being resident for the middle years to have residence confirmed. Failure to appear in those documents indicates non-residency with an accuracy rate that exceeds 95%. Where the duration exceeds 5 years, the Middle-Year Indicator tends to prove or disprove Residence in the 97% range. More specifically, the middle years are identified as set out below:



Using a sample size of 300 former students the accuracy of predicting Residence using this model was 98%. Therefore, it has been decided that setting a threshold of 95% (20:1) for the Middle-Year Indicator is a sound approach to determining whether a former student was a resident, even in the absence of complete Primary Documents. The alternative is to consume vast amounts of resource time and put the Applicant through a potentially arduous task of trying to furnish additional proof, when the odds against them doing so successfully average 50:1.

Illustration of Probability Distribution



Appendix F

CEP

RECONSIDERATION PROCESS

August 21, 2008

Acronyms

AP	Advance Payment
CARS	Computer Assisted Research System
CEP	Common Experience Payment
DR	Daily Register
ER	Enrolment Return
IRS	Indian Residential School
NAC	National Administration Committee
QR	Quarterly Return
RECON	Reconsideration
SA	Indian Residential Schools Settlement Agreement

CEP Reconsideration Process

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1 Executive Summary

Former Indian Residential School students who have received a Common Experience Payment (CEP) and have been denied in whole or in part, may apply to have the decision reconsidered by Indian Residential Schools Resolution Canada. CEP recipients can initiate a reconsideration of their claim by filling out a reconsideration form and mailing, faxing or e-mailing it to the CEP Response Centre, or by calling the CEP Response Centre directly.

It is important to note that applicants do not need to provide additional information in order to have their file reconsidered. However, we encourage applicants to provide any information they may have that might help researchers to confirm residence and years of residence. There is space on the reconsideration form for additional information, or it can be provided by telephone to the CEP Response Centre.

Following reconsideration, if the applicant still disagrees with the decision that has been made he/she has the right to appeal to the National Administration Committee (NAC). The NAC oversees the administration of the Indian Residential Schools Settlement Agreement (SA). Additional details on this process will be made available following reconsideration.

Applications for schools that are not recognized under the Settlement Agreement will not be reviewed as part of the reconsideration process. Former students who would like to apply to have a school added to the list can do so by submitting a request to the Settlement Agreement web site.

To be eligible for reconsideration, the former student for whom the application is made must have:

- Have applied for CEP
- Have applied for reconsideration within six months from the date of the decision denying their CEP Application in whole or in part
- Resided at a recognized Indian Residential School(s) and was alive on May 30, 2005, OR,
- Resided at the Mohawk Institute Residential Boarding School in Brantford, Ontario between 1922 and 1969, and was alive on October 5, 1996.

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2 Definition of Terms

Ancillary Documents:	All other Student Records that are not considered Primary Documents are considered Ancillary Documents.
Applicant	A former student applying for a CEP, including those represented by a Personal Representative as defined in the SA.
Assessment	Assessment refers to the determination of an application, whether resulting in approval or denial of the application.
Attendance:	The Applicant attended the educational program at the school, participated in activities at the IRS (although not a student there), or ate lunch at the IRS. Attendance neither confirms nor negates residency.
Document Gap:	A period of one or more Unconfirmed Years for which there are incomplete Primary Documents or for which the Primary Documents do not apply to the Applicant, as in the case of Applicants who were not Status Indians (e.g. non-status Indian, Métis, Inuit, and non-Aboriginal).
Eligible Year:	A School Year, or part thereof for which an Applicant's Residence is confirmed.
Ineligible Year:	A School Year for which an Applicant's Residence has not been confirmed.
Middle-Year Indicator	Probability distribution model used to infer the likelihood that an Applicant should appear on Primary Documents had they been in Residence at any time.
Primary Documents:	A document is considered primary if the document was created for the purposes of being a complete list of all status residential students and subject to audit by the Federal Government. These documents are Quarterly Returns and Enrolment Returns. Quarterly Returns ("QRs") were intended to be comprehensive lists of all (status) students who Resided at the IRS, and as such, they are the primary documents used for Assessment of Residence. They were filed for calendar quarters ending on March 31st, June 30th, September 30th and December 31st. They listed the students who were in Residence in order to obtain the per capita grants paid to IRSs. Usually, the students are listed with their registration number, their band and date of birth; often, their date of admission is also noted. Effective September 1971, Enrolment Returns ("ERs") replaced the QRs; they were issued twice a year, in March and September, but had essentially the same purpose. Primary Documents are considered to be complete if there are full QRs or ERs for all the School Years that the Applicant requests. Primary Documents were used by most IRSs and principally used for former students who were status. Persons who were not Status Indians may not have been reported in the same manner. Some Quarterly Returns also list day school students (or students who received lunches at the IRS), but they are identified separately from the resident students.

Reasoned Assumption:	Refers to the situation where Assessment of Residence is not possible due to Document Gaps, but through use of contextual information and based on the totality of the information available, conclusions can be drawn. *e.g., Where Assessment of Residence is not possible due to Document Gaps, but the Applicant was found to have attended the IRS, and it has been confirmed that the specific IRS did not have day school facilities for the specific period, the Trustee will make the Reasoned Assumption that the Applicant was Resident at the IRS while he or she attended.*
Residence:	The Applicant resided overnight at an IRS for one or more nights in a School Year and may have attended classes at the IRS, a public school or a federal day school.
School Year:	A School Year is defined as September 1st of any given year to August 31st of the following year.
Student Records:	Any records or documents that identify one or more former IRS students by name that may assist with the Assessment of an Applicant's Residency and/or duration at an IRS. These records may include Primary, Ancillary or other types of documents.
Unconfirmed Year	A School Year for which the Applicant has applied for CEP but for which Residence has not been determined.

3 CEP Process Flow

The CEP is a lump-sum payment that recognizes the experience of residing at an IRS, and its impacts. Upon Assessment, each eligible former student who applies for the CEP will receive $10,000 for the first School Year or part thereof of Residence plus an additional $3,000 for each subsequent School Year or part thereof after the first School Year (subject to deduction if the Applicant received an Advance Payment ("AP")). All former students who resided at an IRS who were alive on May 30, 2005 will be eligible for the CEP. Those eligible include but are not limited to First Nations, Métis, and Inuit former students.

The process begins with collecting Applicant information, confirming its completeness and performing a preliminary assessment by verifying the Applicant's identity against the required identity documents.

The Trustee will implement an escalating Assessment process for assessing the eligibility of Applicants. This Assessment process will assess two elements: Residence at an IRS, and duration of Residence. This process relies on the available records which are more complete for some categories of Applicants than others. Therefore, it is important for the Applicant to self-identify on the application form that they were Status, non-Status, Métis, Inuit or non-Aboriginal while at IRS to ensure proper Assessment of their application form.

In cases of Personal Representatives applying on behalf of former students, and where basic information is not available from the former student (e.g., name of school), the Trustee will communicate with the Personal Representative to seek specific information that will assist in the validation of identity and/or Assessment of Residency.

The Trustee will also quality control a random sample of all CEP applications to ensure the accuracy of the CEP research process and results. The files to be quality controlled will be randomly selected and the results verified by research prior to forwarding findings to the Applicant. The planning assumption for the sample amount has been set at 10% of all applications but will be raised or lowered based on a more detailed statistical analysis to ensure the appropriate sample. Quality control reports, including any variance to the 10% sample, will be provided to the Trustee and to the Court Appointed Monitor.

STAGE 1: CARS

Initial processing of applications will be performed by CARS. For School Years where all Primary Documents are available, CARS may Assess CEP applications without requiring manual involvement. In the cases where there are Document Gaps, Assessment of applications by CARS will be based on Interpolation or using the Middle-Year Indicator.

STAGE 2a: Manual Review

Generally, where CARS cannot Assess and/or Document Gaps exist, manual review will result.
Assessment by manual review will involve:

1. Analysis of Ancillary Documents and additional information that CARS did not consider (e.g. a date of admission on a later Primary Document), including information obtained through other Applicants when authorized);
2. Reasoned Assumption where Assessment of Residence is not possible due to Document Gaps, but a Reasoned Assumption can be made based on contextual information from the totality of the information available;
3. Where the analysis of the Ancillary Documents and additional information warrants, Interpolation will be applied; and/or,
4. Mathematically-based Inferences can be made to calculate the duration where Residence is confirmed and either a start or end date is confirmed.

STAGE 2b: Request for Additional Information

The Trustee intends to seek documentation and/or information from Applicants that will enable Assessment of eligibility in instances where there is a complete gap in the Student Records or Residence cannot be Assessed after manual review, Inference, Interpolation and Reasoned Assumptions are considered. Where information provided by Applicants can be verified against time-specific information known about each relevant IRS (e.g. the Applicant is able to provide the name(s) of their dorm supervisor(s), or name(s) of other staff and/or students who were at the IRS at the same time and this is corroborated by the historical records), such supplementation would permit Assessment at this stage to be performed according to the same standards used for Stages 1 and 2a. This process will be applied where the Student Records are incomplete or Residence cannot be Assessed so that the benefit of the doubt will be given to the Applicant in Assessment of Residency. Any/All information provided orally (over the phone, to call centre agents in the CEP Response Centre) by a CEP Applicant or his/her Estate or Representative, cannot be incorporated into research products related to IAP/ADR.

STAGE 3: Reconsideration

Applicants will be able to initiate Reconsideration of their application in instances when their application is denied, in whole or in part, whether they are able to provide additional information or documents or not.. Additional information could be another name to search against available records, or the provision of documents that put the Applicant at an IRS during their cited time period. Every Applicant (with the exceptions noted below in Stage 4) has the right to Reconsideration so long as they are able to initiate their request before the CEP period has expired.

STAGE 4: Appeal

Applicants who have been denied their application, in whole or in part, after reconsideration may appeal to the National Administration Committee ("NAC") for a determination. Applicants may not appeal to the NAC unless reconsideration has occurred.

All Applicants will have the right of appeal except in cases where:

1. The Applicant has not applied for and received a decision on reconsideration;
2. The school for which they have applied is not an IRS as defined in the SA; or,
3. The person for whom the application is made died prior to May 30, 2005 or, for Cloud Class Members died prior to October 5, 1996.

An appeal to the NAC of a decision by the Trustee may be brought as of right within 12 months of the date upon which the Applicant received the decision denying their reconsideration request. Appeals to the NAC may be brought after that period only with leave of the court. The appeal procedure shall be in writing. The NAC will not hold oral appeals. An Applicant shall not be entitled to more than one appeal in respect of an Application, except where a file has been affected by an amendment to the CEP process.

4 CEP Validation Principles

The principles by which CEP validation will be conducted are as follows:

1. Validation is intended to confirm eligibility, not refute it;

2. Validation must accommodate the reality that in some cases records may be incomplete;

3. Validation must be based on the totality of the information available concerning the application;

4. Inferences to the benefit of the Applicant may be made based on the totality of the information available concerning the application;

5. If information is ambiguous, interpretation should favour the Applicant;

6. This principle (6) shall apply to Applicants who identify themselves as having been status Indians at the time of residency in a residential school. The absence of such an Applicant's name from the lists comprising all status Indian residential students in a given year at the school in question shall be interpreted as confirmation of non Residence that year. An Applicant whose application is denied on this basis may seek reconsideration based on the provision of further information;

7. Where an application is not accepted in whole or in part, the Applicant will be advised of the reasons and may seek reconsideration based on the provision of additional information that relates to the rejection, including evidence that may be provided by the Applicant personally which may include:

    - photographs;
    - other documentary evidence of a connection with the school;
    - affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school;
    - an affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events;

8. An application will not be validated based on the applicant's bare declaration of Residence alone.

5 Reconsideration Process

Once a Common Experience Payment application is processed, applicants receive a detailed letter explaining the result of their assessment, as well as the reasons for denial, and how to proceed if they do not agree with the Trustee's decision.

This process is called Reconsideration. Every Applicant has the right to Reconsideration, except cases where:

- The school for which they have applied is not an IRS as defined in the SA; or,
- The person for whom the application is made died prior to May 30, 2005 or, for Cloud Class Members, prior to October 5, 1996.

Reconsideration will be initiated by the Applicant. As per the CEP Validation Principles 7 and 8, an Applicant will be given an opportunity for reconsideration when their application is denied in whole or in part.

Applicants do not need to provide additional information in order to have their file reconsidered. However, applicants are encouraged to provide any information they many have that might help researchers to confirm residence and years of residence.

Examples of such information could include:

- additional names or nicknames that the Applicant may have used while at IRS;
- photographs;
- other documentary evidence of a connection with the school;
- affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school
- an affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events.

An application will not be approved based on the Applicant's bare declaration of Residence alone.

The Trustee will review any and all information and documents provided by the Applicant. New information will be reviewed in the context of all available information. Where a clear discrepancy arises between the new information provided and other material previously reviewed such that there is a balanced case supporting either approval or rejection, the Assessment will be made in favor of the Applicant.

Applicants dissatisfied with the outcome of their request for reconsideration rendered by the Trustee, will have the right to appeal the decision to the National Administration Commission (NAC).

Information Intake / Processing

Reconsideration will involve the intake of new and additional information in both written form and orally through the IRSRC Response Centre. Applicants have access to the Reconsideration Request Form on the Trustee's website. Requests for Reconsideration and additional information will be received by the Trustee through the following avenues:

1. Via Mail (including internal mail, courier, etc)
2. Via Fax
3. Via E-Mail
4. Via Response Centre

The requests for reconsideration and information received by the Trustee, will be tracked, monitored and managed in an efficient and time sensitive manner by following the Reconsideration Document Management Procedures developed by the Trustee, to ensure that the complexity of the issues have been captured and considered. The requests will be processed by order of date received to ensure fairness and transparency. Also, priority will be given to elderly applicants requesting reconsideration.

Information provided orally to the IRSRC Response Centre will be documented during the conversation with the applicant. This information will be recorded in SADRE and transferred to the Trustee upon completion of the phone call. The oral information provided by the applicants in the CEP process is to be withheld from information provided by Canada to the IAP Secretariat and the conversation will not be used by Canada in the IAP Process

Priority and Timelines

In an effort to ensure fairness and transparency while balancing the urgency associated with the most elderly, reconsideration requests will be processed based on the following priority:

1. Elderly (where the Applicant was 65 or older as of May 30, 2005);
2. In order of date received, while at the same time dedicating a small team to address the files that can be processed quickly (ie. quick hits).

It is important to note that although some requests may be processed within a few days, on average, the majority of files will be processed within 90 days. At the same time, some files will be extremely complex and may take up to 160 days in order to be processed.

If after 90 days, the Trustee still has not rendered a decision, a system's flag will trigger a letter that will be sent to the Applicant notifying them that the Trustee is still working on their file and additional time is required.

6 Documents Provided by Applicants Which Might Be Used to Confirm Residence

These documents will be examined in order to evaluate if they can confirm either Residence or Attendance, depending on the context. These records are reviewed with the totality of findings and contextual knowledge about the IRS, and the Applicant's information is incorporated into the assessment. For example, if it is known that there were no day school students present during the Applicant's time at an IRS, a document need only show Attendance at the IRS. Many of the types of records listed have been provided by Advance Payment ("AP") Applicants. This list is not meant to be exhaustive.

- Documents from other government sources, which reference Applicant's place of Residence being an IRS (Children's Aid Society records, RCMP records on truancy, Social Services records, etc.)
- Counsellors' monthly reports
- Medical records, physical exams
- Newsletters, yearbooks, journals
- Photographs (sent with enough contextual info on photo or archival description itself [e.g., name of student and date clearly listed], and always reviewed alongside other documents and knowledge about the school)
- Student Records
- School Ledger
- Vocational Class Lists
- Correspondence (from school, government, student, or parents in which date and/or postage is present)
- Class reports
- Transportation Lists
- Contemporaneous secondary source documents (articles from local newspapers)
- Census records
- Band Membership Lists
- Inuit Disc List
- Affidavit evidence, including but not limited to, the affidavits of other students, school or Residence employees, Aboriginal leaders or others with personal knowledge relating to the Applicant's Residence at the school
- An affidavit from the Applicant confirming Residence by reference to corroborating documents and/or objective events

Applicants providing one or more of the documents listed above in support of their Reconsideration request but which also concerns, covers or mentions other former students, wherein acquisition of such records would assist the Trustee in supplementing incomplete record collections, will be asked if he or she consents to have such documents used by the Trustee and IRSRC to confirm the residence of those other former students. If the answer of the Applicant is positive, then such documents will be added to the Ancillary Documents database and used to confirm residence as applicable.

7 Guidelines to Assess Applicant's Documents

Documents provided by Applicants will be analyzed by the Trustee. The content of the document is equally important as the type of document provided. Ultimately, final decisions are within the Trustee's authority, subject to appeal to the NAC and the court.

The following guidelines, though neither exhaustive nor universally applicable, are meant to give an overview of the type of information that will be looked for, in order to assess whether or not the new document will confirm Residence for the School Year(s) in question:

- Does the document speak specifically to Residence at the IRS, rather than just Attendance?
- What is the source of the document? Is it an original copy or a certified copy provided by another level of government, Church, or perhaps a Band or Community Repository?
- Does the document list the Applicant's name?
- Does the document list the name of the IRS?
- Does the document contain a contemporaneous reference to the date?
- If the document was created after the time period it covers, was it created prior to commencement of negotiations for the SA?
- If the document does not specify Residence on its own, can it be reviewed in light of IRS-specific knowledge (e.g. does the Trustee know there were no day students at the IRS, when the document was created) to confirm Residence?
- If the document does not specify Residence on its own, can it be reviewed in light of information provided by the Applicant and by other applicants (e.g. does the Trustee know that the Applicant's home was too far from the school in question to allow for Attendance as a day student?) to confirm Residence?

8 Reconsideration Assessment Process

Prior to reviewing any additional information provided by an applicant, the original research findings will be revisited in SADRE.

The School Attendances Analysis tab will be reviewed to determine whether the original assessment of the file was done by CARS, or by a manual researcher in either Stage 2a or Stage 2b, and on what date the application was originally assessed.

If the original research was conducted manually, the reconsideration assessment will be conducted by a different researcher, wherever possible and practical.

The researcher will determine if the application was originally assessed prior to the release of CARS v.2 and/or prior to the implementation of Streamlined Research procedures for Stage 2a Assessment.

A review of all CARS decisions, application of Interpolation and/or Inference models, reasoned assumptions or notes which indicate the basis of the original assessment, in whole or in part will be performed. This analysis will ensure the application is subjected to the current research protocols and standards for assessment.

A new instance will be opened in SADRE School Attendances Analysis tab, and a new search will be performed using the manual CARS interface.

A search of ancillary records (using manual CARS interface, research databases, and/or review of other records in the possession of the Trustee) will be performed. Particular attention will be paid to locate and review records received after the application was originally assessed, including records received through ongoing document collection and through the reconsideration process itself.

The researcher will check SADRE to determine if additional documents or information have been provided by the applicant. The researcher will review scanned images of all such documents in SADRE.

Documents provided by the applicant will be reviewed to assess eligibility for any years which have not been assessed through the review of original research findings and the review of ancillary records (*see also Section 7: Guidelines to Assess Applicants Documents).*

Where additional information is provided by the applicant (verbal information provided to the CEP Response Centre over the phone and/or statement notes about the applicant's time at the IRS submitted on the Reconsideration form), assessment will be performed according to the same standards used in Stages 1, 2a, and 2b.

In instances where there is a complete gap in the student records, or where residency cannot be assessed after review of original research findings, the review of ancillary records or of documents provided by the applicant, a review of any/all additional information provided by the applicant will be performed.

A piece of information provided by the applicant which can be verified against time-specific information known about each relevant IRS (e.g. the applicant is able to provide the name(s) of their dorm supervisor(s), or name(s) of other staff and/or students who were at the IRS at the

same time and this is corroborated by the historical records), would permit assessment at this stage to be performed according to the same standards used for Stages 1 (CARS) and 2a.

