Addressing the Legacy of Residential Schools

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ADDRESSING THE LEGACY OF RESIDENTIAL SCHOOLS

1 INTRODUCTION

For over a century, a system of residential schools\(^1\) operated in Canada under financial and administrative arrangements between the Government of Canada and the Roman Catholic, Anglican, Methodist, Presbyterian and United churches. In all, over 150,000 First Nations, Inuit and Métis children passed through more than 130 residential schools in virtually every part of Canada. An estimated 70,000 to 80,000 former students of residential schools are alive today.

The history of the residential school system has been well told elsewhere,\(^2\) and through its important work, the Truth and Reconciliation Commission of Canada\(^3\) continues the efforts to enhance our understanding of that history. While this paper begins with a brief review of this history, then, its primary purpose is to provide an overview of recent legal and policy measures aimed at addressing the legacy of residential schools.\(^4\) This includes ongoing and future developments toward healing, reconciliation and redress, which will be summarized in the paper’s final section.

2 THE RESIDENTIAL SCHOOL SYSTEM

Residential schools were established in Canada shortly after Confederation in the late 1870s. By the 1930s, over 70 schools were in operation in all parts of the country. While the federal government began phasing out the system in the 1960s,\(^5\) the last such institution closed its doors in 1996.\(^6\)

Throughout its existence, a main objective of the residential school system was to promote the assimilation of Aboriginal peoples into Euro-Canadian and Christian society.\(^7\) Statements by responsible federal officials reveal this policy and the use of residential schools as a primary means to achieve it.\(^8\) Frank Oliver, Minister of Indian Affairs from 1905 to 1911, for example, predicted that residential schools would “elevate the Indian from his condition of savagery” and “make him a self-supporting member of the state, and eventually a citizen in good standing.”\(^9\)

> I want to get rid of the Indian problem … That has been the objective of Indian education and advancement since the earliest times … Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic …\(^{10}\)

> *Duncan Campbell Scott, Deputy Minister of Indian Affairs, 1920*

This assimilative objective was carried out in the schools through a variety of means. Long or braided hair, which had spiritual significance for many students, was often cut short. Homemade and traditional clothes were exchanged for a school uniform. Aboriginal names were replaced with Euro-Canadian names, and a student number. Students often attended schools that were far away and isolated from their families and communities. Most students were prevented from speaking Aboriginal languages or from practising their traditions, and were often physically punished or humiliated if found to be doing so.
I stayed in that Residential School for 10 years. I hurt there. There was no love there. There was no caring there, nobody to hug you when you cried; all they did was slap you over, don’t you cry, you’re not supposed to cry. Whip me when I talked to my younger brother. That’s my brother, for God’s sake.\(^11\)

Jeannie Dick, former student at the Williams Lake (St. Joseph’s) Indian Residential School, Williams Lake, British Columbia

Testimony by former students has revealed extremely harsh and hazardous living conditions at the schools, including hunger and malnutrition, poor heating and sanitation, inadequate clothing, and exposure to contagious diseases. Many students suffered sexual, physical and emotional abuse by the teachers and staff responsible for their care, as well as by their fellow students. The lack of proper treatment and conditions in the schools contributed to the deaths of thousands of children; many families were not informed of the deaths or burial sites.\(^12\)

It was masterfully drilled into me that I was a “heathen savage,” incapable of being white or doing what the white man could do. I’ve had to come to terms with the realization that Canada has tried hard to rid the land of its First Peoples, and has contravened the laws of humanity.\(^13\)

Theodore Fontaine, former student at the Fort Alexander Indian Residential School, Fort Alexander, Manitoba

While many former students report positive experiences and benefits from the education they received, these memories often coexist with those of trauma and loss resulting from attendance at residential schools.

By comparison with courses of study in other schools, our curriculum would have been regarded as below standard. It’s true that we did not have access to a well-stocked library, or attend classes from 9:00 a.m. to 4:00 p.m. It’s also true that we were taught to know what to do with what little we knew; we were taught to be resourceful. But unless one has a sense of worth and dignity, resourcefulness, intelligence and shrewdness are of little advantage.\(^14\)

Basil H. Johnston, former student at the St. Peter Claver’s (Garnier) Indian Residential School, Spanish, Ontario

As much as that particular teacher used to call us bloody dodos and no good for nothing, a bunch of hounds of iniquity, he taught us pretty good in terms of English. But those were the pretty good things that happened to us in terms of getting our education system. The education system that we got was top notch in Chesterfield Inlet.

