

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**

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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.