Assessment of a piece of information and this process of review is only applied where the student records are incomplete or residence cannot be assessed so that the benefit of the doubt will be given to the applicant in assessment of residency.

Wherein any portion of the application is deemed eligible for payment after this review, the School Attendances Analysis Tab will be updated to generate a supplemental payment. Service Canada will then process the supplemental payment. After reconsideration is complete (whether a supplemental payment was approved or not) Service Canada will send a letter which advises the applicant of the outcome of the reconsideration process, and of the opportunity to appeal the decision.

If the full assessment of the application is not complete after these steps are performed (e.g. applicant provided information pertained to IRS “x” only, where records are complete and the application was fully assessed, but additional information is required for IRS “y” in order to complete the reconsideration process), the researcher will request a “follow-up” applicant contact, using the SADRE communications tab to provide more specific instructions to the CEP Response Centre agents in order to guide the applicant to provide information that may assist in the assessment of eligibility.

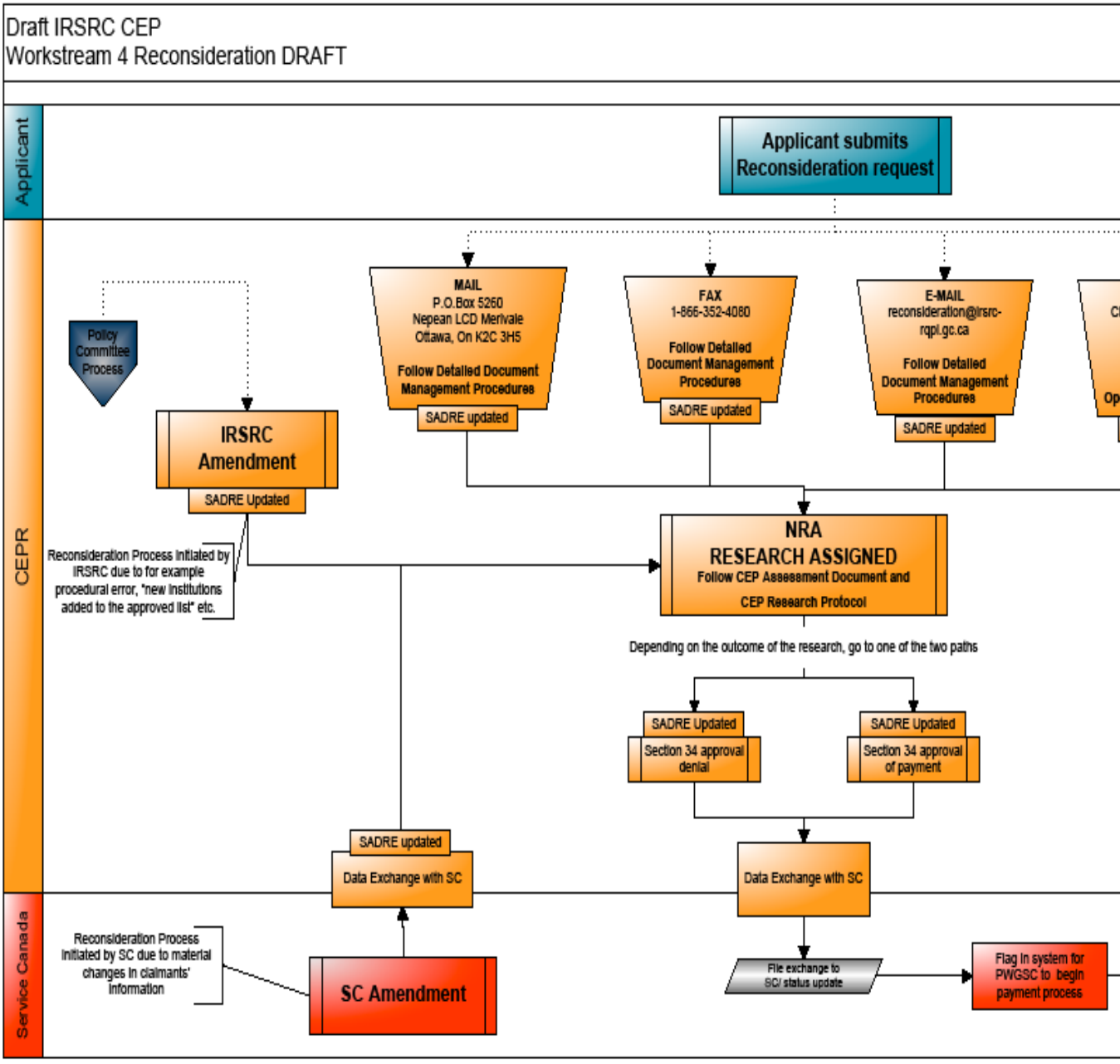
9 Reasons for Denial of Payment at Reconsideration

Based on the rules set out in this document, an application may be denied, in whole or in part, if one of the following is found:

- The Applicant's Residence could not be confirmed.
- An Applicant who was a Status Indian is not found on documents but the Primary Documents are complete (or sufficiently complete) for all School Year(s) requested.
- The Applicant applied for a school that is not an IRS.
- The Applicant submitted multiple application forms. The duplicate(s) will not be approved.
- The IRS was not open during the time periods specified by the Applicant.

Appendices

Appendix A – CEP Reconsideration Workstream



Appendix B – Reconsideration Form - sample

Indian Residential Schools Resolution Canada | Résolution des questions des pensionats indiens Canada

CEP – Request for Reconsideration

CEP Transaction ID		**WIID**	
Last Name		**Given Names**	
Nicknames or other traditional names not indicated on your application		**Date of Birth**	
Indian Residential School(s) at which you lived		**Years lived there**	
Years confirmed		**Years denied**	

If you wish to apply for a reconsideration of your CEP application, please provide any additional information that might help us confirm that you lived at the Indian Residential School(s) indicated on your application form.

Please mail completed forms to:
Common Experience Payment Response Centre
P.O. Box 5260
Nepean LCD Merivale
Ottawa, ON K2C 3H5
(or) Fax: 1-866-352-4080
(or) E-mail: reconsideration@irsr-rqpi.gc.ca

Appendix G

CEP Appeal Protocol

Entitlement to Appeal

1. Applicants who have had a CEP Application denied because the school is not on the list of eligible schools shall not be entitled to appeal to the NAC.

Initiation of Appeal

2. An applicant may initiate an appeal to the NAC by filing an NAC Appeal Form with the Trustee[1]. The form shall:
   (a) ask the applicant to explain why he or she disagrees with the decision of the Trustee,
   (b) invite the applicant to provide any information he or she may have to support the claim; and
   (c) provide any further information that may be relevant to the consideration of the appeal (ie. if information is not available, why it is not available).
3. Upon receipt of a Request for Appeal form, the Trustee shall:
   (a) Record the fact of the receipt of the Request for Appeal, the date of receipt, and acknowledge receipt to the applicant by way of standard form letter;
   (b) compile a record for the NAC consisting of the correspondence exchanged with the applicant, notes of any discussion with the applicant during the reconsideration process and documents submitted by the applicant, if any; and
   (c) complete a form to accompany the file which indicates:
      (i) the reason the claim or part thereof was denied;
      (ii) what records exist in respect of the school for the period in which the claim has been made, and what if anything, they disclosed;
      (iii) what other records were available;
      (iv) what other records were reviewed;
      (v) what other records disclosed; and
      (vi) whether a telephone discussion was held with the applicant, and if not, why not. [More Information to come from Canada regarding what information may be readily supplied]

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1 Form to be drafted

NAC Hearing Schedule

4. NAC hearings may be conducted by telephone.
5. During the first year, the NAC shall meet on the third Thursday of every month, with the first meeting to be held on the first such day following the Implementation Date.
6. If a member of the NAC is unable to attend, he or she shall designate a proxy to exercise his or her vote. Such proxy may be legal counsel who does not ordinarily participate in the NAC, or another member of the NAC, but such member must be familiar with the appeals process and have reviewed the appeal materials. Individuals designated must be from a disclosed pool of acceptable individuals. If a qualified person is not available, a proxy for the NAC member must be provided to another member of the NAC.
7. A member who is unable to attend shall inform the other members of the NAC as soon as possible, and indicate the name of the person who has been designated on their behalf, or the member of the NAC who has been provided with the missing NAC member's proxy.

Coordination of Appeals

8. The Trustee shall submit a list of appeals to the members of the NAC as well as the appeal files, on or about the first of each month, to be heard at the next scheduled hearing date.
9. Appeal lists and files shall be disseminated to the NAC members in electronic format.
10. Appeals will be heard in the order in which they are filed.
11. The scheduling and coordination of the hearing of appeals, as set out herein, shall be revisited if circumstances warrant.

Hearing of Appeals by the NAC

12. The appeal procedure shall be in writing. The NAC will not hold oral appeals.
13. An applicant shall not be entitled to more than one appeal in respect of a claim.
14. An appeal to the NAC of a decision by the Trustee may be brought as of right within [6-12] months of the date upon which the Applicant received the denial of his or her application. Appeals to the NAC may be brought after that period only with leave of the court.

Grounds for an Appeal – the NAC Jurisdiction

15. The NAC shall review the decision of the Trustee to ascertain whether a material error has been made with respect to:
    (a) The interpretation of the Settlement Agreement;
    (b) The interpretation or application of the CEP Verification principles; or
    (c) The evaluation of the evidence or information presented.

Remedies available from the NAC

16. If the NAC determines that the Trustee made a material error in respect of one or more grounds set out in the above paragraph, the NAC may:
    (a) Substitute its own decision, allowing the appeal and approving some or all of the applicant's claim;
    (b) Send the application back to the Trustee for reconsideration, with directions; or
    (c) Dismiss the appeal.

Decision of the NAC

17. If the legal firm of a member of the NAC is also counsel for an applicant whose appeal is being heard by the NAC, that NAC member shall recuse himself or herself from hearing that appeal and designate another member of the NAC to exercise his or her vote on the appeal.
18. The NAC shall designate a member of the NAC to act as responsible for stating and recording the Reasons for Decision. That person shall state the Reasons for Decision at the conclusion of the appeal, and be responsible for transcribing and circulating those Reasons for Decision.
19. The Reasons for Decision shall be circulated by the responsible member to the other members of the NAC following each hearing, for review and correction. The members of the NAC shall provide any corrections within 10 days of receipt of the Reasons for Decision, failing which the Reasons for Decision shall be deemed final. The approved or corrected Reasons for Decision shall then be provided to the Trustee, which shall be responsible for communicating the Reasons for Decision to the applicant, and where necessary, acting on the Reasons for Decision by carrying out reconsideration steps or making a CEP payment.

Processing Timeframes

20. The following time periods are set as targets for the processing of appeals:
    (a) Receipt by Trustee of Request for Appeal to delivery to NAC of appeal file: not more than 30 days;
    (b) From Receipt of appeal file by NAC to hearing: not more than 30 days;
    (c) From Hearing of appeal to delivery by NAC of Reasons for Decision to the Trustee: not more than 30 days;
    (d) From receipt by Trustee of Reasons for Decision to delivery of Reasons for Decision to applicant: not more than 15 days; and
    (e) Total number of days elapsed from receipt of Request for Appeal to delivery of Reasons for Decision: 105 days.

Appeals from the NAC

21. Applicants who are unsuccessful (either in whole or in part) on appeal to the NAC shall be informed of their right to appeal to the court at the same time that they are made aware of the Reasons for Decision, all by way of standard form letter. The standard form letter shall further inform applicants that should they chose to initiate an appeal to the court, they should request an information package from the Trustee.
22. The Information Package for applicants seeking to appeal to the court shall include basic instructions for initiating an appeal and a Court CEP Appeal Form to be used in connection with the appeal.
23. The basic instructions relating to the appeal shall include:
    (a) The appeal shall be directed to the two supervising judges under the Court Administration Protocol;
    (b) The need to make the application by way of notice of motion to the court under the class proceeding court file number;
    (c) The requirement to complete the Court CEP Appeal Form initiating the appeal in addition to the notice of motion;
    (d) The requirement to file court fees, where applicable; and
    (e) The requirement to serve the notice of motion, together with the Court CEP Appeal Form, on the Trustee.
24. The Trustee shall provide copies of the appeal documentation to counsel for the courts, and shall coordinate with counsel in arranging for hearings of the appeals where oral hearings have been requested.

Fees to NAC Members

25. With respect to the NAC funding as provided in the Settlement Agreement, no plaintiff member representative shall be entitled to more than 1/5 of the amount available for legal fees and disbursements for services performed in that month.

Appendix H

NAC Appeal Package Summary

Name of Applicant:	[redacted]
File Number:	E5442-[redacted]
CEP Transaction ID Number:	[redacted]
CEP APPLICATION	
Date CEP Application Received:	September 30, 2007/October 15, 2007
School(s)/Years Applied For:	**1.** Beauval IRS: 1971/72, 1972/73
	2.
	3.
Date of Decision on Application:	February 26, 2008
School(s) and Year(s) Allowed:	**1.** Beauval IRS: None
	2.
	3.
School and Year(s) Denied:	**1.** Beauval IRS: 1971/72, 1972/73
	2.
	3.
RECONSIDERATION CEP APPLICATION	
Date CEP Reconsideration Received	January 28, 2008
School(s)/Years Applied For:	**1.** Beauval IRS: 1971/72, 1972/73
	2.
	3.
Date of Decision on Reconsideration:	May 9, 2008
School(s) and Year(s) Allowed:	**1.** Beauval IRS: None
	2.
	3.
School and Year(s) Denied:	**1.** Beauval IRS: 1971/72, 1972/73
	2.
	3.
COMMENTS	
APPEAL CEP APPLICATION	
Date CEP Appeal Received	August 5, 2008
School(s)/Years Applied For:	**1.** Beauval IRS: 1971/72, 1972/73, 1973/74
	2.
	3.
COMMENTS	

National Administration Committee (NAC) - Appeal Form

CEP Transaction ID		**WIID**	
Last Name		**Given Names**	
Nicknames or other traditional names not indicated on your application		**Date of Birth**	
Indian Residential School(s) at which you lived		**Years lived there**	
Years confirmed		**Years denied**	

Please state your reasons for appealing the decision of the Government of Canada concerning your application for Common Experience Payment. Please provide any information you have to support your appeal, as well as any information that you feel may be relevant to the appeal. If no information is available, please let us know if you are aware of the reasons why it is not available. If you need to, you may provide additional pages.

CEP Appeal Administrator
Suite 3 - 505, 133 Weber St. N.
Waterloo, ON N2J 3G9

INDIAN RESIDENTIAL SCHOOLS COMMON EXPERIENCE PAYMENT

CEP COURT APPEAL FORM ("FORM")

PRIVACY STATEMENT

Personal Applicant Information is collected, used, and retained by the CEP Court Appeal Administrator ("Administrator") regarding CEP Court Appeals, pursuant to the Personal Information Protection and Electronics Documents Act, S.C. 2000, c.5 (PIPEDA) for the purpose of operating and administering the CEP Court Appeals Administration.

This Form will be provided to the Court and will become **publicly available information**.

INSTRUCTIONS

This Form is to be used to appeal to the Court if your PRIOR Appeal to the National Administration Committee ("NAC") for Common Experience Payment ("CEP") was NOT successful. The Court will determine your Appeal in writing. There will not be any personal appearances before the Judge.

This Form is for appeals to the Court of decisions of the NAC related to schools listed in the Indian Residential Schools Settlement Agreement ("Settlement").

An appeal may be filed by an individual, personal or legal representative ("representative").

You may download this Form at www.residentialschoolsettlement.ca or; by calling 1-866-879-4916 to request a Form be mailed to you.

Once the Form is fully completed, mail the Form to:

Indian Residential Schools CEP Court Appeals Administrator
Suite 3 - 505, 133 Weber Street North
Waterloo, Ontario
N2J 3G9
1-866-879-4916

Please review all information in the Form and make a copy for your records before you mail it. Please notify the Administrator in writing at the address above regarding any change in your personal or any representative's address or contact information.

This Form may only be used if:

1. Your PRIOR Appeal to the NAC for CEP was NOT SUCCESSFUL; AND,

2. Your Appeal to the Court of the NAC decision relates to a school or schools listed in the Indian Residential Schools Settlement Agreement ("Settlement").

Completing the Form

Please complete all sections of the Form. Please read all questions and requests for information carefully before answering. Please type or use black ink pen. Use extra sheets of paper and provide additional documentation as necessary to provide complete information.

How to fully complete the Form:

Page 1:

1. Please complete the Appellant (Claimant) Information section in full.

   If you are appealing as a representative on behalf of a former student, please enter the former student's CEP Transaction ID, Date of Birth, Last Name, and Given Names. You may indicate that you are the representative in the Current Address box and place your mailing address there.

2. Please complete the Details of Your Appeal to the Court section in full. You must list both the name of the school that you resided at and the years that you were denied payment while residing at that school. If you are a representative, please list the information as it pertains to the former student. Please use a separate piece of paper if more space is required.

Page 2:

1. In the space provided please tell the Court the reason(s) why your appeal should be allowed. If you are a representative, please list the information as it pertains to the former student.

2. At the end of the Form, please sign your name and date the Form where indicated. If you are a representative, please sign and date the Form and indicate that you are the representative. If you or anyone else is represented by a lawyer, please enter the lawyer's contact information. This information will allow the Administrator to communicate with you.

3. If you used additional paper to complete the Form, please write your first and last name and your CEP Transaction ID at the top of each additional piece of paper. If you are a representative, please write the former student's first and last name and his or her CEP Transaction ID at the top of each additional piece of paper.

The Administrator will send a Letter of Acknowledgement to you by mail once your fully completed Form is received. If you have questions, please call 1-866-879-4916 or visit www.residentialschoolsettlement.ca.

If required, counseling and emotional support services are available by calling the toll free IRS Crisis Line 1-866-925-4419.

INDIAN RESIDENTIAL SCHOOLS COMMON EXPERIENCE PAYMENT ("CEP")

CEP COURT APPEAL FORM ("FORM")

This Form is to be used to appeal to the Court, decisions of the National Administration Committee ("NAC") related to schools listed in the Indian Residential Schools Settlement Agreement ("Settlement"), if your PRIOR Appeal to the NAC for Common Experience Payment was NOT successful.

The Court will determine your Appeal in writing. Personal appearances before a Judge are not permitted.

If your appeal relates to a school NOT listed in the Settlement, please contact 1-866-879-4913.

APPELLANT (Claimant) INFORMATION:

Preferred Language: ☐ **English** ☐ **French** ☐ **Other** _____

CEP Transaction ID			Date of Birth (mm/dd/yyyy)			
Last Name			Given Names			
Current Address						
	Province			Postal Code		
Phone Number(s)	Home		Business		Other	

DETAILS OF YOUR APPEAL TO THE COURT:

List both the name of the school and the years denied. **Please complete fully. Incomplete information will lead to your appeal being delayed.**

Name of the Approved Indian Residential School	Year(s) Denied yyyy to yyyy

Please use a separate piece of paper if more space is required.

In the space provided below please tell the Court the reason(s) why your Appeal should be allowed.

Applicant Signature:		Date	

Appendix I

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
St. Michael's IRS	1984	1985	No
St. Michael's IRS	1985	1986	No

Reason for Decision

CEP APPLICATION

The applicant requested the Common Experience Payment (CEP) for residing at Muscowequan IRS for 2 years (1987/88, 1988/89). He received the CEP for 1 year (1988/89).

RECONSIDERATION

At reconsideration, the applicant claimed the CEP for residing 1 year at St. Michael's IRS (1982/83). He received the CEP for the year claimed.

APPEAL

On appeal, the applicant is requesting the CEP for residing 2 years at St. Michael's IRS (1984/85, 1985/86).

DECISION

The applicant received the CEP for the school year 1982/83 for a stay of short duration at St-Michael IRS based on the description he gave of the residential school and because the names of students and employees he provided were located at St-Michael IRS during the school year requested.