But the abuses …

We want to make sure that these kinds of things never happen to young people again, little children, in the future. We don’t hold grudges against those people, but we want to make sure that these things never happen to young people again, little children, never again.\(^15\)

Peter Irniq, former student at the Sir Joseph Bernier Federal Day School, Chesterfield Inlet, Nunavut

The traumas of physical and sexual abuse, social and emotional dislocation, and cultural loss have manifested, for many survivors and their communities, in after-
effects such as substance abuse, violence and family breakdown. Many survivors’
descendants have experienced and continue to experience inter-generational effects
as a result of this unresolved trauma. Many survivors, their families and communities
have also demonstrated great resilience in seeking help and building networks of
support to deal with the effects of residential schools. 

3 LEGAL AND POLICY RESPONSES

When an Indian comes out of these places it is like being put between two
walls in a room and left hanging in the middle. On one side are all the things
he learned from his people and their way of life that was being wiped out,
and on the other side are the white man’s ways which he could never fully
understand since he never had the right amount of education and could not
be a part of it. There he is, hanging, in the middle of two cultures and he is
not a white man and he is not an Indian. 

John Tootoosis, Cree leader and former student at the Delmas
(Thunderchild) Indian Residential School, Delmas, Saskatchewan

Through the 1980s and 1990s, the voices of both Aboriginal and non-Aboriginal
Canadians rose in unprecedented numbers to demand federal measures for healing,
reconciliation and redress. Thousands of former students filed lawsuits against the
federal government and church organizations involved with the residential school
system. The 1996 Report of the Royal Commission on Aboriginal Peoples (RCAP),
which had conducted public hearings with survivors, called the residential school
system “an act of profound cruelty,” and called for a public inquiry to investigate its
policies and practices, as well as the impact of the system “on individuals and
families across several generations, on communities, and on Aboriginal society as a
whole.”

The federal government announced its policy response to the RCAP report in
January 1998. Entitled Gathering Strength – Canada’s Aboriginal Action Plan, it
included a grant of $350 million to support community-based healing for those
affected by the legacy of residential schools. The grant was disbursed to the
Aboriginal Healing Foundation, a national Aboriginal-managed, not-for-profit private
corporation established by the federal government in March 1998. The policy was
accompanied by a statement of reconciliation, delivered by then Minister of Indian
Affairs and Northern Development Jane Stewart, in which the Government of
Canada formally expressed “profound regret for past actions of the federal
government” and acknowledged “the role it played in the development and
administration of these schools.”

The courts have addressed the question of liability for the harms suffered by
survivors of residential schools. In 2005, the Supreme Court of Canada found that
both the Government of Canada and the United Church of Canada were vicariously
liable for the sexual abuse of Aboriginal children committed by a residential school
employee. In an earlier case, the Court of Appeal for Ontario found that the federal
government had, through implementation of its residential school policy, assumed a
fiduciary duty with respect to the education of Aboriginal peoples in Canada.
The largest class action lawsuit in Canada to date, brought forth on behalf of tens of thousands of survivors across Canada, culminated in 2007 with the Indian Residential Schools Settlement Agreement. The settlement agreement provided for the following measures and accompanying funding commitments:

- **Common Experience Payment**: The Common Experience Payment is individual compensation for all former students who resided at a recognized Indian Residential School and were alive on 30 May 2005. Payments are comprised of $10,000 for the first school year or portion thereof, and $3,000 for each additional year. The deadline for applications is 19 September 2011.

- **Independent Assessment Process**: The Independent Assessment Process provides individual compensation for claims of sexual and severe physical abuse. Claims proceed through an adjudicative process; validation of claims and the amounts of compensation in each case are determined by an independent adjudicator. The Independent Assessment Process is running for a period of five years, through to 19 September 2012.