In a conversation on February 24, 2011, the applicant indicated that he slept at the residence for one week while he attended the residential school. The applicant states that after staying there for one week, he returned to his parents' home on the weekend and decided he did not want to return as a resident but preferred to attend St-Michael IRS as a day student. The applicant also provided a document labelled "School Block Day School Attendance" in which he indicates that he attended St-Michael for 2 years as a day student in grades 4, 5 and 6.

Day students attending classes at an IRS, who did not also sleep at the IRS, are not eligible to receive CEP. The applicant indicated he slept at St-Michael IRS for one week. The applicant already received the CEP for one year at St-Michael.

Based on the above, the appeal is denied.

Name of NAC Member

Date (yyyy-mmm-dd)

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
Sturgeon Lake (St. Francis Xavier) IRS	1947	1948	**No – already paid**
Sturgeon Lake (St. Francis Xavier) IRS	1948	1949	**Yes**
Sturgeon Lake (St. Francis Xavier) IRS	1957	1958	**Yes**
Sturgeon Lake (St. Francis Xavier) IRS	1958	1959	**Yes**

Reason for Decision

CEP APPLICATION

The applicant requested the Common Experience Payment (CEP) for residing 14 years at Sturgeon Lake (St. Francis Xavier) IRS (1944/45 to 1957/58). She received the CEP for 4 years (1944/45, 1945/56, 1946/47, 1947/48).

RECONSIDERATION

At reconsideration, the applicant requested the CEP for the 10 unpaid years at the same institution (1948/49 to 1957/58). She received the CEP for 8 years (1949/50 to 1956/57).

APPEAL

The applicant is claiming the CEP for 4 years at Sturgeon Lake (St. Francis Xavier) IRS (1947/48, 1948/49, 1957/58, 1958/59).

DECISION

The applicant already received the CEP for the school year 1947/48.

The applicant lived at the residential school between 1944 and 1948 because her mother past away when she was two years old. The applicant appears on primary documents from the school years 1944/45 to 1947/48. From 1944/45 to 1947/48, she appears on the primary documents as a resident only (and not as a student). There are various remarks on the primary documents indicating that she was "*not of age or two young to attend school*".

The applicant does not appear on complete primary documents for the school year 1948/49. The applicant was 5 & 6 years old in the school year 1948/49. The youngest age of students found on primary documents for the school year 1948/49 is seven years old. Two of the applicant's siblings of school age, L. who is two years older, and M. who is 3 years older, were residents in the school year 1948/49. The applicant provided many letters of support. One of the letters is from a former student who is a confirmed resident from 1948/49 to 1952/53 and she confirms that the applicant was at the school from 1948 to 1959.

The applicant wrote that she was at the residential school from age 2 to age 16 when the residential school would release children from the residence. Her name appears on at least one primary document in every year she received the CEP. Prior to the school year 1949/50, there is a pattern of entering and leaving the residential school.

The applicant has stated that she was at the residential school until the age of 16 years old. The applicant turned 16 years old in the school year 1958/59.

Based on the above, the appeal is granted for the school years 1948/49, 1957/58 and 1958/59.

Name of NAC Member	Date (yyyy-mmm-dd)

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
St. Mary's [Blood] IRS	1972	1973	Yes

Reason for Decision

CEP APPLICATION

The applicant requested the CEP for residing 1 year at St. Mary's [Blood] IRS (1972/73). She was denied.

RECONSIDERATION

At reconsideration, the applicant requested the CEP for 2 years at St. Mary's [Blood] IRS (1971/72 and 1972/73). She was denied.

APPEAL

On appeal, the applicant is requesting the CEP for the year 1972/73.

DECISION

The applicant indicated that she arrived after the start of the school year (late September or October 1972) and left prior to the end of the school year.

The applicant described the residential school and her first day at the school. She remembers being brought to the dorm at the end of the day by a Sister T. Sister T. is a confirmed employee at the residential school in the school year 1972/73. The applicant also identified a dorm supervisor.

The applicant provided the names of 13 students. No information could be found on 4 students. Of the remaining 9 names, 7 of the students are confirmed residents in the school year 1972/73.

The applicant wrote that her mother came to get her because one of her family members had passed away on June 11, 1973. The death of the family member is confirmed by INAC-Research.

The applicants provided two letters of support. The applicant's brother confirms that the applicant attended the residential school in 1972/73. The applicant's brother is a confirmed resident at St. Mary's IRS in the school year 1972/73. The other letter of support is dated September 8, 2008 and is from the applicant's mother. The applicant's mother confirms that the applicant was taken to school in September 1972, resided there until June 1973, and that she was taken away from the school "*by myself her mother*".

Based on the above, the appeal is allowed for the school year 1972/73.

Name of NAC Member

Date (yyyy-mmm-dd)

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
St. Joseph's IRS	1957	1958	Already paid
St. Joseph's IRS	1958	1959	Already paid
Breynat Hall SR	1959	1960	Already paid
Breynat Hall SR	1960	1961	No
Breynat Hall SR	1962	1963	Already paid
Breynat Hall SR	1963	1964	Already paid
Breynat Hall SR	1964	1965	Already paid
Breynat Hall SR	1965	1966	Already paid
Breynat Hall SR	1966	1967	Already paid
Snowdrift Federal Day School, Snow Drift, NWT	1960	1961	No
Snowdrift Federal Day School, Snow Drift, NWT	1961	1962	No
Snowdrift Federal Day School, Snow Drift, NWT	1962	1963	Already paid
Grandin College SR	1966	1967	Already paid
Grandin College SR	1967	1968	Already paid
Grandin College SR	1968	1969	Already paid
Grandin College SR	1969	1970	No
Grandin College SR	1970	1971	Already paid
Akaitcho Hall SR	1970	1971	Already paid
Akaitcho Hall SR	1971	1972	No

Reason for Decision

CEP APPLICATION

The applicant claimed the Common Experience Payment (CEP) for a total of 18 years as follows:

- St Joseph IRS – 3 years (1957/58 to 1959/60)
- Breynat Hall – 7 years (1959/60 to 1965/66)
- Grandin College – 6 years (1965/66 to 1970/71)
- Akaitcho Hall – 2 years (1970/71 & 1971/72)

There are 15 school years between 1957 and 1972. The applicant claimed a total number of 18 school years because 3 school years were claimed at two institutions (1959/60, 1965/66 and 1970/71).

The applicant received the CEP for a total of 11 years as follows:

- St Joseph IRS – 1 year (1957/58)
- Breynat Hall – 8 years (1958/59, 1959/60, 1962/63, 1963/64, 1964/65, 1965/66, 1966/67, 1967/68)
- Grandin College – 1 year (1968/69)
- Akaitcho Hall – 1 year (1970/71)

RECONSIDERATION

In reconsideration, the applicant claimed the CEP for 12 years. The applicant already received the CEP for 10 of the 12 years claimed in reconsideration. The two schools years claimed in reconsideration for which the

applicant did not receive the CEP were the years 1960/61 and 1961/1962 at Breynat Hall. All the years claimed in reconsideration were already paid or denied.

APPEAL

On appeal, the applicant is claiming the CEP for 19 years. The applicant already received the CEP for 11 of the years claimed on appeal. The years claimed on appeal for which the applicant already received the CEP are as follows:

Institution	Year	CEP paid to applicant
St-Joseph RS	1957/58 1958/59	Yes (paid for St-Joseph) Yes (1958/59 already paid at Breynat Hall)
Breynat Hall	1959/60 1962/63 1963/64 1964/65 1965/66 1966/67	Yes (paid for Breynat Hall) Yes (paid for Breynat Hall) Yes (paid for Breynat Hall) Yes (paid for Breynat Hall) Yes (paid for Breynat Hall) Yes (paid for Breynat Hall)
Snowdrift Federal Day School	1962/63	Yes (1962/63 already paid at Breynat Hall)
Grandin College SR	1966/67 1967/68 1968/69 1970/71	Yes (1966/67 already paid at Breynat Hall) Yes (1967/68 already paid at Breynat Hall) Yes (paid for Grandin College SR) Yes – (1970/71 already paid at Akaitcho Hall SR)
Akaitcho Hall SR	1970/71	Yes (1970/71 paid for Akaitcho Hall SR)

The years claimed on appeal for which the applicant did not already received the CEP are as follows:

Breynat Hall	**1960/61**
Snowdrift Federal Day School	**1960/61** **1961/62**
Grandin College SR	**1969/70**
Akaitcho Hall SR	**1971/72**

DECISION

Year 1957/58

The applicant received the CEP for the school year 1957/58 at St-Joseph. An Admission dated September 30, 1957 indicates the applicant was admitted to St. Joseph on September 8, 1957. A Student List indicates the applicant transferred from St. Joseph's to Breynat Hall on December 27 or 28, 1957. St-Joseph ceased to operate on December 29, 1957.

Year 1958/59

This applicant received the CEP for the year 1958/59 at Breynat Hall.

Year 1959/60
This applicant received the CEP for the year 1959/60 at Breynat Hall.

Year 1960/61 (unpaid year under appeal)
The applicant did not receive the CEP for the year 1960/61. The applicant is claiming the CEP for the year 1960/61 at two institutions: Breynat Hall and Snowdrift Federal Day School.The applicant does not appear on complete primary documents for the school year 1960/61 at Breynat Hall. Primary documents were intended to be comprehensive lists of all the students residing at Breynat Hall. The applicant appears as a day student on the monthly report of the Snowdrift Federal Day School in the month of October, November, and December 1960. The applicant also appears on list of students attached to a letter dated April 15, 1961 signed by the community teacher indicating the applicant was a student at the Snowdrift Federal Day School. In the year 1960/61, the school records indicate that the applicant was a day student at the Snowdrift Federal Day School. Snowdrift Federal Day School is not an eligible institution under the Settlement Agreement. **Based on the absence of the applicant's name from the quarterly returns at Breynat Hall and the school records confirming that the applicant was a day student at Snowdrift Federal Day School, the appeal is denied for the year 1960/61.**

Year 1961/62 (unpaid year under appeal)
The applicant did not receive the CEP for the year 1961/62. The applicant is claiming the CEP for the year 1961/62 at Snowdrift Federal Day School. The applicant appears as a day student on a Nominal Roll of Treaty Indians enrolled at Snowdrift Federal Day School in September 1961. The applicant also appears on a letter dated April 15, 1961 signed by the community teacher indicating the applicant was a student at the Snowdrift Federal Day School. In the year 1961/62, the school records indicate that the applicant was a day student at the Snowdrift Federal Day School. Snowdrift Federal Day School is not an eligible institution under the Settlement Agreement. **Based on the above, the appeal is denied for the year 1961/62.**

Years 1962/63,1963/64,1964/65,1965/66,1966/67,1967/68
These school years were previously assessed as eligible at Breynat Hall. The applicant last appears on the June 1968 quarterly return with a date of discharge recorded as June 27, 1968.

Year 1968/69
This school year was previously assessed as eligible at Grandin College. Student Records and the applicant's statements indicate the applicant was residing at Grandin College for part of the school year 1968/69 and was then placed in a private home for the rest of the year.

Year 1969/70 (unpaid year under appeal)
The applicant does not appear on any documents for the school year 1969/70 at Grandin College. The applicant is recorded on a September 1969 Enrolment Form for Joseph Burr Tyrrell Federal Day School which indicates that she was a day pupil in grade 12. The applicant also appears on the June 1970 Promotion form for Joseph Burr Tyrrell Federal Day School. Joseph Burr Tyrrell School was the day school for Grandin College, Breynat Hall and the Fort Smith community.
The statements of the applicant indicate she was in a private home in the year 1969/70. Students placed into home boarding accommodations are not eligible under the Settlement Agreement. **Based on the above, the appeal is denied for the year 1969/70**

Year 1970/71
This school year was previously assessed as eligible at Akaitcho Hall. No admission documents were located for the applicant at Akaitcho Hall. The applicant first appears on the September 1970 Quarterly Return with a 'Date of Current Admission' recorded as September 1, 1970 and a "new admission" note recorded in the 'Remarks' column. No discharge documents were located for the applicant. She last appears on the March 1971 Quarterly Return with a date of discharge recorded as January 3, 1971.

Year 1971/72 (unpaid year under appeal)

The applicant does not appear on complete primary documents for this school year at Akaitcho Hall. Primary documents were intended to be comprehensive lists of all the students residing at Akaitcho Hall. The NWT Student Records Enrollment History and the NWT Official Transcript of Secondary Schooling indicate that the last school year of the applicant was 1970/71. **Based on the above, the appeal is denied for the year 1971/72.**

Name of NAC Member

Date (yyyy-mmm-dd)

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
Prince Albert IRS	1970	1971	**No**
Prince Albert IRS	1971	1972	**Yes**

Reason for Decision

CEP APPLICATION

The applicant claimed the Common Experience Payment (CEP) for residing ten (10) years at Prince Albert IRS (1966/67 to 1975/76). She received the CEP for four (4) years (1972/73 to 1975/76).

RECONSIDERATION

In reconsideration, the applicant claimed the CEP for residing six (6) years at Prince Albert IRS (1966/67 to 1971/72). She was denied.

APPEAL

On appeal, the applicant is claiming the CEP for residing two (2) years at Prince Albert IRS (1970/71 and 1971/72).

DECISION

School Year 1970/71. The applicant's name does not appear on available primary documents in the school year 1970/71. Primary documents were intended to be comprehensive lists of all the students residing at Prince Albert IRS. There is no document or information supporting that the applicant was a resident at Prince Albert IRS in 19070/71. **Based on the above, the appeal is denied for the year 1970/71.**

School Year 1971/72. There is a school document indicating that the applicant may have been admitted to Prince Albert IRS in the spring of 1972. Based on an *Application for Admission to Student Residence* approved on June 15, 1972, there is reasonable ground to believe that the applicant was admitted to Prince Albert IRS on April 26, 1972. **The appeal is allowed for the year 1971/72.**

Name of NAC Member **Date (yyyy-mmm-dd)**

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
Dauphin (McKay) IRS	1972	1973	Yes

Reason for Decision

CEP APPLICATION

The applicant claimed the Common Experience Payment (CEP) for residing one (1) year at the Churchill Vocational Centre (1971/72). The applicant was denied.

RECONSIDERATION

In reconsideration, the applicant claimed the CEP for the same year at the Churchill Vocational Centre (1971/72). The applicant received the CEP for that year (1971/72).

APPEAL

On appeal, the applicant is requesting the CEP for one (1) year at the Dauphin (McKay) IRS (1972/73).

DECISION

In a written correspondence dated June 10, 2010, the applicant provided a detailed description of traveling by plane to Dauphin Lake with her siblings. The applicant and her brothers arrived at Dauphin (McKay) IRS and were separated. The applicant had no idea where her brothers were taken and believed that they were supposed to be together at all times at the residential school. The plane travel with her siblings from her home community to Dauphin (McKay) IRS is confirmed by 2 letters from former students. The applicant slept at the residence prior to being moved to a private home.

The applicant's statements indicate that she believed at the time of her arrival that she would reside at Dauphin (McKay) IRS with her siblings.

Based on the above, the appeal is allowed for the year 1972/73.

Name of NAC Member

Date (yyyy-mmm-dd)

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
Desmarais (St. Martin's, Wabasca RC) IRS	1949	1950	**No**
Desmarais (St. Martin's, Wabasca RC) IRS	1950	1951	**Yes**
Joussard (St. Bruno's) IRS	1961	1962	**No**

Reason for Decision

CEP Application

The applicant claimed the Common Experience Payment (CEP) for residing at Desmarais IRS for nine (9) years (1949/50 to 1957/58). The applicant also claimed the CEP for residing at Joussard IRS for one (1) year (1958/59). The applicant claimed the CEP for a total of ten (10) years. The applicant received the CEP for a total of ten (10) years as follows:

- nine (9) years at Desmarais IRS (1951 to 1960); and
- one (1) year at at Joussard IRS (1960/61)

Reconsideration

In reconsideration, the applicant requested two (2) prior years at Desmarais IRS (1949 to 1951) and one (1) year at Joussard IRS (1961/62). The applicant was denied.

Appeal

On appeal, the applicant is requesting the same three years: 1949 to 1951 at Desmarais IRS and 1961/62 at Joussard IRS.

Decision

Year 1949/50 at Desmarais IRS

The applicant would have been four (4) years old in September 1949. All the quarterly returns are available for the years 1949/50 at Desmarais IRS and the name of the applicant does not appear on them. Quarterly returns were intended to be comprehensive lists of all the students who resided at Desmarais IRS. The Committee could not find a reason that could explain the absence of the applicant's name from the quarterly returns.

The appeal is denied for the year 1949/50 at Desmarais IRS.

Year 1950/51 at Desmarais IRS

The applicant would have been five (5) years old in September 1950. The Committee did find evidence that the applicant was residing at Desmarais IRS in the year 1950/51, namely:

- a statement from the applicant that she was apprehended by the Indian Agent at age five (5);
- the letters of support from two (2) former students who were residents in the year 1950/51;
- a letter of support from the applicant's mother that she was at the residential school from age 5;
- credible statements in the IAP decision that the applicant was a resident at age 5.

Based on the above, the appeal is granted for the year 1950/51 at Desmarais IRS.

Year 1961/62 at Joussard IRS

All the quarterly returns are available for the year 1961/62 at Joussard IRS and the name of the applicant does not appear on them. The applicant last appears on the December 1960 quarterly return. A letter dated July 24, 1962 from an assistant director indicates that the applicant did not continue at Joussard after the year 1960/61. An IAP decision also indicates that the applicant left Joussard IRS in December 1960 and returned a year later to work and train in a nearby hospital. If the applicant did return to the IRS in 1961/62, it was to work and train in a nearby hospital and not for the purpose of attending classes.

Based on the above, the appeal is denied for the year 1961/62 at Joussard IRS.

Name of NAC Member

Date (yyyy-mmm-dd)

NAC CEP Appeal Decision Grid	
CEP File Number	
CEP Transaction ID	
Applicant First Name	
Applicant Last Name	
Date Sent to NAC (mm/dd/yyyy)	

School Name	School Year From	School Year To	Decision to Pay (Yes/No)
The Federal Hostel at Cambridge Bay	1992	1993	**No**
The Federal Hostel at Cambridge Bay	1993	1994	**Yes**
The Federal Hostel at Cambridge Bay	1994	1995	**Yes**

Reason for Decision

CEP APPLICATION

The applicant requested the Common Experience Payment (CEP) for residing two (2) years at the Federal Hostel at Cambridge Bay (1993/94 and 1994/95). He was denied.

The applicant also applied to receive the CEP for three (3) years at Quqshuun School (1995 to 1998). Quqshuun School is not a recognized institution under the Settlement Agreement.

RECONSIDERATION

In reconsideration, the applicant requested the CEP for residing five (5) years at The Federal Hostel at Cambridge Bay (1994 to 1999). He was denied.

APPEAL

On appeal, the applicant is requesting three (3) years at The Federal Hostel at Cambridge Bay (1992/93, 1993/94 and 1994/1995).

DECISION

Year 1992/1993 at The Federal Hostel at Cambridge Bay

The applicant does not appear on any school documents available for the year 1992/93. Further, the applicant provided a Student Records Enrolment History dated November 12, 2010 which indicates that he attended Kugaardjuk School in 1992/93. **Based on the above, the appeal is denied for the year 1992/93.**

Years 1993/1994 and 1994/95 at The Federal Hostel at Cambridge Bay

The Student Records Enrolment History indicates that the applicant did attend school in Cambridge Bay in the years 1993/94 and 1994/95. The specific information provided by the applicant on The Federal Hostel at Cambridge Bay for the year 1993/94 was accurate. The applicant also appears on three invoices during the 1994/95 school year which indicates the applicant was residing at the Federal Hostel at Cambridge Bay.

Based on the above, the appeal is allowed for the years 1993/94 and 1994/95 at The Federal Hostel at Cambridge Bay.

Name of NAC Member

Date (yyyy-mmm-dd)

Appendix J

Appendix J

Examples of Standard Statements in NAC Appeals

- St. Augustine Mission School. St. Augustine Mission was considered to be a unique situation. Although, Schedule "F" of the Settlement Agreement listed "St. Augustine ("Smoky River)" as a recognized institution, the IRS closed in 1907 and was succeeded by the St. Augustine Mission School, which was operated by the Roman Catholic Church as a private school. Canada did not consider the St. Augustine Mission School to be an IRS, and the supervising Court eventually sided with Canada. All the applicants who claimed the CEP for residing at "St. Augustine" after 1907 received the following decision:

  > *The information provided by the applicant indicates he/she resided at St. Augustine Mission School. However, St. Augustine Mission School is not recognized as an Indian residential school in the period requested on appeal. There is an institution on the list of recognized Indian residential schools named St. Augustine (Smoky River). This institution was an Indian residential school until 1907. From 1907 to 1951, St. Augustine Mission School was operated by the Roman Catholic Church as a private boarding and day school. Former students who resided at the institution during those years are not eligible to receive the CEP.*

- Coqualeetza IRS. Canada's research indicated that Coqualeetza IRS had ceased to be an IRS in 1940 and became the Coqualeetza Indian Hospital in 1941. There was considerable debate among NAC members about whether or not Coqualeetza was a recognized IRS after 1940, or should be recognized as one, because young Indigenous patients with tuberculosis resided there for months or even years, and attended classes during the day. The supervising Court eventually decided that Coqualeetza Indian Hospital did not qualify as an IRS under the Settlement Agreement. Applicants who claimed school years at Coqualeetza IRS after 1940 received the following decision:

  > *Coqualeetza IRS ceased operation in 1940, at the end of the 1939/40 school year. The following September, in 1941, Coqualeetza Indian Hospital was opened. Coqualeetza Indian Hospital is not an eligible*

institution under the Indian Residential Schools Settlement Agreement. Coqualeetza IRS ceased operation in 1940 at the end of the 1939/40 school year. All pupils who had been attending Coqualeetza IRS were transferred to other residential schools including St. Michael's IRS and Alberni IRS. Much of the furniture and equipment and some staff were also transferred to Alberni IRS for the 1940/41 school year. In September 1941, Coqualeetza Indian Hospital was opened. Coqualeetza hospital is not an eligible IRS.

- Application from Personal Representative or Estate. When applications from personal representatives for applicants declared mentally incompetent and applications from estate for applicants who died on or after May 30, 2005, INAC would always contact the personal representatives or applicant to seek additional information. When the name of the applicants appeared in Primary Documents, the application could be validated. However, when it was not the case, and no additional information was provided in the appeal file, the NAC denied the appeal and used the following language as applicable:

The applicant did not appear in any primary or ancillary documents in the possession of INAC-Research that could confirm eligibility for [school year] to [school year], or for any additional years, at any known Indian Residential School (IRS). During the initial stages of the Common Experience Payment (CEP), the applicant's representative did not indicate specific school years or a specific IRS in their request for CEP. As a result, INAC-Research performed pre-appeal CEP assessment for the years in which the applicant would have been 4 years of age to 18 years (i.e. [school year] to [school year]) for possible residence at all Indian Residential Schools across Canada. In addition, research was performed on possible name variations based on the name of the applicant's father and father [names researched]. On Appeal, the applicant's representative did not specify the IRS but did specify the years for which CEP is requested ([school year] to [school year]). As a result, INAC-Research conducted a broad search of all IRS records for these school years. While the representative did not indicate whether the applicant was non-Aboriginal, and therefore may not be listed on available primary documents, there was no information submitted that could be used to confirm that the applicant either attended or resided at an IRS.

- Application of CEP Validation Principle 6 to deny appeal. The NAC usually used the following language when CEP Principle 6 applied:

The applicant does not appear in complete Quarterly Returns available for the school years under appeal. Quarterly Returns are lists of all Status Indian students residing at the residential school during a year. They were submitted to the Government of Canada by the administrator of the residential school in order to receive funding. They are considered to be a reliable listing of former residential school students unless there is other information indicating they may not have been accurate. There was no reason provided or ascertained that could explain the absence of the applicant's name from the Quarterly Returns and other school documents in the school years requested on appeal

Appendix K

INDIAN RESIDENTIAL SCHOOLS COMMON EXPERIENCE PAYMENT

CEP COURT APPEAL FORM ("FORM")

PRIVACY STATEMENT

Personal Applicant Information is collected, used, and retained by the CEP Court Appeal Administrator ("Administrator") regarding CEP Court Appeals, pursuant to the Personal Information Protection and Electronics Documents Act, S.C. 2000, c.5 (PIPEDA) for the purpose of operating and administering the CEP Court Appeals Administration.

This Form will be provided to the Court and will become **publicly available information**.

INSTRUCTIONS

This Form is to be used to appeal to the Court if your PRIOR Appeal to the National Administration Committee ("NAC") for Common Experience Payment ("CEP") was NOT successful. The Court will determine your Appeal in writing. There will not be any personal appearances before the Judge.

This Form is for appeals to the Court of decisions of the NAC related to schools listed in the Indian Residential Schools Settlement Agreement ("Settlement").

An appeal may be filed by an individual, personal or legal representative ("representative").

You may download this Form at www.residentialschoolsettlement.ca or; by calling 1-866-879-4916 to request a Form be mailed to you.

Once the Form is fully completed, mail the Form to:

Indian Residential Schools CEP Court Appeals Administrator
Suite 3 - 505, 133 Weber Street North
Waterloo, Ontario
N2J 3G9
1-866-879-4916

Please review all information in the Form and make a copy for your records before you mail it. Please notify the Administrator in writing at the address above regarding any change in your personal or any representative's address or contact information.

This Form may only be used if:

1. Your PRIOR Appeal to the NAC for CEP was NOT SUCCESSFUL; AND,

2. Your Appeal to the Court of the NAC decision relates to a school or schools listed in the Indian Residential Schools Settlement Agreement ("Settlement").

Completing the Form

Please complete all sections of the Form. Please read all questions and requests for information carefully before answering. Please type or use black ink pen. Use extra sheets of paper and provide additional documentation as necessary to provide complete information.

How to fully complete the Form:

Page 1:

1. Please complete the Appellant (Claimant) Information section in full.

   If you are appealing as a representative on behalf of a former student, please enter the former student's CEP Transaction ID, Date of Birth, Last Name, and Given Names. You may indicate that you are the representative in the Current Address box and place your mailing address there.

2. Please complete the Details of Your Appeal to the Court section in full. You must list both the name of the school that you resided at and the years that you were denied payment while residing at that school. If you are a representative, please list the information as it pertains to the former student. Please use a separate piece of paper if more space is required.

Page 2:

1. In the space provided please tell the Court the reason(s) why your appeal should be allowed. If you are a representative, please list the information as it pertains to the former student.

2. At the end of the Form, please sign your name and date the Form where indicated. If you are a representative, please sign and date the Form and indicate that you are the representative. If you or anyone else is represented by a lawyer, please enter the lawyer's contact information. This information will allow the Administrator to communicate with you.

3. If you used additional paper to complete the Form, please write your first and last name and your CEP Transaction ID at the top of each additional piece of paper. If you are a representative, please write the former student's first and last name and his or her CEP Transaction ID at the top of each additional piece of paper.

The Administrator will send a Letter of Acknowledgement to you by mail once your fully completed Form is received. If you have questions, please call 1-866-879-4916 or visit www.residentialschoolsettlement.ca.

If required, counseling and emotional support services are available by calling the toll free IRS Crisis Line 1-866-925-4419.

INDIAN RESIDENTIAL SCHOOLS COMMON EXPERIENCE PAYMENT ("CEP")

CEP COURT APPEAL FORM ("FORM")

This Form is to be used to appeal to the Court, decisions of the National Administration Committee ("NAC") related to schools listed in the Indian Residential Schools Settlement Agreement ("Settlement"), if your PRIOR Appeal to the NAC for Common Experience Payment was NOT successful.

The Court will determine your Appeal in writing. Personal appearances before a Judge are not permitted.

If your appeal relates to a school NOT listed in the Settlement, please contact 1-866-879-4913.

APPELLANT (Claimant) INFORMATION:

Preferred Language: ☐ **English** ☐ **French** ☐ **Other** _____

CEP Transaction ID			Date of Birth (mm/dd/yyyy)			
Last Name			Given Names			
Current Address						
	Province			Postal Code		
Phone Number(s)	Home		Business		Other	

DETAILS OF YOUR APPEAL TO THE COURT:

List both the name of the school and the years denied. **Please complete fully. Incomplete information will lead to your appeal being delayed.**

Name of the Approved Indian Residential School	Year(s) Denied yyyy to yyyy

Please use a separate piece of paper if more space is required.

In the space provided below please tell the Court the reason(s) why your Appeal should be allowed.

Applicant Signature:		Date	

Appendix L

Indian Residential Schools
Adjudication Secretariat

Secrétariat d'adjudication
des pensionnats indiens

September 29, 2010

Chief Adjudicator's Guidelines for Legal Fees under the IAP

Early on in the Independent Assessment Process (IAP), there was insufficient data upon which to reliably assess trends in terms of legal fees approved by adjudicators under the Courts' IAP Implementation Orders. However, there is now a statistically significant body of rulings upon which to assess trends in rulings as to fees that adjudicators are generally prepared to approve under the process.

In consideration of this data, the Chief Adjudicator's Office has developed legal fee guidelines for the assistance of Claimant Counsel, Claimants and Adjudicators for the following reasons:

- To promote transparency.
- To provide claimant counsel with benchmarks as to fees that are likely to be approved, so that counsel can gauge and in appropriate circumstances adjust their proposed fees upon receipt of the decision or conclusion of a settlement.
- While recognizing that each case is unique, to encourage consistency among cases that are of similar risk and monetary value.
- To provide counsel with incentive to take on more difficult cases and cases of lower monetary value.
- To ensure that no legal counsel receives less for pursuing higher awards - achieved by the use of a graduated fee percentage.
- To minimize the number of Schedule 2 rulings and legal fee "appeals" that are required, thereby reallocating resources that are presently expended on issues with legal fees by Claimant Counsel, adjudicators and IRSAS staff to the priorities of IAP decisions and settlements.

Note: These Guidelines do not apply to Opportunity Loss Re-openers, where most counsel limit fees to 15 per cent.

The legal fee guidelines are as follows:

On portion of award / settlement that is:	
Less than $30,000	**25%**
$30,000 - $100,000	**20%**
$100,000 - $150,000	**17.5%**
Greater than $150,000	**15%**

Examples:

Award of $50,000 This would produce the following fee:	
First $30,000 x 25%	$7,500
Next $20,000 x 20%	$4,000
Total Fee:	$11,500

Award of $95,000 This would produce the following fee:	
First $30,000 x 25%	$7,500
Next $65,000 x 20%	$13,000
Total Fee:	$20,500

Award of $165,000 This would produce the following fee:	
First $30,000 x 25%	$7,500
Next $70,000 x 20%	$14,000
Next $50,000 x 17.5%	$8,750
Next $15,000 x 15%	$2,250
Total Fee:	$32,500

Award of $200,000 This would produce the following fee:	
First $30,000 x 25%	$7,500
Next $70,000 x 20%	$14,000
Next $50,000 x 17.5%	$8,750
Next $50,000 x 15%	$7,500
Total Fee:	$37,750

Underlying principles

1. General

These guidelines are not intended to re-write or derogate from the responsibilities reposed in adjudicators by the courts. Instead, they are simply intended to reflect how adjudicators have interpreted and applied those responsibilities in other rulings. The rights of claimants, counsel and adjudicators as provided for in the Implementation Orders remain in place. It will therefore be important for counsel to docket their time, recognizing that if the proposed fees exceed the guidelines, or even if the proposed fees are based on these guidelines, a fee review may be requested by the claimant or initiated by the adjudicator.

2. Rights of Claimants

Even if counsel submits a proposed fee that falls within these guidelines, in all cases where the proposed legal fees exceed 15%, claimants are entitled to request that an adjudicator conduct a Schedule 2 review for fairness and reasonableness.

3. Rights of Claimant Counsel

Subject to the 30% maximum, including Canada's contribution, these guidelines do not restrict counsel from proposing fees that exceed the guidelines. For example, some Complex Track cases may be deserving of higher fees than these guidelines provide. However, in Standard Track cases, unless it is obvious to the adjudicator that the case is deserving of higher fees than the guidelines permit, counsel should expect that the adjudicator is likely to require justification for a departure from the guidelines. In such circumstances, counsel should expect that the risk of a Schedule 2 review being required is substantial.

4. Responsibilities of Adjudicators

Even in cases where the fees proposed by counsel fall within these guidelines, adjudicators retain the ability in all cases to initiate a fee review. It is envisaged that this will occur in circumstances where the adjudicator is of the view that the representation was not of adequate quality to justify the proposed fee, the proposed fee may result in a windfall to counsel, or that factors set out in the Implementation Orders may be engaged.

Appendix M

Appendix M

Distribution of Personal Credits – Terms and Conditions

The principal terms and conditions for the distribution of the Personal Credits approved by the Court were as follows:

- A notice plan consisting of a direct mail-out to CEP recipients along with a media campaign targeting Indigenous persons 18 years and older to raise awareness among CEP recipients and their family members about their personal credits entitlement;

- Personals credits could be used individually for mainstream education or for group Indigenous programs (such as Indigenous identities, histories, cultures or languages);

- Some or all of the personal credits could be transferred to up to two family members and be used at a maximum of two “education entities” or “group educational services,” or a combination thereof;

- Eligible “education entities” or “group educational services” could be found on a list jointly approved by Canada, AFN and the Inuit Representatives. Additional education providers could be recognized by a three-member advisory committee comprised of appointees by each of Canada, the Court and AFN (or the Inuit Representatives in place of the AFN appointee when the applicant was Inuk);

- Each CEP recipient received a personalised “Acknowledgement Form” by mail to be completed by selecting the various options described above (i.e. who would use the credits, where and when). The completed Acknowledgement Form was returned by mail to Crawford Class Action Services (“Crawford”) for

processing, who was appointed as the personal credits administrator, agent of Canada as the trustee of the DAF;

- Once the completed “Acknowledgement Form” was received and approved by Crawford, the CEP recipients and/or transferees were sent one or more “Redemption Form(s)” to be completed by each “education entities” or “group educational services” and submitted to Crawford. Once the completed “Redemption Form(s)” was received and approved by Crawford, a cheque was issued to the education provider;

- Deadlines were set forth for the filing of the Acknowledgement Forms (October 31, 2014) and the Redemption forms (December 1, 2014). Educational activities were to be completed by April 30, 2015; and

- The estimated cost of $23,597,929 to be covered by the DAF for the administration and distribution of the personal credits was approved, including funding for the AFN and the Inuit Representatives to conduct outreach activities and to hire “Aboriginal Liaisons” to assist CEP recipients and their family members to use the personal credits.

Appendix N

Appendix N

Distribution of DAF – Terms and Conditions

The principal terms and conditions for the distribution of the Designated Amount Fund approved by the Court were as follows:

- NIBTF would receive 94.3 percent of the funds to be distributed between First Nations (97.3 percent) and Métis (2.7 percent);

- IEF would receive 5.7 percent of the funds to be distributed between Nunavut Inuit (60.5 percent), Inuvialuit (30.4 percent), Quebec Inuit (8.1 percent), and Labrador Inuit (1 percent);

- Funds would be distributed by NIBTF and IEF to individuals or groups to attend educational programs (including mainstream education, employment training, courses on Indigenous language and culture) to address the intergenerational impact of residential schools, promote reconciliation, and improve the conditions for educational success;

- Each organization would identify educational needs and priorities for First Nations, Métis and Inuit individuals, families and communities and set forth objective criteria and guidelines for the selection of applicants;

- Funds could be disbursed through scholarships, grants, bursaries, sponsorships and awards for a variety of educational expenses in mainstream education (including tuitions, transportations, and living expenses) or cultural programs (such as elder's fees, equipment, and supplies) without reducing, replacing, or duplicating existing support available through federal, provincial and territorial governments, but to augment and complement such funding;

- NIBTF would invest no less than 50 percent of the initial capital received to be maintained as a reserve for a term of 20 years;

- Administrative expenses of NIBTF shall not exceed 10 percent of the interest generated by the funds each year, or 10 percent of the amount paid out to beneficiaries each, whichever is greater.[1] The total administrative expenses of IEF shall not exceed an average of 20 percent of the funds received by IEF; and

- Each organization would account and report separately on the funds received and disbursed by preparing annual financial statements, annual reports, and by filing Annual Information Returns as required by the Canada Revenue Agency for registered charities.

[1] NIBTF subsequently requested an increase in administrative expenses allowed from 10 to 15 percent. The request was initially approved for a period of two years by the Supreme Court of British Columbia on October 31, 2016, and then permanently in a subsequent court order dated July 27, 2018.

Appendix O

AMENDED MINUTES OF NAC MEETING – JUNE 22, 2010

GILLES GAGNÉ – CHAIR

PARTICIPANTS

Dan Carroll, Alex Pettingill, Randy Bennett, Brian O'Reilly, Peter Grant (via conference call), Kathleen Mahoney, Jane Ann Summers, Mike Thibault, Rod Donlevy and Catherine Coughlan

GUESTS (VIA CONFERENCE CALL)

Justice Murray Sinclair (Chair, Truth and Reconciliation Committee), Tom McMahon (Executive Director Adjudication Secretariat) and Marie Wilson (TRC Commissioner)

INTRODUCTIONS

- Gilles welcomed the guests, introduced all participants and referenced the agenda he circulated on June 15th

ISSUES RELATING TO INDEPENDENCE FROM CANADA / TRANSLATION OF "*TRUTH*" BY "*TÉMOIGNAGE*" / NAC ASSISTANCE OF AND COORDINATION WITH TRC

- Gilles referred to a letter he received regarding the TRC's independence from Canada and stated that he knows that the Commission has a firm grasp on this issue completely however he does not know if the TRC website demonstrates this independence as much as it perhaps should
- Justice Sinclair thought it would beneficial from the outset to have a discussion regarding the roles of the NAC and the TRC
- Gilles advised that the NAC is responsible for overseeing and implementing the Approval Orders and is in essence guardian of the Settlement Agreement
- Gilles referenced the good relationships that the NAC have made with Crawford Class Actions and the Oversight Committee and IAP Secretariat and would like to forge the same relationship with the TRC
- Justice Sinclair advised that we are all guardians of the Settlement Agreement and not to misunderstand him, a relationship is important however there is a strong need to understand the roles of each group
- Justice Sinclair stated that the NAC is called upon during disputes and that it concerns him to receive letters from the NAC indicating the TRC is doing something wrong
- Justice Sinclair understands the validity of the view points however he questioned the appropriateness of NAC members writing letters to the TRC
- Alex advised that the NAC has a unique role, not exactly an appellate role, and is charged with the responsibility of initiating and taking matters forward
- Justice Sinclair advised that the NAC has a limited role and an appellate role with respect to the TRC
- Justice Sinclair is a little concerned that the NAC members are advocating a view on something when in fact it is an appellate body
- Justice Sinclair asked the NAC members in what capacity are they bringing the translation issue forward; in a personal capacity not as committee members?