- **Truth and Reconciliation Commission**: The settlement agreement established the Truth and Reconciliation Commission as an independent body “to contribute to truth, healing and reconciliation.” The goals of the Truth and Reconciliation Commission are to create a permanent and public record of the legacy of residential schools, complete a public report that includes recommendations to the parties of the settlement agreement, and establish a National Research Centre on Residential Schools. The Truth and Reconciliation Commission, whose mandate expires in 2014, was granted $60 million in funding under the settlement agreement.

- **Aboriginal Healing Foundation Endowment**: The settlement agreement provided the Aboriginal Healing Foundation, which was established prior to the 2007 agreement, with an endowment of $125 million over five years “to support the objective of addressing the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools, including the intergenerational impacts, by supporting holistic and community-based healing to address needs of individuals, families and communities …” The endowment extended the mandate of the Aboriginal Healing Foundation to March 2012.

- **Indian Residential Schools Resolution Health Support program**: The settlement agreement provided the Indian Residential Schools Resolution Health Support program, which was established in 2006 and is administered by Health Canada, with $94.5 million over six years. These funds help the program furnish emotional health and wellness support services to survivors and their families.

- **Commemoration Initiative**: The settlement agreement earmarked $20 million over five years to facilitate regional and national memorial projects to eligible survivors, communities and interest groups.

On 11 June 2008, Prime Minister Stephen Harper delivered in Parliament a statement of apology on behalf of the Government of Canada to survivors of residential schools. In the apology, the Prime Minister stated that the entire “policy of assimilation” implemented by the system of residential schools “was wrong, has caused great harm, and has no place in our country.” The Prime Minister further committed to “moving towards healing, reconciliation and resolution of the sad legacy of Indian Residential Schools …”
The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey.35

Canada has thus begun a national effort to remember the history of the residential school system and to come to terms with its legacy. The apology and the settlement agreement were catalysts for action toward the ultimate goals of healing, reconciliation, redress, and reparation of the relationship between Aboriginal and non-Aboriginal Canadians. These events have created a rare opportunity for all Canadians to learn about and re-examine history, acknowledge the suffering caused by the policy of assimilation, and examine the effects this policy has had on Canadian society for so many years.

4 GOING FORWARD

Seven generations passed through the residential school system. The present generation can begin to address the legacy of the schools and forge a path ahead. As many survivors and Aboriginal leaders have noted, the well-being of future generations depends on what happens today.36

We need to think about reconciliation as a long-term objective. I do not think we will find it easily because we need to recognize that there is a great deal of pain that is still out there and a great deal of frustration on both sides. A large segment of the Aboriginal population does not want to talk about re-establishing a positive relationship with Canada, and many Canadians do not accept that they need to be engaged in this issue. Getting those communities to come together is an important first step, but then we have to talk about what we want to achieve in the long term.37

Political negotiations and legal actions to address issues not initially covered by the 2007 settlement agreement continue on behalf of survivors. Notably, negotiations and litigation in respect of some schools excluded from the list of recognized Indian Residential Schools under the settlement agreement have led to their subsequent inclusion and accompanying benefits for the survivors of these schools.38 Discussions on the particular experience of Métis survivors of residential schools were included in a 2008 federal protocol on Métis issues, and continue between Métis, federal and provincial leaders.39 Individual lawsuits and class actions continue to proceed through courts across Canada, including class actions on behalf of former day students40 and former students of several residential schools located on the coast of Labrador and northern Newfoundland.41

Since being established, the Aboriginal Healing Foundation has disbursed a total of 1,345 grants to community-based healing programs and initiatives across Canada. Although all available funds have now been fully committed, some programs hope to continue following the closure of the Aboriginal Healing Foundation. The 2010 federal budget committed to extend funding, for a further two years, to the Indian Residential Schools Resolution Health Support program to provide individual healing and counselling support to survivors and their families.
The Truth and Reconciliation Commission is expected to continue to play an important role in healing and reconciliation within Aboriginal families, and between Aboriginal and non-Aboriginal people, churches, governments and Canadians generally. The work of the Truth and Reconciliation Commission is also central to the processes of truth-telling and developing the historical record on residential schools. Ongoing activities within its mandate include the hosting of national events, held in different regions across Canada, to engage the public and further education on residential schools. The Truth and Reconciliation Commission is also working to support community-based events and reconciliation processes, coordinating the collection of statements of individual survivors across Canada, and establishing a permanent National Research Centre on Residential Schools.