- Dan advised that he was the author of one of the letters sent to Justice Sinclair and further advised that he was writing in a personal capacity and that he was very careful in doing so
- Dan explained his role as the representative from the National Consortium and his obligations to his constituents
- Going forward, Dan advised that he will be mindful to clarify the capacity in which he is writing
- Peter advised that he authored one of the letters and that he is in a similar situation as Dan in his role as the representative for Independent Counsel
- Peter advised that he referenced his participation on the NAC as a way of introducing himself to Justice Sinclair and that he was writing on behalf of Independent Counsel and not the NAC
- Peter advised that he concurs with Dan and understands the confusion the letter may have caused
- Kathleen agreed with her colleagues and advised that she is representative for the AFN
- The NAC members wear a number of hats, it oversees the implementation of the Settlement Agreement while each individual is responsible to his or her constituents
- Kathleen advised that more than any other party, the AFN is closer in touch with survivors and survivor groups
- Kathleen advised that she takes instructions from the AFN but is also responsible for raising concerns or questions of survivors and bringing those concerns or questions to the table
- The members deal with their NAC hat versus their constituents hat on a daily basis
- Gilles advised that he realized quickly this was not a NAC issue but individual concerns made by three separate groups
- Justice Sinclair advised that he has no problem discussing this issue directly with the individual parties and advised that there is no need to have item 3 or for that matter item 2 on today's agenda
- Gilles advised that under Article 18.09 of the Settlement Agreement, he was selected by the parties to verify and correct the French translation prepared by Justice Canada
- Gilles advised that he made over 2500 changes and all but a few were accepted
- Justice Sinclair advised that item 3 is not a matter for this table
- Alex advised that the French translation does not equal the English translation
- Justice Sinclair respectfully disagreed and advised that he is more than willing to discuss with individuals this issue
- Justice Sinclair advised that he is willing to speak to anyone about anything and asked the NAC if, as a committee, it is saying what should or should not be on the website, if so he would like to hear about this
- Gilles advised that is a matter of consistency of the Settlement Agreement
- The use of "témoignage" is a departure from the translation and thought to add this item to the agenda for a discussion
- Justice Sinclair reiterated his statement regarding the need to understand the relationship between the NAC and the TRC
- Justice Sinclair advised that he accepts the individual views and the validity of the points and is willing to discuss this however if the NAC is going to raise an issue it needs to specify it in the context of the relationship to ensure it is dealt with properly
- In an effort to ensure his understanding, Rod asked if an issue came outside from the NAC to the NAC, then the NAC should communicate with the TRC that an issue was raised

- Rod asked Justice Sinclair what his suggested protocol would be to deal with, for example, a concern raised by citizen Dan Carroll
- Justice Sinclair advised that he does not have a complete enough understanding of the NAC's mandate to understand beyond a personal interest; why on a committee level, Dan wrote to the TRC directly and the TRC responded
- Rod advised that he takes Justice Sinclair's point and that this clarifies this matter for him
- Alex referenced section 12 regarding national consistency and believed it was under this context that item 3 was added to the agenda
- Kathleen advised she was one of the authors of the letters and that the NAC is very enthusiastic about the TRC and wants the TRC to be successful and asked the TRC members to see this discussion in that light
- Kathleen advised that this item should not have been one line on the agenda but referenced in the spirit of those who are concerned about this matter
- Kathleen advised that the item was placed on the agenda to have a conversation about the importance of the wording
- Justice Sinclair thanked Kathleen and advised that time would probably run out to have such a discussion so instead advised that he will correspond with the NAC Chair and provide the rationale for using "témoignage"
- Justice Sinclair advised that more emphasis was focused on using "Canada" in the title and that he provide a letter to the NAC as a source of information and would discuss this matter later if the NAC wishes
- Justice Sinclair indicated that items 2 and 3 will be dealt with in writing
- Just for reference, Peter advised that he never received a letter and was provided with a copy from Dan Carroll
- Mr. McMahon apologized and stated he will ensure that Peter receives an original letter; Peter thanked Mr. McMahon
- With respect to independence from Canada, Dan advised that he recognizes the issues that could lie there with respect to resources for the TRC
- Justice Sinclair advised that the TRC have had a number of public discussions regarding the TRC's independence from Canada and that this matter is one of the most challenging questions faced by the TRC
- The TRC was declared a department under the *Financial Administration Act* and has to comply with Treasury Board policy
- This resulted in an attitude, from both the government and the public, that the money received by the TRC is government funds
- The TRC is spending public funds from the compensation fund created from the Settlement Agreement; these funds are not government funds
- The TRC still must follow Treasury Board policy with respect to staffing
- The TRC has two rules:
  - Comply with Treasury Board policy as specified in the Settlement Agreement
  - Act as a designated department under the *Financial Administration Act* and *Public Service Employees Act*
- Justice Sinclair advised that to the extent that government employees can facilitate matters for the TRC they have done so
- However the staffing process continues to be time consuming and distracting
- Justice Sinclair spoke of the former TRC administration and how his administration has been appointed to a five year term, to 2014, however the spending ceases in 2012
- What was spent during the first administration is lost to Justice Sinclair's administration

- Justice Sinclair has not heard from Canada if the fund will be replenished, in whole or in part, and he is hesitant to ask for more money when not much has been done
- Justice Sinclair advised that while the Commissioners are here for five more years, the money is here for four more years
- Justice Sinclair advised that 60 million is not adequate to complete the mandate of the TRC as required under the Settlement Agreement
- A lengthy discussion ensued as to the funding of the TRC
- Justice Sinclair advised that the TRC needs to prove themselves and currently they have made significant strides in hiring and is in position to hire regional liaisons
- Ms. Wilson stressed the point that time is of the essence
- Ms. Wilson advised that given the magnitude of the mandate the question is: does the TRC have the resources to complete everything
- Kathleen reiterated that the attitude of the NAC is to offer assistance and that the AFN is also in a position to assist with funding as is the private sector
- The AFN is alive to the large mandate and the resource issue as well as being alive to the concerns of survivors not understanding the mandate
- The AFN is behind the TRC
- Justice Sinclair advised that he knows the private sector is behind the TRC; $250,000 was raised from the private sector in relation to the first national event
- Justice Sinclair referred to a discussion held last September or October with Caroline Davis, former Assistant Deputy Minister
- Justice Sinclair asked Ms. Davis what the government's view of reconciliation is and referenced the day students who attended schools not listed in the Settlement Agreement
- There is a large body of people who were just as affected by the residential school system as the class members who are being left out of reconciliation
- Justice Sinclair questions why the TRC is not authorized to work with all students
- Justice Sinclair understand the claims fund issue is a different matter however the TRC is bombarded by day students and the TRC is unable to provide health support services etc as they are technically not covered by the TRC mandate
- While funding would be an issue, the TRC is in a unique position to assist day students
- Justice Sinclair advised that the average cost of taking one statement is approximately $500; taking statements from those students not covered is extremely expensive
- Justice Sinclair does not want to view things from a financial standpoint
- Justice Sinclair stated he would not be surprised if another TRC is established for these people who are dealing with the same issues as the class members
- Catherine echoed Justice Sinclair's early comment regarding the roles of the NAC and the TRC
- The NAC has no mandate or jurisdiction with respect issues not included in the Settlement Agreement; the day school issue is one of these issues that is not covered
- Justice Sinclair referenced his conversation with Ms. Davis that took place last year
- Justice Sinclair referenced the Spirit Wind Class Action regarding day students and if this matter is certified the question will be what can the TRC do for these people
- The TRC has a broad mandate regarding reconciliation and as the day students are dealing with the same issues, it would make sense to involve everyone at the same time
- Ms. Wilson advised that the Commissioners are placed in difficult situations when day students, who are not covered by the Settlement Agreement, want to tell their stories
- If you take the statement you increase costs however if you decline to take the statement you hurt the credibility of the TRC
- Discussion ensued about the day students issue vis a vis the TRC and its mandate

- Justice Sinclair advised that the TRC is obligated to prove itself and show what has been done, what will be done and what can be done
- Gilles referenced the issue regarding document production
- Justice Sinclair advised that there is no need for discussion on this as the matter has been resolved

SPECIFIC ISSUES

- Kathleen advised that she was happy to hear that the regional liaisons positions are moving forward
- Kathleen advised that some survivors are confused as to the TRC's purpose and do not understand the TRC's function
- Kathleen asked if the TRC is using the survivor committee as this committee would very helpful in writing the story of residential schools in Canadian history
- Kathleen advised that the survivor committee feels underutilized and would like to help
- Justice Sinclair advised that depending on who you talk to, some believe the survivor committee is a full-time job versus those who do not believe it is a full-time job
- Justice Sinclair advised that the people on the survivor committee are ambassadors for the TRC
- The survivor committee attended events with the TRC and on behalf of the TRC
- Justice Sinclair advised that the survivor committee has a clear role and this role has kept the committee pretty busy
- Justice Sinclair stated that the survivor committee is not a full-time job as the TRC can not afford full-time salaries and to a large extent, no one on the committee has complained thus far
- Justice Sinclair stated that he did apologize for not including the survivor committee in the planning of the Manitoba national event
- Justice Sinclair advised that he has ensured to utilize the committee as much as possible and that he knows one or two people are not happy as they expected to have more work
- The survivor committee call their own meetings, which take place every three months, and that the TRC does not interfere in these meetings and attends same when requested
- The survivor committee has been playing a significant role
- Kathleen asked for an update regarding the commemoration fund
- Justice Sinclair advised that Mr. McMahon has been working on this
- Mr. McMahon advised that he received feedback at the end of March
- This matter has been an interesting challenge and Mr. McMahon advised how he as been working with INAC to ensure people to have to go through a double process
- Mr. McMahon advised that he is working on a document which is in the last approval stages which will be posted at the end of July
- This document will invite people to give ideas to access the funds
- With respect to the regional liaisons, Mr. McMahon advised that the job opportunities have been posted on both the TRC website and at www.jobs.gc.ca
- These positions will also be advertised in Aboriginal media as well
- Mr. McMahon advised the NAC to encourage people to apply and to broadcast the availability of these positions
- Mr. McMahon advised that there is a short time line to apply; two weeks from last Friday
- Gilles thanked Justice Sinclair, Ms. Wilson and Mr. McMahon for participating in today's meeting and they in turn thanked the NAC

POST–MEETING DISCUSSION – POSTING TIMELINES

- The grids will be posted to the Decisions for Comment folder by Wednesday, June 30, 2010
- The grids will be posted to the Final Decisions folder by Wednesday, July 7, 2010

NEXT MEETING

- The July NAC meeting will be held in Montreal on July 21st and 22nd; Gilles will host

Minutes Prepared By Corey L. McDonald

Appendix P

ADMINISTRATIVE JUDGES RESPONSE TO REQUEST FOR GUIDANCE BY THE NATIONAL ADMINISTRATION COMMITTEE

DECEMBER 1, 2008

Overview

1. In order to facilitate the orderly and expeditious implementation of the Residential Schools Settlement, the courts supervising the settlement designated two supervising judges to act as Administrative Judges pursuant to the Court Administration Protocol. These were Chief Justice Warren Winkler and Chief Justice Donald Brenner, representing the east and west respectively.

2. The National Administration Committee has approached the Administrative Judges under the Settlement Agreement for guidance, as distinct from directions, in respect of three matters. This was done through an informal case conference conducted in Calgary and subsequent communications.

3. After meeting with the NAC, it became apparent that this guidance could best be provided by framing the issues as specific questions. There are three such questions: first, the process for adding new schools to those listed in the Agreement; second, issues concerning the application of the class definition; and, third, a general issue concerning the functioning of the NAC.

I. Adding Schools to the Settlement Agreement

4. Schedules "E" and "F" to the Settlement Agreement contain the list of schools to which the Settlement Agreement applies. It appears that there were some schools that were omitted from this list of schools at the time the agreement was entered into. In our view, this issue raises two broad questions:

A. What procedure should be followed in determining whether a school should be added to the Settlement Agreement?

B. If a school is to be added, what steps must be followed to ensure that the procedure is fair to all prospective new class members?

5. While this matter was under consideration, we were advised through Court Counsel that Ms. Susan Vella, counsel for Windigo First Nations Council and Nishnawbe Aski Nation, was instructed to deliver a Request for Directions with respect to the addition of two schools, Stirland Lake High School and Cristal Lake High School, to Schedule "F" of the Settlement Agreement.

6. The Request for Directions was filed by Ms. Vella on November 14, 2008. It will be dealt with in due course. It is clear to us that a decision by us relating to the Request for Directions will require that we squarely address the two questions above relating to

the addition of schools to Schedule F of the Agreement. Moreover, the Request for Directions provides a factual matrix which will be of assistance and will avoid having to deal with the questions on an abstract basis. Accordingly, we will defer any response to these questions relating to school additions pending disposition of the Request for Directions. Should there be any further guidance required after the disposition of the Request for Directions, it may be sought at that time. For reference, a copy of the Request for Directions has been attached.

II. The Class Definition

7. The second matter on which guidance was requested related to the application of the class definition under the Settlement Agreement in certain circumstances. There were two such situations described to us: i. Some former students resided at one listed residential school while attending another: ii. Some former students attended at a listed residential school while being billeted at private homes or elsewhere. The issue is whether such students are included in the class and are entitled to benefits under the settlement. In our view, these situations give rise to two questions:

> A. Does the class definition include those persons who attended a school listed on Schedules "E" or "F" of the Settlement Agreement but did not reside at that school or at home?
>
> B. If the answer to this question is yes, how, in those circumstances, is eligibility to be determined?

(a) Residence at a Different Listed Institution

8. The issue turns on the definition of Survivor Class in the agreement. The relevant part of the Survivor Class definition provides:

> "All persons who resided at an Indian Residential School in Canada at any time prior to December 31, 1997...." (emphasis added)

9. Residence, rather than attendance, determines class eligibility. Accordingly, it is our view that where a person "resided" at one listed residential school but attended another, such a person would fall within the class definition and should therefore be entitled to claim as a class member. Indeed, we understand that this interpretation, which is based on a plain reading of the class definition in the Settlement Agreement, has been applied by the Administrator. We agree with this approach.

(b) "Billeted" Students

10. The issue of class membership as it pertains to students "billeted" outside an institution listed on Schedules "E" and "F" is more difficult. While a strict literal reading of the definition would preclude class membership for billeted students, the question remains whether this interpretation should apply in all circumstances? And if not, there

are other questions. For example, should a difference exist between students who were placed in billet accommodation by parents as opposed to those placed in a billet by Canada under the residential schools' policy? Does it matter that the placement was not a private home but some other institution not included on Schedules "E" or "F" of the Settlement Agreement?

11. In our opinion, there are three factors to be considered in respect of the "billeted" student issue:

> (i) the overarching principle is that those whom the settlement is intended to benefit must be treated fairly and equitably;
>
> (ii) the requirement that the Settlement Agreement be applied consistently in all jurisdictions; and
>
> (iii) the fact that the compensation pool has been structured as a Trust Fund with residual beneficiaries.

12. The principle of fair and equitable treatment of class members is manifest in relation to class action legislation, thus mandating a liberal and purposive approach. These principles extend to the administration of claims in a class action settlement. Therefore, with respect to the evidentiary basis necessary to support a claim to class membership, it is preferable to err on the side of inclusion rather than exclusion.

13. However, where the issue involves the actual interpretation of a class definition, as opposed to the evidence required to support a claim to class membership, different considerations pertain. The liberal and purposive approach cannot be so readily applied. Class definitions are, of necessity, meant to be more precise and provide a clear demarcation between those persons who are class members and those who are not.

14. Ideally the limits of class membership in terms of to whom it applies will be clear and apparent from a plain reading of the class definition. In the present circumstances the request for guidance has been formulated based on the submission that there may be circumstances in which the exclusion resulting from a plain reading of the class definition produces a result different from what was in fact intended. However, if an expanded class definition is the consequence that flows from giving effect to that contention, arguably this may amount to a material amendment to the Settlement Agreement. If this is so, it is very different from giving a broad interpretation of its terms.

15. Also, the requirement of a consistent application of the Settlement Agreement in all jurisdictions arises in these circumstances. That requirement is contained in s. 4.11(14) of the Settlement Agreement which provides in relevant part:

> "...no material amendment to the Approval Orders can occur without the unanimous consent of the NAC ratified by the unanimous approval of the Courts"

16. An answer to the billeted student question will require a determination as to whether the preferred result constitutes an amendment to the Settlement Agreement. Such a legal question cannot be decided by way of guidance from the Administrative Judges on an abstract basis. The issues must be decided on motion with a proper evidentiary record before all of the supervising courts in each jurisdiction. The Settlement Agreement is quite clear in this respect. This is the only way that the rights of those affected can receive the full protection contemplated by the governing legislation in each respective jurisdiction.

17. The nature of the question and the requirement that it be dealt with through a formal court process leads to consideration of the third factor. Currently, after all claims have been paid and all appeals exhausted, class members, under certain conditions, and specific organizations, have an entitlement to any surplus in the Trust Fund. Accordingly, those residual beneficiaries must be provided with notice of any process that might result in a change in their respective entitlements under the Trust Fund. The form and substance of such notice is a matter for the determination of the supervising courts.

(c) The Process for Determination of the Billeted Student Issue

18. Finally, we turn to the practical considerations relating to the process for determining the billeted student issue. However, we wish to make it clear that in our view there is no duty under the Settlement Agreement for any party, administrator or oversight body to pursue a determination aimed at securing an expanded class definition.

19. Nonetheless, should the NAC choose to do so, in keeping with the principles of the Court Administration Protocol, we offer guidance as to the manner in which the formal process may be initiated by the NAC.

20. The identical record must be before each court in order that the issue can be determined on the basis of the same documentary or written record. The NAC, as both an oversight and appellate body, is in a unique position to select representative cases from the appeals filed with it so as to provide the necessary evidentiary record. This will allow for a process that is at once expedited and cost effective. Where a case is selected, the NAC should obtain the consent of the appellant-claimant to stand as a representative. (It is, of course, implicit in this direction that it is our view that the NAC does not have the jurisdiction to grant an appeal based on a class definition that differs from a plain reading of the current definition in the Settlement Agreement, without having the question determined by the supervising courts.)

21. The selected cases should then be made the subject of a Request for Directions. In the event that the NAC, or any member, is of the view that additional information is necessary to supplement the record in order to ensure that there is a sufficient evidentiary basis for the determination of the issues, brief submissions should be delivered as to why this evidence should be accepted together with the tendered evidence in full.

22. As the question of funding was raised, we believe that the steps set out in the foregoing paragraphs should be conducted within the budgeted monthly compensation of the NAC under the Settlement Agreement. However, once those steps are completed, the NAC, or any of its members, may make submissions with respect to whether additional funding is necessary to ensure that the process is adequately resourced. Should it be found by the courts that additional funding is necessary, directions will be issued with respect to quantum and manner of payment. Once all of the above steps have been completed the issue will be decided.

III. The NAC

23. We were also asked to provide guidance with respect to the role, function and funding of the NAC. That guidance has been provided within the specific context of the class definition issue. However, with respect to general questions relating to the NAC, it is difficult to do otherwise than to look at the language of the Settlement Agreement. The Agreement contains detailed provisions dealing with the mandate, function and funding of the NAC. Should specific questions arise in the course of the ongoing work of the NAC; these can be addressed through a Request for Directions under the Court Administration Protocol.

24. We are mindful however that the Settlement Agreement, as it pertains to the funding of the NAC represents a bargained result between parties with equal bargaining power. While we do not foreclose any future application for further funding, we emphasize that there would have to be compelling reasons to support any such request.

"Donald Brenner"

Chief Justice Donald Brenner

"Warren Winkler"

Chief Justice Warren Winkler

Schedule 1

Perspective of The Assembly of First Nations

The Role of the AFN

1. The Assembly of First Nations[1] (AFN) brought a unique perspective to its participation in resolving the historic Indian Residential Schools Settlement Agreement. This is because the AFN's approach to the negotiations was primarily informed by indigenous legal principles, theories, and traditions rather than Western legal theory and principles. Where there was overlap, the AFN sought to harmonize the legal principles to achieve a broad range of reparations[2] to further its goals of reconciliation and healing.

2. When Phil Fontaine was elected National Chief of the AFN in 1997, it was after a long personal and political history of connection with the residential school legacy. For generations, he and members of his family and extended family were survivors of the residential school system. In 1990, as Grand Chief of the Assembly of Manitoba Chiefs, he was the first indigenous political leader to bring national

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[1] The **Assembly of First Nations** (AFN) is a political organization representing approximately 900,000 **First Nations** citizens in Canada. The AFN advocates on behalf of **First Nations** on issues such as treaties, Indigenous rights, and land and resources.

[2] The AFN uses the term "reparations" as defined in the *United Nations Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Gross Violations of International Human Rights Law* applicable to Canada. The UN Principles and Guidelines are, to a considerable degree, consistent with indigenous principles in that they recognize that victims of human rights violations can be individuals or a collective group of individuals, the immediate family or dependants of the direct victim. As such, they have the right to prompt, sufficient and effective reparations for gross violations of their human rights by the state. The Guidelines also recognize a broad range of reparations including damages, restitution, rehabilitation, satisfaction and guarantees of non-repetition. See the UN Guidelines at https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx See also, Lisa Maragell, Reparations in Theory and Practice, *International Center for Transitional Justice* (2007) at https://www.google.com/search?q=lisa+maragell+international+center+for+transitional+justice&rlz=1C5CHFA_enCA729CA730&oq=lisa+maragell+international+center+for+transitional+justice&aqs=chrome..69i57.10775j0j7&sourceid=chrome&ie=UTF-8 (accessed April 20, 2019).

attention to the dark history of residential schools issue by relating his and his community's experience of systemic and personal abuse in the Fort Alexander Indian Residential School.[3]

3. His revelations contributed to a flood of litigation such that by the time he was elected National Chief in 1997, the courts were clogged with an unmanageable number of IRS claims. The Treasury Board of Canada estimated that it would take 53 years to conclude court proceedings of residential school cases, at great cost.[4]

4. The National Chief realized that not only did the crisis of litigation create leverage for settlement negotiations, it presented an opportunity to chart a different course in the relationship between indigenous peoples and the rest of the Canadian population.[5] While recognizing the major contributions made by class action law firms and independent counsel through their litigation on behalf of survivors, the National Chief knew that unless the AFN and other indigenous groups were an integral part of the solution, the historic opportunity to properly and authentically deal with the residential school tragedy, in the indigenous way, would not occur.

5. The problem, as the AFN perceived it, was that leaving the settlement in the control of non-indigenous lawyers, government officials and church representatives would restrict the range of reparations and reinforce colonial dominance over indigenous

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[3] Phil Fontaine's Shocking Testimony of Physical and Sexual Abuse https://www.cbc.ca/archives/entry/phil-fontaines-shocking-testimony-of-sexual-abuse

[4] The cost was estimated to be $2.3 billion in 2002 dollars not including the value of the actual settlement costs. See Treasury Board of Canada Secretariat 2003 Indian Residential Schools Resolution Canada Performance Report for the Period ending March 31, 2003. *Ottawa Supply and Services Canada.* http://publications.gc.ca/site/eng/246476/publication.html

[5] For a full discussion of the AFN's approach, see K. Mahoney, "The Untold Story: How Indigenous Legal Principles Informed the Largest Settlement in Canadian Legal History**,** [2018] UNB LJ 198. https://www.questia.com/library/journal/1G1-565512076/the-untold-story-how-indigenous-legal-principles (accessed April 24, 2019)

peoples – a prospect that would be an anathema to survivors who suffered through the most egregious forms of colonial subjugation in the residential schools.[6]

6. Moreover, to have any chance of reconciliation for the enormity of the harms caused, the parties would have to start from the recognition that the Indian residential school violations were motivated by a policy of cultural genocide[7] that not only affected every aspect of life for the survivors of Indian residential schools, but that of all indigenous peoples. Unless the Settlement Agreement recognized the motives that caused the harms and dignified the collective as well as the individual experiences of the survivors, their families and communities, healing and reconciliation would be a dream, not a reality.

7. When the Government issued their Alternative Dispute Resolution plan (ADR) as the solution for the residential school tragedy, it was obvious from the AFN's perspective that their worst fears were realized and that their intervention in the process was essential.[8]

The AFN Political and Legal Strategy

8. To seek support for their position and to raise public awareness, the AFN took a number of strategic steps. First, it jointly convened an international, interdisciplinary conference[9] with the University of Calgary Faculty of Law that called for survivor

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[6] Many scholars have written on the impacts of colonization and the rights of indigenous peoples to take control of their lives through employing indigenous laws, principles and customs. One of the best sources is John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

[7] Even though some of the defendants did not accept that residential school policy was a form of cultural genocide, the conclusion that it was, is now well accepted. The Truth and Reconciliation Commission, the former Chief Justice of Canada as well as the former Prime Minister of Canada, Paul Martin all described the residential school policy as one of cultural genocide or attempted cultural genocide. The comments of the former Chief Justice and the former Prime Minister Paul Martin can be found at https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/; and https://www.cbc.ca/news/politics/paul-martin-accuses-residential-schools-of-cultural-genocide-1.1335199. For a summary of opinions and analysis see Ruth Amir, Cultural Genocide in Canada? It did Happen Here, *Aboriginal Policy Studies*, Vol 7 No. 1 (2018). Also see http://dx.doi.org/10.5663/aps.v7i1.28804

[8] See paras 20 and 21 of the NAC Report*, infra.*

[9] See discussion at para 22 of the NAC Report and corresponding footnotes.

inspired reparations rather than the government's ADR solution;[10] second, it sent a letter to the Deputy Minister of Indian Residential Schools Resolution Canada setting out the AFN's position in detail;[11] third, it published the AFN Report,[12] critiquing the ADR and making extensive recommendations consistent with indigenous principles; fourth, it negotiated a Political Agreement with the federal government and commitment letter from the Deputy Prime Minister.[13] Finally the AFN filed a Statement of Claim in the courts[14] ensuring it would have a place at the negotiating table.[15]

9. The breakthrough for the AFN occurred on May 30, 2005. This was the date that it entered into a Political Agreement[16] with Canada accepting the AFN Report as the framework for the Settlement Agreement.

10. The Political Agreement spoke to a relationship between Canada and the AFN of cooperation and reconciliation ensuring the AFN would play a "key and central" role in achieving a lasting resolution to the Indian Residential Schools legacy.

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[10] The conference agenda is at https://kathleenmahoney.files.wordpress.com/2019/03/2004-residential-school-legacy-conference-agenda.pdf

[11] See "Letter to Mario Dion on line: https://kathleenmahoney.files.wordpress.com/2015/11/adr-critique-2nd-dion-leter-irs.pdf

[12]Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools, https://kathleenmahoney.files.wordpress.com/2018/03/afn-report-indian_residential_schools_report.pdf.

[13] https://kathleenmahoney.files.wordpress.com/2019/01/a-mclellan_letter.pdf

[14] AFN Statement of Claim, *infra*, note 59.

[15] A position at the negotiating table was crucial for the AFN because in the event that the settlement negotiations failed, it was the only party to claim collective remedies including the truth and reconciliation commission, the archive and research center, healing and commemoration funds, the early payment for seniors, and the compensation for loss of language and culture and loss of family life based on the formula of $10,000 for the first year and $3,000 dollars per year or portion of a year thereafter. The *Baxter* class action called for a lump sum payment for all resident students.

[16] Political Agreement between the Assembly of First Nations and Her Majesty the Queen in Right of Canada (represented by Deputy Prime Minister Anne McLellan) dated May 30, 2005. Online: https://web.archive.org/web/20070319141417/http://www.afn.ca/cmslib/general/IRS-Accord.pdf (accessed March 8, 2019). See Appendix A

11. It also addressed the context and content of a future Settlement Agreement, identifying the reparations the AFN deemed essential, and the appointment, with the agreement of the AFN, of the Hon. Frank Iacobucci as Canada's representative.

The Political Agreement reads as follows:

> Whereas Canada and First Nations are committed to reconciling the residential schools tragedy in a manner that respects the principles of human dignity and promotes transformative change;
>
> Whereas Canada has developed an Alternative Dispute Resolution (ADR) process aimed at achieving that objective;
>
> Whereas the Assembly of First Nations prepared "The Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools" (the AFN Report) identifying the problems with the ADR process and suggesting practical and economical changes that would better achieve reconciliation with former students;
>
> Whereas the Assembly of First Nations participated in several months of discussion with Canada, the churches and the consortium of lawyers with respect to the AFN Report, moving the towards settlement and providing education and leadership for all the people in the residential schools legacy;
>
> Whereas Canada and the Assembly of First Nations recognize that the current ADR process does not fully achieve reconciliation between Canada and the former students of residential schools;
>
> Whereas Canada and the Assembly of First Nations recognize the need to develop a new approach to achieve reconciliation on the basis of the AFN Report;
>
> Whereas Canada announced today that the first step in implementing this new approach is the appointment of the Honourable Frank Iacobucci as its representative to negotiate with plaintiffs' counsel, and work and consult with the Assembly of First Nations and counsel for the churches, in order to recommend, as soon as feasible, but no later than March 31, 2006, to the Cabinet through the Minister Responsible for Indian Residential Schools Resolution Canada, a settlement package that will address a redress payment for all former students of Indian residential schools, a truth and reconciliation process, community based healing, commemoration, an appropriate ADR process that will address serious abuse, as well as legal fees;
>
> Whereas the Government of Canada is committed to a comprehensive approach that will bring together the interested parties and achieve a fair and just resolution of the Indian Residential Schools legacy, it also recognizes that there is a need for an

apology that will provide a broader recognition of the Indian Residential Schools legacy and its effect upon First Nation communities; and

Whereas the Assembly of First Nations wishes to achieve certainty and comfort that the understandings reached in this Accord will be upheld by Canada:

The Parties agree as follows:

1) Canada recognizes the need to continue to involve the Assembly of First Nations in a key and central way for the purpose of achieving a lasting resolution of the IRS legacy, and commits to do so. The Government of Canada and the Assembly of First Nations firmly believe that reconciliation will only be achieved if they continue to work together;

2) That they are committed to achieving a just and fair resolution of the Indian Residential school legacy;

3) That the main element of a broad reconciliation package will be a payment to former students along the lines referred to in the AFN Report;

4) That the proportion of any settlement allocated for legal fees will be restricted;

5) That the Federal Representative will have the flexibility to explore collective and programmatic elements to a broad reconciliation package as recommended by the AFN;

6) That the Federal Representative will ensure that the sick and elderly receive their payment as soon as possible; and

7) That the Federal Representative will work and consult with the AFN to ensure the acceptability of the comprehensive resolution, to develop truth and reconciliation processes, commemoration and healing elements and to look at improvements to the Alternative Dispute Resolution process.

12. The Deputy Prime Minister explained the new policy in a letter to the National Chief saying:

> "The Government has adopted a new comprehensive approach to achieving broad resolution of the legacy of Indian residential schools. The primary element of this approach is the appointment of a Federal Representative who has been given a flexible mandate to meet with all interested parties and develop a broad reconciliation package. As many of the former students have chosen to be represented by legal counsel in class actions against the Government, it will be an important objective of the Representative to work with these groups to obtain a

> legal settlement. However, the Government has also recognized that ***broad resolution will require more than just a legal settlement*****,** (emphasis added) and it is with that in mind that the Representative has also been mandated to work and consult with the AFN on the acceptability of all parts of a comprehensive resolution package and what improvements should be made to the ongoing Alternate Dispute Resolution process. The Assembly of First Nation's Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools will be an important foundation for these discussions."[17]

13. The confirmation that the government's policy had shifted from litigation to reconciliation and that it recognized the need for a comprehensive resolution was a very positive development as it ultimately led to the comprehensive, holistic reparations the AFN sought - reparations that had never been achieved before by victims of mass human rights abuses in the Western world.

14. However, the Deputy Prime Minister categorized the AFN's position on reparations as requiring something other than "*a legal settlement*." From the AFN's perspective, the refusal to recognize the legal nature of the AFN's claims was wrong in law. It was also an ironic recapitulation of colonial attitudes to deny indigenous law's existence. Since the 1979 Supreme Court of Canada decision in *Delgamuukw,* indigenous ways of addressing the resolution of issues of rights, including ways of making appropriate compensation, are now part of Canadian law. The Court emphasized that if the path to resolving claims is governed by legal principles, those principles include, when dealing with indigenous nations, principles governing the legal systems of those nations.[18]

15. The AFN's position was that indigenous laws have existed for thousands of years and the common law as it now exists in Canada must take into account how its principles can be reconciled and coexist with the principles of the legal systems of indigenous nations.

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[17] To see the entire letter go to https://kathleenmahoney.files.wordpress.com/2019/01/a-mclellan_letter.pdf (accessed March 8, 2019).

[18] *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC).

[19] The AFN's view is that the Settlement Agreement is an excellent example of how co-existence can be achieved.

How the AFN Applied Indigenous Principles and Traditions

16. The AFN's position on procedure was that negotiations had to respect indigenous values of consultation, consensus, inclusiveness, collaboration, transparency, trust, hope and healing with the understanding that defendants would take responsibility for their behavior and apologize[20] for the wrongs committed.

17. Throughout the period of negotiations the AFN reached out to thousands of survivors, elders, community members and intergenerational survivors from coast to coast to ascertain what they wanted from the settlement and under what terms. Other consultations were conducted with the AFN executive, Chiefs, and survivor's groups to seek their input and participation in the decision-making process.

18. The consultative approach is one shared by many indigenous tribes. In Mi'kmaq legal traditions, for example, while a certain degree of concentrated authority is important to their legal order, they also aspire to give everyone an opportunity to participate in decision-making.[21] Ojibway tradition also requires people to talk to one another, using persuasion, deliberation, council, and discussion.[22] In Cree legal traditions, consultation and deliberation are used to create and maintain good relationships in order to maintain peace between different people with different perspectives.[23]

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[19] For an in depth discussion, see Paul Williams, *The Right to Compensation for Cultural Damage* http://www.tobiquefirstnation.ca/treaties/PaulWilliamsCultureLoss.pdf

[20] The AFN negotiated the apologies from the federal government and the Vatican separately from the Settlement Agreement negotiations.

[21] James Sakej Youngblood Henderson, *"First Nations Legal Inheritances: The Mikmaq Model"* (1995) 23 Man LJ 1.

[22] *Ibid*. See also Hadley Friedland, *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018).

[23] Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2013) cited in Borrows, NAC Report, note 6 at 85.

19. During the consultations the AFN was able to determine the priorities, objectives and goals of survivors. What they discovered was that survivor's most important priorities were for reparations other than compensation. What survivors wanted most were healing, respect, the ability to tell their stories, and receiving apologies from the government and the churches that administered the schools.[24] Some of the typical comments made by survivors are as follows:

- Not everyone wants courts and litigation – some just want to heal. […] Survivors need validation – have their experience accepted as real; […] Money never equals healing. Need accountability, redress, closure, resolution and rebuilding relationships.[25]
- Experience of victims has to be central – have to understand what actually happened to them to be able to react – need to understand scope and extent of trauma. Need to respect those with the courage to speak – don't just listen – believe them.[26]

- Give victims choices, lawsuit, settlement, healing, nothing. Government needs to give up some power and believe in power of aboriginal people to do it in their own way.[27]

- Need to work to develop a culture of resolution […] Must deal with culture and intergenerational impacts.[28]

- Need apology, including individual apology, extended to family if victim wants. Need televised apologies from Prime Minister and Department of Indian Affairs and Northern Development minister.[29]

- Apologies are at the heart of reconciliation. It must go beyond words to action.[30]

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[24] For a record of the outreach dialogues, see Glenn Sigurdson, *Reconciliation and Healing: Alternative Resolution Strategies for Dealing with Residential School Claims* (Ottawa, Minister of Indian Affairs and Northern Development, 2000), online: http://www.glennsigurdson.com/wp-content/uploads/2016/06/Reconciliation_healing2.pdf

[25] *Ibid* at p. 7.

[26] *Ibid* at 16.
[27] *Ibid* at 17.
[28] *Ibid* at 19.
[29] *Ibid*.
[30] *Ibid* at 21.

- Compensation must be accessible, fair and just and supported by financial and vocational counselling.[31]

- Need to tell the story and have it memorialized in a public way […] including the means to commemorate those who have died.[32]

- We want to learn how to be Indians again – to get back language […] Must restore culture and dignity […] must address loss of culture and language and parenting skills […][33]

20. As well as taking the specific suggestions from the consultations, the AFN was guided by general indigenous principles that emerged:

    a) To be inclusive, fair, accessible and transparent;
    b) To offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools;
    c) To respect human dignity and racial and gender equality;
    d) To contribute towards reconciliation and healing;
    e) To do no harm to survivors and their families.[34]

21. The AFN also incorporated Indigenous ceremony into the negotiation process. The then National Chief (who is Ojibway) organized a special ceremony to consecrate the negotiations so they would start, according to tradition, in a good way.

22. In Ojibway tradition, ceremonies are performed to communicate to the Creator, and to acknowledge before others how one's duties and responsibilities have or are being performed.[35] Dancing, singing, and feasting sometimes accompany these rituals as a way to ratify legal relationships.[36]

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[31] *Ibid* at 22.
[32] *Ibid.*
[33] *Ibid* at 34.
[34] *Ibid*. This was a summary of many ideas that were recorded in the dialogues.
[35] See generally Basil Johnston, *Ojibway Heritage* (Toronto: McClelland & Stewart, 1976). See also stories and histories that shaped the Omushkego Crees in Louis Bird, *The Spirit Lives in the Mind: Omushkego Stories, Lives and Dreams,* (Montreal & Kingston: McGill-Queen's University Press, 2007) which stories describe similar ceremonies and traditions.
[36] Edward Benton-Banai, *The Mishomis Book: The Voice of the Ojibway* (Hayward: Indian Country Communications, 1988).

23. On this occasion, the government representative, the Honorable Frank Iacobucci, along with other government officials, church representatives, and members of the AFN negotiating team, were invited to the traditional round house on Pow Wow Island located on the Onigaming First Nation. The ceremony was performed by Ojibway elder Fred Kelly. During the ceremony, Frank Iacobucci was carried through the round house on the shoulders of women. An ancient, ceremonial pipe from the Treaty 3 area[37] was shared first by the government representative and the National Chief, then by men and women elders from the Treaty 3 territory. This was followed by singing, dancing, and praying for a successful outcome.

24. After the event, the group travelled to the Sagkeeng First Nation, the National Chief's birthplace, where a community meeting was held to hear testimony from residential school survivors, answer their questions and hear their suggestions about the negotiating process.

25. The consecration ceremony was an important step because Anishinabek law focuses on the process and principles that guide actions rather than on the specific outcomes. Accountability is closely connected to those to whom duties are owed, how those duties should be exercised, and the consequences that flow from such exercise.[38]

26. By holding the ceremony in the Roundhouse in the presence of government and church representatives, elders and community members and by hosting the public meeting of the community at the Sakeeng First Nation, the National Chief presaged to all parties that he and his team would follow Anishinabek legal principles throughout the negotiations.

27. With respect to substance, the AFN's position was that the settlement had to not only include fair and just reparations for individual survivors, but also reparations for

[37] The ceremonial pipe was smoked at peacemaking and treaty negotiations and special events such as the consecration ceremony.
[38] Borrows, *supra* note 23 at 333.

all residential students for the destruction of family life, languages, cultures and dignity, intergenerational devastation, and commemoration for those who had died.[39] Most importantly, survivors had to have the opportunity to safely tell their stories about residential schools, to be believed, and to have a permanent record be established in an archive and research center.[40]

28. The design of the Truth and Reconciliation Commission (TRC) and its mandate[41] reflected the AFN's objectives and goals.[42] The preamble of the mandate states:

> "…..The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continual healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation."[43]

29. The AFN's demands for a research center and archive, healing resources, health supports and commemoration activities were designed to assure survivors that their ancestors would be honored, that they would be respected, safe, receive healing resources, and be protected in the future from any prospect that residential schools could be imposed on them again.

30. The composition of the AFN negotiating team further reflected its view that the settlement had to be survivor-centered and represent their diverse and unique interests. The majority of the team was made up of residential school survivors, including an elder

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[39] Other than the *Baxte*r class action which claimed a lump sum for every survivor, no party other than the AFN claimed for the remedies listed.