Canadians should really try to find out and ask questions. Find out for themselves. Sit one-to-one with somebody who has been through ... Sometimes people think you’re just talking like this just because, but it’s not. It’s not. They have to find out the true facts of what we went through.

Lillian Elias, former student at the Aklavik Immaculate Conception Indian Residential School, Aklavik, Northwest Territories

Reconciliation is a vast concept that includes historical, cultural, epistemological, pedagogical and moral dimensions. As Marie Wilson, a commissioner of the Truth and Reconciliation Commission, has noted, “... it is such a big word, it is so undefined and it has, therefore, many possible rich interpretations. The act of reconciliation creates many great opportunities.” The path toward reconciliation may be generations long, but, for many on this journey, there is much potential value in the process toward its achievement.

NOTES

1. The Aboriginal Healing Foundation defines residential schools as follows: “[t]he Residential School system in Canada attended by Aboriginal students, including industrial schools, boarding school, homes for students, hostels, billets, residential schools, residential schools with a majority of day students or a combination of any of the above.” See Aboriginal Healing Foundation, Aboriginal People, Resilience and the Residential School Legacy, Ottawa, 2003, p. ii.


3. Within its five-year mandate, the Truth and Reconciliation Commission of Canada aims, among other things, to develop the historical record on residential schools and to inform all Canadians about the residential school system and its impacts. See Truth and Reconciliation Commission of Canada, Residential Schools. For a detailed account of the mandate and work of the Truth and Reconciliation Commission of Canada, see also Julian Walker, The Indian Residential Schools Truth and Reconciliation Commission, Publication no. 08-48E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 February 2009.

5. The partnership between the federal government and church organizations remained in place until 1969, though residential schools continued to operate with federal support thereafter.

6. The last residential school to close was the Gordon Residential School, near Regina, Saskatchewan.

7. In the *Statement of Apology – to Former Students of Indian Residential Schools*, delivered in Parliament on 11 June 2008, Prime Minister Stephen Harper acknowledged that “[t]wo primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.”


9. See the excerpt of a letter from Frank Oliver to the Joint Church Delegation, 21 March 1908, reprinted in RCAP (1996).

10. Evidence of Duncan Campbell Scott before the Special Committee of the House of Commons examining the *Indian Act* amendments of 1920, as cited in John Leslie and Ron Maguire, eds., *The Historical Development of the Indian Act, 2nd* ed., Treaties and Historical Research Branch, Department of Indian Affairs and Northern Development, Ottawa, 1978, p. 114. Dr. Scott was, within the senior civil service, superintendent of Indian education from 1909 to 1913 and deputy minister of Indian Affairs from 1913 to 1932.


12. For example, the Royal Commission on Aboriginal Peoples noted that in the early 20th century, death rates in residential schools from tuberculosis and other causes climbed as high as 50%. RCAP (1996).


16. The Aboriginal Healing Foundation has published numerous studies on the effects of residential schools on, and measures toward healing for, survivors, families and communities. See Aboriginal Healing Foundation, “Research Series.”


20. The Foundation was initially given an 11-year mandate, to end in March 2009, but it was later extended to March 2012 under the terms of the Indian Residential Schools Settlement Agreement.


22. Vicarious liability may be imposed on an employer for the actions of its employee, if the wrongful conduct of the employee is sufficiently related to conduct authorized by the employer. See Bazley v. Curry, [1999] 2 S.C.R. 534.


24. Fiduciary duty is, in general, a trust-like duty, involving duties of loyalty and an obligation to act in a disinterested manner that puts the beneficiary’s interest ahead of all other interests. Liability may be found in the event of a breach of this duty. See K.L.B. v. British Columbia, [2003] 2 S.C.R. 403.