[40] These demands were set out in the AFN's statement of claim filed against Canada and the churches, See *Fontaine et al v Canada (Attorney General)* (5 August 2005), Toronto 05-CV-294716 CP (ONSC) (Statement of Claim), online: https://kathleenmahoney.files.wordpress.com/2018/04/afn-issued-statement-of-claim_2005.pdf

[41] http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf
The structure of the TRC was designed to achieve this goal by having small community hearings and reconciliation events as well as the larger national events designed to bring in non-Aboriginal participants.

[42] The AFN was the only plaintiff's representative at the table negotiating the TRC and other collective remedies.

[43] *Ibid.*

advisor and the National Chief. A human rights professor and lawyer, a mathematician with a law degree and family ties to holocaust survivors, a class action expert with a Jesuit background and a small group of other experts completed the team.

Indigenous Legal Theory

31. As indicated above, Indigenous legal principles, theory and traditions were at the core of the AFN's perspective. When the ADR was examined through the lens of indigenous legal theory, including indigenous feminist theory, it was clear that its content was informed solely by Western legal principles and that its assumptions of objectivity, equality, and neutrality did not consider the often different values of the survivors.

32. Indigenous legal theory required that appropriate, fair and just reparations had to directly confront the historic, individual and collective effects of colonialism on indigenous peoples.[44]Questions that needed to be asked included, how can we move from Western criteria for reconciliation to an Indigenous understanding of reconciliation? How can the relationship be rebalanced? How did the residential school strategy affect indigenous identity, relationships, family and citizenship? How did the schools affect the economic, cultural, and linguistic knowledge of indigenous peoples? How can we make space for Indigenous law, conflict resolution, and peacemaking traditions?

33. Similarly, insights of Indigenous feminist theory[45] guided the AFN team to consider political and social conditions from the perspective of indigenous women victims[46] at the intersection of racial, colonial and gendered acts of violence. Questions such as: how did the gender dynamics in the residential schools shape the ways in which women and

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[44] See Gordon Christie, "Indigenous Legal Theory: Some Initial Considerations" in Benjamin Richardson et al (eds.) *Indigenous Peoples and the Law: Cooperative and Critical Perspectives*. Hart Publishing, 2009.

[45] Some indigenous feminist theorists writings that were consulted include Patricia Montour-Angus, "Standing Against Canadian Law: Naming Omissions of Race, Culture and Gender," in Elizabeth Comack, et al, eds., *Locating Law: Race/Class/Gender Connections* (Halifax: Fernwood Publishing, 1999); Joyce Green's chapter "Taking Account of Aboriginal Feminism*"* in Joyce Green, ed, *Making Space Indigenous Feminism*, 2d ed (Blackpoint: Fernwood Publishing, 2017); Emily Snyder*, "Gender and Indigenous Law: A Report prepared for the University of Victoria Indigenous Law Unit, The Indigenous Bar Association and the Truth and Reconciliation Commission*" (2013), online: http://indigenousbar.ca/indigenouslaw/wp-c.ontent/uploads/2013/04/Gender-and-Indigenous-Law-report-March-31-2013-ESnyder1.pdf

[46] For a fuller discussion, see Joyce Green, *ibid,* at p.30.

girls were treated? How are those dynamics reflected in the reparations strategy? Do the responses and proposals for reparations include indigenous women's experiences and knowledge?[47] Was the violence against girls in the residential schools perpetuated by social norms in which the degradation of Indigenous women and girls was treated as normal? Did the abusive acts and their resulting harms impact Indigenous women and men differently? How did the violence in the residential schools affect indigenous women's experience of domestic violence in their adult lives? In their participation in the work force? In their child bearing and child rearing experiences?

34. The AFN bought the answers to these questions into the AFN Report[48] recommendations on individual abuse claims, psychological injuries, claims for loss of culture and loss of family life, the mandate and structure of the Truth and Reconciliation, healing funds, memorialization, consideration for the elderly, and intergenerational harms and health supports.

35. Engagement with indigenous legal theory also illuminated the AFN Report's identification of culturally inappropriate and gender biased aspects of the ADR plan.[49] An example was the ADR's failure to recognize gender specific harms experienced by girls and women in the residential schools. If women could fit their harms into the harms males suffered they could be compensated. Otherwise they could not. Consequently, the ADR did not compensate girls or women for pregnancy, abortion or forced adoption of a child. An example of culturally inappropriate provisions was the ADR's requirement that abusive disciplinary measures would be measured by "standards of the day" of the dominant society, not by indigenous standards of child discipline.

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[47] For a theoretical analysis see Emily Snyder, Indigenous Feminist Legal Theory, [2014] *CJWL Vol. 25 no. 2.* https://utpjournals.press/doi/abs/10.3138/cjwl.26.2.07 (accessed March 9, 2019)
Also see Snyder, An Indigenous Feminist Legal Theoretical Analysis https://era.library.ualberta.ca/items/15997cd2-0909-4b8c-ad37-c6e1e9f513a0 (accessed March 9. 2019).

[48] These criticisms are set out in detail in Assembly of First Nations, *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, available online at: https://kathleenmahoney.files.wordpress.com/2018/03/afn-report-indian_residential_schools_report.pdf

[49] For a full discussion of the inappropriateness of the ADR solution imposed by Canada, see the NAC Report, at paras. 21-26.

The Problems with Mainstream Legal Theory

36. The legal theory that dominates mainstream tort law is corrective justice. The corrective justice theory goes back to the time of Aristotle[50]who posited that when one party has committed a wrong towards another and realizes a gain while the other party a corresponding loss, justice requires that the party who is deprived must be restored to his original position by the party who gained.

37. Corrective justice says a loss need not be one for which the wrongdoer is morally to blame, it need only be a loss incident to the violation of the victim's right – a right correlative to the wrongdoer's duty not to inflict the loss on the victim. The injury of the victim is repaired by putting the victim back in the position he or she was in prior to the injury taking place.[51] Remedies based in corrective justice almost always take the form of monetary compensation.

38. The main problem with the corrective justice theory is that it is often not possible for a wrongdoer to repair the injury with a money payment. When harms based on racist ideologies are multiple and diverse over extended periods of time, such as generations of residential school students were forced to endure, corrective justice is an unsuitable theory for appropriate redress. For example, a sexual abuser of a child cannot not repair the loss suffered by the victim, regardless of the amount of compensation paid.

39. When the sexual abuse occurs to thousands of racialized children as it did in residential schools, corrective justice theory is incapable of comprehending the collective dignitary losses or broken relationships between racial groups. This is especially true where there has been relentless enforcement of a degraded moral status of the group, and where systemic, discriminatory conditions persist.[52]

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[50] Aristotle, *The Nicomachean Ethics* (Kitchener: Batoche Books, 1999) at 73–81.
[51] Ernest J Weinrib, "Corrective Justice in a Nutshell" (2002) 52:4 UTLJ at 349.
[52] *Ibid* at 378–379.

40. The ADR plan was based on a corrective justice model. Within its restrictive parameters and emphasis on individual as opposed to group harms, the AFN Report correctly pointed out that the ADR was incapable of addressing the full range and complexity of the residential school claims.

Conclusion

41. In order to achieve a just and fair outcome for survivors, their families and communities, the AFN team followed indigenous legal principles throughout the negotiation process.

42. The ultimate goal of the AFN strategy was for the Indian Residential Schools Settlement Agreement to be transformative and create a path for reconciliation. Without reparations informed by indigenous legal theory and principles the AFN knew that the goal of reconciliation would fail.

43. The Indian Residential Schools Settlement Agreement demonstrates that when mass tort and human rights violations occur, fairness and justice require more than what Western legal theories are able to provide. Even though most lawyers and judges educated in the Western legal tradition unquestioningly adopt corrective justice as the appropriate theory to apply to tort based injuries,[53] it is clear that in civil proceedings, successful outcomes are rare, especially for historic wrongs such as the residential school claims.[54] Indigenous legal theory is able to fill in the gaps of corrective justice and achieve justice that would otherwise have been denied.

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[53] *Blackwater v. Plint,* [2005] 3 S.C.R. 3, 2005 SCC 58. is a good example where the Crown's "crumbling skull" argument successfully escaped liability by arguing that the residential school students who were sexually and physically abused in the school would have suffered the harms anyway because their education was inferior and the parenting they received (from former residential school students) was so poor. For a thorough analysis see Kent Roach, "*Blaming the Victim: Canadian Law, Causation and Residential Schools"* (2014) 64:4 UTLJ 566. https://www.utpjournals.press/doi/abs/10.3138/utlj.2486 (accessed March 8, 2019)

[54] To see a discussion about the duty of lawyers to learn and understand indigenous legal principles, see Lance Finch CJ, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (2012) *CLE BC Materials*; T. Farrow, Residential Schools Litigation and the Legal Profession (2014) *64:4 UTLJ* p. 596; https://www.utpjournals.press/doi/abs/10.3138/utlj.2486 (accessed March 9, 2019);

44. The relaxed proof requirements and non-adversarial hearings of the Individual Assessment process, healing funds, health supports, the Truth and Reconciliation Commission, a payment for loss of language and culture and loss of family life, an advance payment for the elderly, commemoration for deceased survivors, intergenerational reparations for education and community development, a research center and archive and public apologies from Canada and the churches - all are reparations that the AFN demanded and indigenous legal theory and principles supported.

45. Indigenous legal principles also required the AFN to create a process that allowed for direct engagement and consultation with survivors, empowering them to express their feelings and influence the outcome of the negotiations. The incorporation of ceremonial practices into the negotiating process honored the connection of survivors to the Creator and underscored the importance of accountability of the negotiators and the interconnectedness of culture to indigenous law.

46. Coming to terms with the limitations of the traditional forms of law and legal remedies is important for reconciliation.[55] Indigenous legal traditions are evolving out of colonialism, but the journey is far from over. The AFN's impact on the creation of the historic Indian Residential Schools Settlement Agreement through the use of indigenous legal principles demonstrates that legal pluralism has the potential to build trust, restore dignity and provide a measure of justice directly to victims that can add to the sum of justice available for indigenous peoples and contribute to transformative change.[56]

Carrie Menkle-Meadow, Unsettling the Lawyers: Other Forms of Justice in Indigenous Claims of Expropriation, Abuse and Injustice (2014) *64:4 UTLJ* p. 620. https://www.utpjournals.press/doi/abs/10.3138/utlj.2486 (accessed March 9 2019)

[55] See, for example, Lisa Chartrand, "Accommodating Indigenous Legal Traditions" (2005) Indigenous Bar Association 1, online: <http://www.indigenousbar.ca/pdf/Indigenous%20Legal%20Traditions.pdf>.

[56] Para 275 of the NAC Report and corresponding footnotes set out some of the transformative changes in Canada as a result of the TRC Calls to Action.

Schedule 2

Perspective of the Inuit Representatives

1. The Inuit Representatives include the Inuvialuit Regional Corporation (IRC), Makivik Corporation (Makivik) and Nunavut Tunngavik Incorporated (NTI). IRC represents the Inuvialuit, a group of Inuit from the Western Arctic (Northwest Territories). Makivik represents the Inuit of Nunavik (northern Québec) and NTI represents the Inuit of Nunavut. IRC is based in Inuvik (Northwest Territories), Makivik in Kuujjuak (Québec), and NTI in Iqaluit (Nunavut). In general, the work of the Inuit Representatives is to promote and protect the collective interests and rights of the Inuit they represent.

2. The role of the Inuit Representatives in the negotiation, conclusion and implementation of the November 2005 Agreement in Principle and the May 2006 Settlement Agreement is unique in many ways. Inuit were not included in the discussions between Canada and the Assembly of First Nations (AFN) that lead to the political agreement of May 30, 2005 (AFN Political Agreement). In fact, the Inuit Representatives needed to invite themselves to subsequent negotiations between The Honourable Frank Iacobucci (Federal Representative), the AFN, the church representatives and various lawyers representing former students. Additionally, the history of residential schools in the Arctic differed from the history of Indian Residential Schools (IRS) in some aspects, discussed below in further detail.

3. Despite such differences, however, former Inuit students went through similar traumatic experiences of being removed from their land, family and culture and sent to schools and hostels that were financed, built and operated by the federal government and the churches where they were forcefully introduced to a foreign language, strange food, a different religion and a civilization that regarded their culture as inferior, primitive and savage. This occurred at a time when their way of life was traditional and nomadic. Inuit students were subjected to harsh discipline, many were sexually abused, and the living conditions in the hostels contributed to the spread of infectious diseases such as influenza, measles and tuberculosis. However, prior to the

involvement of the Inuit Representatives, many Inuit residential schools had been largely ignored.

4. Following the public announcement of the Political Agreement, many Inuit former students begin to wonder if they would also be offered compensation. However, this was not the first time that the experience of Inuit at residential schools was discussed. For example, in 1991, Marius Tungilik spoke of the sexual abuse he suffered at Turquetil Hall (Chesterfiel Inlet, Nunavut) at a hearing of the Royal Commission on Aboriginal Peoples. In parallel to that hearing, in the summer of 1993, Marius Tungilik and two other former students, Piita Irniq and Jack Anawak, organized a reunion of 150 former students of Turquetil Hall to discuss their experience at the school. The reunion led to a request by former students of Turquetil Hall to conduct an inquiry. The independent investigation[1] that followed revealed that serious incidents of physical and sexual abuses had occurred at Turquetil Hall.[2]

5. Additionally, in 1997 in the Western Arctic, a number of Inuit and First Nations former students that were abused at Grollier Hall (Inuvik, NWT) formed a support group. As a result of this initiative, several perpetrators of sexual abuse on Grollier Hall's students were criminally convicted in the late 1990s and early 2000s.[3] In addition to criminal convictions, an alternative dispute resolution pilot project implemented between 1999 and 2002 with the participation of Canada and the churches resulted in many out of-court settlements for many former students of Grollier Hall. Beyond initiatives related to Grollier Hall, at the time of the Settlement Agreement, a number of other individual cases about abuses experienced at various schools were also being litigated by Inuit in courts in the NWT, Nunavut and Québec.[4] Moreover, since 1998, several community-based initiatives financed by the Aboriginal Healing Foundation were

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[1] The investigation was conducted by lawyer Katherine Peterson. She was appointed by the Government of the Northwest Territories.
[2] *Canada's Residential schools: The History, Part 2, 1939 to 2000, The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 1, at pages 439 – 440.
[3] *Ibid.,* at pages 431 to 438.
[4] *Fontaine et al. v. Canada et al.*, 2006 YKSC 63, at par. 2.

organized in Inuit communities across the Arctic to address the legacy, and inter-generational impact, of the abuses suffered at residential schools.[5]

6. In the AFN Political Agreement, the Inuit Representatives noted Canada's commitment for a "broad reconciliation package" for all former students with flexibility to explore "collective and programmatic elements," including "reconciliation processes, commemoration and healing elements."[6] The references indicated a marked shift in the residential school file from an individual to a collective approach. In noting this shift, the Inuit Representatives expected that Inuit would be involved, or at least consulted, in upcoming negotiations with the Federal Representative, who had been appointed on May 31, 2005.

7. However, the Inuit Representatives were not invited to participate in the negotiations led by the Federal Representative. A lawyer representing Inuit from Nunavik[7] in abuse claims was invited to participate in the negotiations with the Federal Representative. He was acting in concert with Makivik in support of individual claimants. In approximately July 2005, he contacted the legal counsel of the IRC and NTI, informing them that the negotiations were taking place. The Inuit Representatives started to get organized, determined to gain a seat at the negotiation table. During a conference call held on August 15, 2005, the leaders of the IRC, Makivik, NTI and the Labrador Inuit Association, representing all Inuit communities from coast to coast, decided to coordinate efforts in order to raise the issue of their exclusion from the negotiations with the federal government. This marked the beginning of an intense period of political and legal action by the Inuit Representatives to gain a seat at the negotiation table and ensure the full inclusion of Inuit former students and their residential schools in any global settlement, including in reconciliation and healing initiatives.

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[5] See the website of the Aboriginal Healing Foundation at AHF Website.
[6] For the text of the AFN Political Agreement, please see Appendix "A" attached to this report.
[7] Gilles Gagné, who was a NAC Member until 2011, and the NAC Chairperson from October 2009 to June 2011.

8. On August 10, 2005, IRC sent a letter to the Federal Representative to seek participation in the negotiation. On August 19, 2005, Inuit Tapiriit Kanatami (ITK), the national voice of Canada's 60,000 Inuit, sent letters to the Deputy Prime Minister and the Minister of Indian Affairs and Northern Development. These letters requested direct and meaningful participation in the process underway and the inclusion of all Inuit former students and the residential schools they attended. In addition to their letters, ITK also attempted to organize meetings between Inuit leaders and the federal government. On the legal front, the Inuit Representatives began preparations to file class actions in their respective jurisdiction on behalf of Inuit former students should the federal government refuse to include them. However, the Labrador Inuit Association did not pursue the process further, given that they were in the process of concluding a land claim agreement and that their beneficiaries had attended mission schools in Labrador in which Canada had no involvement prior to the entry of Newfoundland in the Confederation in 1949.[8]

9. On September 1, 2005, a conference call took place between the Federal Representative and the Inuit leaders. The Inuit leaders explained particular features of residential schools in the Arctic, which included federal day schools constructed by the federal government and separate hostels to lodge Inuit students. The Federal Representative indicated that day schools and hostels were not included in his current mandate, which was to negotiate with lawyers representing former IRS students who had filed legal actions against Canada. However, after being informed that NTI had filed a class action the previous day (August 31, 2005)[9] on behalf of Nunavut former students and that IRC would do the same on September 7, 2005 on behalf of the Inuvialuit,[10] the Federal Representative confirmed that NTI and IRC lawyers would be

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[8] After 1949, Canada provided funding to Newfoundland for the educational needs of indigenous students in Labrador. Class actions filed in 2007 and 2008 on behalf of former students of Labrador residential schools resulted in a settlement on September 28, 2016. Canada paid $50 million as compensation for attendance at residential schools and for serious abuse claims together with funding for healing and commemoration initiatives. On November 24, 2017, Prime Minister Trudeau apologized to former students of Newfoundland and Labrador. More at Government of Canada.

[9] *Michelline Ammaq, Blandina Tulugarjuk and Nunavut Tunngavik Incorporated v. Attorney General of Canada,* Nunavut Court of Justice Court, File # 08-05-401 CVC.

[10] *Rosemarie Kuptana v. the Attorney General of Canada*, Supreme Court of the Northwest Territories, File # S-0001-2005000243.

invited to the next negotiation meeting and that he would advise Canada of the new development. NTI and IRC had followed in the footsteps of Makivik, which filed a legal action in the Superior Court District of Montréal on August 1, 2005[11] to formally gain a seat at the table. The Inuit leaders indicated they would prepare a briefing note on the Inuit federal day schools and related hostels, as well as on the IRS that were generally also attended by Inuit.

10. Having achieved their first objective of participating in the negotiation, the Inuit Representatives accelerated various consultation and research initiatives on Inuit residential schools commenced in the previous months. Consultation with Inuit former students was essential to identify with accuracy the residential schools that Inuit had attended throughout the years. Historical research was necessary to determine the involvement of the federal government in Inuit residential schools. Makivik, IRC, and NTI mailed detailed questionnaires to their beneficiaries to gather specific information about their residential school attendance.

11. Since September 1, 2005, the Inuit Representatives participated in all of the negotiation meetings that lead to the Agreement in Principle on November 20, 2005. When the Inuit Representatives entered the negotiations, they knew that the list of residential schools used by Canada did not include many residential institutions where Inuit had lived and studied. The Federal Representative formed a committee comprised of Canada and the Inuit Representatives to determine the eligibility of the additional institutions to be proposed by the Inuit Representatives. Based on the results of their internal consultation with former students and their historical research in various government and church archives across the country, the Inuit Representatives were able to provide lists of residential schools and detailed research memorandums on the involvement of the federal government in Inuit education.

[11] File # 500-17-026908-056.

12. These efforts resulted in the addition of 16 additional residential schools in the Agreement in Principle (four in Nunavik,[12] ten in Nunavut,[13] and one in each of the NWT and the Yukon). The school added in the NTW was Grandin College (Fort Smith), a residential school predominantly for First Nations and Métis but where some Inuvialuit also attended, based on the results of the survey conducted by IRC among its former students. The school added in the Yukon was the Shingle Point Eskimo Residential School, which officially operated from 1929 to 1936, and some Inuvialuit and Inuit former residents were still alive in 2005. After the Agreement in Principle was signed, an additional Inuit residential institution (the Federal Hostels at Frobisher Bay, Nunavut) was added to the final schedule of additional schools attached to the Settlement Agreement (Schedule "F"), for a total of 17 additional residential schools.

13. Due to time limitations in conducting research prior to the conclusion of the Agreement in Principle and the Settlement Agreement and the fact that the historical record was both incomplete and distributed across various archives,[14] there remained a possibility that other Inuit residential schools might be identified. With that in mind, the Inuit Representatives insisted that a mechanism be included in the Settlement Agreement for any person or organization to request Canada to research and include other residential schools to the Settlement Agreement together with a right to appeal to the Court if Canada should refuse to include a particular institution.[15]

14. During the negotiation process, the Inuit Representatives made representations on all the components of the Settlement Agreement. They knew from experience with their land claim agreements that the real challenges of the Settlement Agreement would be its implementation. With that in mind, the Inuit Representatives obtained representation on the National Certification Committee, the National Administration

[12] Federal hostels at Great Whale River, Port Harrison, George River, and Payne Bay.
[13]Federal hostels at Panniqtuug/Pangnirtang, Broughton Island/Qikiqtarjuaq, Cape Dorset/Kinngait, Eskimo Point/Arviat, Igloolik/Igglulik, Baker Lake/Qamani'tuaq, Pond inlet/Mittimatalik, Cambridge Bay, Lake Harbour, and Belcher Island.
[14] Library and Archives Canada, NWT Archives, the General Synod Archives of the Anglican Church of Canada, and the Hudson's Bay Company Archives.
[15] Section 12 of the Settlement Agreement.

Committee, the Independent Assessment Process (IAP) Working Group, and the IAP Oversight Committee. The Inuit Representatives also ensured that the mandate of the Truth and Reconciliation Commission (TRC) would be inclusive of Inuit and that there would be Inuit representation on the TRC Indian Residential Schools Survivor Committee. In June 2011, the TRC's second national event was held in Inuvik, NWT. The northern national event was preceded by a three-month tour of a TRC Inuit Sub-commission of 18 Inuit communities across the north and it was followed by TRC hearings held in 12 Inuit communities, as well as one in Ottawa for Inuit and other former students.[16]

15. In 2012, the Inuit Representatives intervened in the Request for Direction with respect to the scope of Canada's obligation with respect to historical residential school documents stored at Library and Archives Canada (LAC). Canada's position was that it was only obligated to give access to LAC to the TRC to conduct its own research. The TRC's position, supported by the Inuit Representatives and the AFN, was that Canada was required by the terms of the Settlement Agreement to provide to the TRC all the IRS documents archived at LAC. On January 30, 2013, The Honourable J.A. Goudge of the Ontario Superior Court of Justice decided that Canada had to produce to the TRC in an organized manner the relevant residential school documents stored at LAC.[17] The Inuit Representatives' intervention in the case was motivated by Canada's narrow interpretation of its obligation under the Settlement Agreement respecting the IRS documents archived at LAC, as well as by the difficulty they encountered in having Inuit residential schools recognized by Canada related to challenges in locating relevant historical documents.

16. Following the conclusion of the Settlement Agreement, the Inuit Representatives focused on assisting Inuit former students to claim and receive the compensation promised by the Settlement Agreement. They toured their communities to provide information on the Settlement Agreement. They assisted Inuit former students to claim

[16] See the website of the TRC at TRC Website.
[17] *Fontaine v. Canada (Attorney General)*, 2013 ONSC 684 (CanLII), at paragraph 77.

the advance payment and the common experience payment. They facilitated access to IAP lawyers in their communities. They ensured that former students received access to counseling and other mental health services through the implementation of Health Canada's Resolution Health Program. They assisted the TRC with community events and statement-taking in their communities. They provided access to estate and financial planning services to Inuit former students through activities funded by Canada. They used their best efforts to help Inuit former students use their personal education credits.

17. Between the conclusion of the Agreement in Principle and the Settlement Agreement, a new federal government was elected that prioritized education. The Agreement in Principle contemplated that any surplus in the Designated Amount Fund (DAF) should be distributed in the form of personal credit for "personal healing," and that any excess in the DAF after this funding was distributed should be transferred to the Aboriginal Healing Foundation. In the Settlement Agreement, these provisions were changed to reflect the educational focus of the new government. The Inuit Representatives and the AFN proposed that any remainder in the DAF be transferred and divided between the Inuvialuit Education Foundation (IEF) and the National Indian Brotherhood Trust Fund to be used for education purposes, to which Canada agreed. Given that a surplus remained in the DAF at the conclusion of the CEP and the distribution of personal credits, the IEF was entitled to receive 5.7% of the excess in the DAF, representing the percentage of Inuit that were CEP recipients. To date, the IEF has received $13,132,841. These funds are distributed for educational purposes to Nunavut Inuit (60.5%), Inuvialuit (30.4%), Nunavik Inuit (8.1%) and Labrador Inuit (1%), percentages that were determined on the basis of how Inuit CEP recipients self-identified on their CEP application forms.[18] [19]

[18] There was no specific category on the CEP application form for Labrador Inuit. To calculate these percentages, all the Inuit CEP recipients who resided in Newfoundland and Labrador were considered to be Labrador Inuit. These percentages are explained in the *IEF Administration Plan for the Funds Received under the Residential Schools Settlement Agreement* attached to an order of The Honourable Madam Justice B.J. Brown of the Supreme Court of British Columbia dated January 7, 2016.

[19] For more information, see section III C. of this report - *Transfer to National Indian Brotherhood Trust Fund and Inuvialuit Education Foundation*.

18. At the time of the Agreement in Principle, the Inuit Representatives estimated that there would be between 4,000 and 5,000 Inuit former students qualifying for the CEP assuming that all of the Inuit residential institutions would be recognized by the Settlement Agreement. A total of 4,510 Inuit received the CEP (2,745 Nunavut Inuit, 1,387 Inuvialuit, and 378 Nunavik Inuit).[20] However, many Inuit who attended residential schools in Nunavik and Nunavut did not receive a CEP at all or did not receive the CEP for all the school years they have claimed.[21] The following section discusses both the reasons for the denials and some of the measures taken to assist these former students. However, it is first necessary to provide a brief summary of the unique history of Inuit residential schools in order to understand the challenges encountered with the CEP.

19. In the Western Arctic and what is now the Northwest Territories (NWT),[22] Inuvialuit often lived in proximity to First Nations communities. Consequently, Inuvialuit were educated in mixed residential schools with First Nations and Métis starting at the beginning of the 20th century. Inuvialuit were first educated in mission schools[23] built and operated by religious orders with construction and operating grants provided by Canada. In the late 1950s, Canada financed and built new residential institutions in the NWT knowns as “hostels” or “halls” usually located near federal day schools that were operated under contract with the Catholic and Anglican churches. The churches were gradually replaced by secular administrations and some of the residential institutions remained in operations until the 1990s.[24] Many Inuvialuit and Inuit from Nunavut, as well as some Inuit from Nunavik, were forced to travel long distances to attend these residential schools in the NWT, sometimes thousands of kilometres, first by boat and

[20] These numbers were provided by Canada in 2015 and can be found in the *IEF Administration Plan* referred in note 18.
[21] 24% of the CEP applications from Nunavut Inuit were denied (3,625 claimed the CEP and 880 were assessed as ineligible). 30% of the CEP applications from Nunavik Inuit were denied (541 claimed the CEP and 163 were assessed as ineligible) For the Inuvialuit, approximately 9% were assessed as ineligible (1,519 Inuvialuit claimed the CEP and 132 were assessed as ineligible). These percentages are calculated based on numbers provided by Canada to the Inuit Representatives on February 28, 2019 and the numbers referred to in note 20.
[22] The Inuit residential school system operated prior to the creation of Nunavut in 1999.
[23] For instance, at Shingle Point in the Yukon until 1936 and in Aklavik in the NWT until 1959.
[24] Grollier Hall in Inuvik operated from 1959 to 1997. Atkaicho Hall in Yellowknife operated until 1994.

then by planes. In the first decades of the system, residents often lived at these institutions for years without any opportunity to visit their families. Generally, Inuit who attended institutions in the NWT (as it is now) received the CEP for all the school years claimed with the exception of those who were placed with private families when home boarding programs were established in the late 1980s and 1990s when the hostels were overcrowded.

20. The history of residential schools located in Nunavut and Nunavik essentially begins in the 1950s, with some exceptions,[25]following the implementation of Canada's "Eskimo Education Policy". Before, Inuit in these regions had been mostly left alone by Canada and they still lived a semi-nomadic existence in migratory groups. The establishment by Canada of "day schools" and hostels[26] in Nunavut and Nunavik contributed to the settlement of Inuit in permanent communities usually located where missions, churches, and the Hudson's Bay Company (HBC) were first established. The construction of schools and hostels was challenging because of the short summer period and high transportation costs. The "day schools" were usually built first. Inuit children were often gathered by the Royal Canadian Mounted Police (RCMP), missionaries and government employees or agents from their small camps on the land and sent to these "day schools." In situations where hostels had not yet been constructed, children were placed in whatever buildings existed at the time, such as at the HBC's staff house, the church mission house, the teachers' houses, the nursing station, or in tents located near the schools.[27] Some children were placed in rudimentary and overcrowded houses with the first Inuit families to move permanently in these early settlements. Many Inuit children attended these "day schools" away from their families for many years until a small hostel was built. In the early 1970s, once the migration of Inuit families in permanent settlements was essentially completed, most

[25] For instance, Fort George in northern Québec and Coppermine in Nunavut.
[26]In Nunavut, they were mostly small hostels for 8 to 12 children with exceptions such of Turquetil Hall in Chesterfield Inlet (capacity of 70), The Churchill Vocational Centre in Manitoba (capacity of 160), or the Coppermine Tent Hostel (an average of 30-45 residents). The other larger hostels sometimes attended by Nunavut Inuit after 1955 were in Aklavik, Inuvik and Yellowknife. Many Inuit from Nunavik resided at The Churchill Vocational Centre in Manitoba.
[27] This was the case for former students at the Federal hostel in George River (now Kangiqsualujjuaq, Nunavik) where former students reported living in tents and using rocks as school desks.

of the small hostels in Nunavut closed. In northern Québec, the last federal hostel (Inukjuak) closed in 1971 and in 1978, the Kativik School Board[28] assumed authority over all Inuit schools in Nunavik.[29] In some Nunavik communities, federal schools operated for a certain period of time alongside provincial schools. The situation of the residential students attending provincial schools in Nunavik, where they experienced the same hardship and trauma as the students of the federal residential schools, has yet to be addressed.[30]

21. Inuit from Nunavut who were removed from their families and their traditional lifestyle to attend federal day schools in these early settlements and who lived with a priest, teacher, nurse, or another Inuit family, did not qualify for the CEP for these years.[31] School years were only recognized for the purpose of the CEP for years resided at the small hostels, once they were built if the students were placed there, provided that the hostel was included in the schedule of additional schools (Schedule "F") attached to the Settlement Agreement. For instance, a former student who was removed at the age of seven from his family and from their summer encampment to go attend a federal day school 100 kilometres away, but was required to live in a tent near the school for three years before the hostel was built, where he resided for one year, would only receive the CEP for the one year he lived at the hostel. In September 2011, NTI, together with former students Rhoda Katsok and Tuqiqki Osuitok, filed a Request for Direction to have these living arrangements recognized under the Settlement Agreement. NTI was advancing that the Settlement Agreement should be interpreted in a manner that would include these various residences or, alternatively, that such living arrangement should be added as "institutions" to the list of residential schools. The first argument failed when the Court decided in another case (known as the

[28] A school board newly established under the 1975 James Bay and Northern Québec Agreement.
[29] *Canada's Residential schools: The Inuit and Northern Experience, The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 2, at p. 180.
[30] Many thought they were eligible for compensation under the Settlement Agreement and unsuccessfully applied for the CEP.
[31] Like the students who resided at recognized hostels, these students were often gathered from their camp by the RCMP (or other government officials) and traveled by boat or dog team to a village that usually consisted of the school, the church and the HBC's store, leaving behind their parents in a state of confusion and fear.

"Beardy Decision")[32] that older First Nations or Métis students who were placed in private family homes were not included under the Settlement Agreement. The second argument required NTI to provide evidence on each residential arrangement, a costly and near impossible task given that a significant amount of time had passed since the arrangements took place, the informal and diverse nature of the arrangements, the death of the adults involved at the time, and the lack of available written documentation. In light of these difficulties, NTI advised the Court in September 2014 that it would not pursue further the Request for Direction. To this day, many Inuit removed by Canada from their family and their way of life at a young age for the purpose of education have yet to obtain justice for their ordeal.[33] Unfortunately, many have since passed away.

22. Other residential institutions where Inuit students attended, such as Kivalliq Hall in Rankin Inlet, NWT (now Nunavut), were the objects of requests made pursuant to Article 12 to be added as institutions under the Settlement Agreement.[34] All such requests were denied by Canada which maintained that these hostels or residences were territorially operated by the Government of the NWT. On April 23, 2013, NTI and former student Simeon Mikkungwak filed a Request for Direction to have Kivalliq Hall recognized as a residential school under the Settlement Agreement. Kivalliq Hall opened in 1985 and operated until 1995. Canada's position was that as of 1970, the NWT Department of Education was responsible for all aspects of the education program operated by the Government of the NWT and that by 1984, the devolution to full territorial responsible government was completed. On December 14, 2016, Madam Justice B. Tulloch of the Nunavut Court of Justice found that Canada was jointly responsible for the operation of Kivalliq Hall which should be added to Schedule "F" of the Settlement Agreement because of the general extent to which Canada remained involved in the education-related affairs of the NWT, and the continuing financial dependence of the NWT on Canada which had granted all the funding for the

[32] *Fontaine v. Canada (Attorney General)*, 2014 BCSC 941.
[33] Many thought they were eligible for compensation under the Settlement Agreement and unsuccessfully applied for the CEP.
[34] The list all institutions requested can be found at List of Residential Schools.

construction and operation of Kivalliq Hall. Justice Tulloch found that through at least 1985: (1) the federally-appointed Commissioner of the NWT maintained at least some power and authority over the governance of the NWT and (2) the project of devolution and attaining responsible government was still ongoing.[35] On July 20, 2018, the Nunavut Court of Appeal confirmed the decision of Justice Tulloch.[36] Canada did not appeal further the decision and Kivalliq Hall was added as an IRS under the Settlement Agreement. It is estimated that 225 Inuit former students lived at Kivalliq Hall.[37]

23. The addition of Kivalliq Hall was a bitter-sweet victory for NTI and Inuit former students. First, other residential institutions which operated in the NWT had been denied because they were according to Canada "territorially operated" and it was now too late to have them recognized. Second, the issue of the gradual transfer of responsibility from the federal government to the NWT had been discussed and resolved at the time of the Agreement in Principle and the Settlement Agreement. This issue was an important concern for IRC and NTI. For instance, IRC had determined that approximately 63% of Inuvialuit had attended recognized residential schools in the NWT after 1970. If Canada was to subsequently invoke that the CEP would not be payable because Canada's direct oversight of education in the NWT ceased in 1970,[38] the majority of Inuvialuit former students would be denied some or all of their CEP. The IRC would not have signed the Agreement in Principle if the residential schools attended by Inuvialuit former students in the NWT were not recognized until their closure, and in fact, IRS like Grollier Hall (Inuvik) and Akaitcho Hall (Yellowknife) were recognized until 1997 and 1994, respectively. Prior to the Settlement Agreement, and as a condition for approving it, the Inuit Representatives requested and received a written confirmation that the residential schools located in the NWT and Nunavut listed in Schedule "F" that were included as a result of their efforts would also be recognized until December 31, 1997. This was intended to ensure that the CEP would be paid

[35] The information in this paragraph is from the decision of Justice B. Tulloch in *Fontaine v. Canada (Attorney General)*, 2016 NUCJ 31.
[36] *Fontaine v. Canada (Attorney General)*, 2018 NUCA 4.
[37] According to the website of the IAP Secretariat. See IAP Secretariat.
[38] Prior to April 1, 1970, Canada exercised full authority over education in the NWT. On April 1, 1970, the NWT Department of Education began to operate.

notwithstanding the gradual devolution of powers from the federal government to the territorial government, and that Canada would not invoke devolution as a means to deny the CEP for residential schools that operated in the NWT and Nunavut. It was thus disappointing to subsequently see Canada refuse to add residential institutions similar to Kivalliq Hall to the list of Schedule "F" residential schools on the basis that they were "territorially operated."

24. With regards to physical or sexual abuse, 849 Inuit claimed compensation in the Independent Assessment Process.[39] Many Inuit who suffered abused at residential schools were at first very reluctant to disclose they were abused and to file IAP claims. Inuit mental health workers worked closely with Inuit former students to explain the IAP claim process and to support those who decided to proceed with a claim. In 2011, the Inuit Representatives collaborated with the IAP Secretariat to conduct outreach activities to increase the number of Inuit IAP claimants. In 2012, NTI was contracted by the IAP Secretariat to help self-represented claimants in Nunavut. The Inuit Representatives were also careful to ensure that only reputable lawyers with experience in IRS claims would assist Inuit former students and many of the problems encountered in the south with some unscrupulous lawyers and form fillers generally did not occur in the north.[40]

25. In 2017, the Inuit Representatives were a party to the case decided by the Supreme Court of Canada respecting the faith of the IAP documents. They supported the position of the Chief Adjudicator that IAP claimants were promised by the Settlement Agreement that their IAP documents and their testimonies would remain confidential and would never be disclosed without their consent. For the Inuit Representatives, the positions advanced by Canada and the National Centre for Truth and Reconciliation (NCTR) that IAP documents had to be preserved, were subject to federal privacy and access legislation, and would eventually be archived at Library and Archives Canada (LAC) and available to the public, was both irreconcilable with the provisions of the

[39] This number was provided by the IAP Secretariat to the Inuit Representatives on March 1, 2019.
[40] See section VIII of this report - *NAC's Involvement in Requests for Direction Counsel Conduct Issues.*

Settlement Agreement and constituted a serious breach of trust. The Inuit Representatives welcomed the decision of the Supreme Court who decided that IAP documents would be destroyed following a notice program to advise IAP claimants of the possibility to voluntary archive their IAP documents with the NCTR. The Inuit Representatives participated in the discussions organized by the Chief Adjudicator to develop the notice program as well as in the Request for Direction that followed to obtain Court approval of the notice program. IRC and Makivik are currently assisting Inuit former students understand the options they have respecting their IAP documents. The budget authorized by the Court was however insufficient to allow NTI to properly assist Inuit former students from Nunavut, and NTI decided not to participate in it.

26. During the implementation of the Settlement Agreement, the objective of the Inuit Representatives was to ensure that Inuit former students would receive the compensation promised by the Settlement Agreement and promote healing and reconciliation for Inuit former students, their families and communities with a view to increasing the understanding by the general Canadian public of the impacts of residential schools and their relationship to some of the problems experienced today by Inuit. To achieve the objectives described above, the Inuit Representatives have often cooperated with Canada, the AFN, the churches, the IAP Chief Adjudicator (and the IAP Secretariat), the TRC, and the NCTR. While many of the objectives have been achieved, it remains that the experience of some Inuit former students was not recognized by the Settlement Agreement and Canada.

27. Finally, the Inuit Representatives wish to thank all involved in the Settlement Agreement who have worked hard and in good faith to achieve *"a fair, comprehensive and lasting resolution of the legacy"*[41] of residential schools for Inuit former students.

[41] Preamble of the Settlement Agreement.