25. The Court also left open the possibility that this fiduciary duty might extend to future generations affected by residential schools. See Bonaparte v. Canada (Attorney General), [2003] 64 O.R. (3d) 1 (C.A.).

26. The settlement agreement was reached between the federal government, representatives of former students at residential schools, the Assembly of First Nations, Inuit representatives and several church organizations. It was approved by the superior courts in all applicable jurisdictions, and is final and binding on all defendants and on survivors of residential schools who have not opted out of the settlement. See, for example, Baxter v. Canada (Attorney General), [2006] 83 O.R. (3d) 481 (S.C.), and the “Indian Residential Schools Settlement Agreement.”

27. A total of $1.9 billion was allocated in trust under the settlement agreement, with additional provisions to deal with any potential deficit or surplus in the trust fund. Aboriginal Affairs and Northern Development Canada reports that, as of 31 March 2011, an estimated 96% of former students eligible for the Common Experience Payment had received payment, and that $1.586 billion had been approved for payment. See Aboriginal Affairs and Northern Development Canada, “Implementation of the Indian Residential Schools Settlement Agreement: Information Update on the Common Experience Payment (From September 19, 2007 to September 19, 2011),” Statistics.

28. The settlement agreement placed no cumulative cap on the amount of compensation to be paid. The Independent Assessment Process Adjudication Secretariat reports that, as of 1 June 2011, over $1 billion had been paid in compensation under the Independent Assessment Process. See Indian Residential Schools Independent Assessment Process, “Adjudication Secretariat Statistics.”


30. Funding Agreement: Aboriginal Healing Foundation and Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Mēris and Non-Status Indians.
A 2009 government evaluation on the Aboriginal Healing Foundation, required under the terms of the settlement agreement, was highly favourable in terms of the foundation’s achievement of its objectives and in its governance and fiscal management, and recommended that the federal government continue funding support for the Aboriginal Healing Foundation. A 2010 report of the House of Commons Standing Committee on Aboriginal Affairs and Northern Development recommended a three-year extension of funding to the Aboriginal Healing Foundation. See Aboriginal Healing Foundation, “Funded Projects”; House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, Study and Recommendations of the Standing Committee on Aboriginal Affairs and Northern Development Concerning the Aboriginal Healing Foundation, June 2010.


Aboriginal Affairs and Northern Development Canada reports that all of the money allocated under the settlement agreement has been committed and will be disbursed over the 2011–2012 and 2012–2013 fiscal years. See Aboriginal Affairs and Northern Development Canada, Commemoration.


Ibid.

See, for example, the statement of Phil Fontaine, Grand Chief of the Assembly of First Nations, to Pope Benedict XVI in private audience at the Vatican on 29 April 2009; statement of Beverly Jacobs, President, Native Women’s Association of Canada, before Parliament following the “Indian Residential Schools Statement of Apology,” (video), 11 June 2008.

Senate, Standing Committee on Aboriginal Peoples, Evidence, Ottawa, 28 September 2010 (Justice Murray Sinclair).

The list of recognized Indian Residential Schools can be found in Schedules E and F of the settlement agreement. Article 12 of the settlement agreement sets out the criteria under which a school may be added to the list. Several schools have been added to the list, including Wawanosh Home (Ontario) and Fort George Hostels (Quebec) in late 2010, and Stirland Lake High School (also known as Wahbon Bay Academy) and Cristal Lake High School (Ontario) in 2011. See Aboriginal Affairs and Northern Development Canada, “Implementation of the Indian Residential Schools Settlement Agreement,” Statistics; and Fontaine v. Canada (Attorney General), [2011] O.J. No. 3756 (S.C.).


Day students, or day scholars, attended but did not reside at a residential school. A class action suit was filed in June 2009 in Manitoba and subsequently amended to potentially include all former day students across Canada. The Tk'emlups te Secwepemc and Sechelt First Nations in British Columbia have also signalled their intent to file a future class action suit on behalf of day students. The Assembly of First Nations has passed resolutions in support of day students, most recently at its annual general assembly in July 2011. See McLean v. Canada (Attorney General), Statement of Claim, Court of Queen’s Bench of Manitoba, C109-01-62181; and Assembly of First Nations, Resolution 21/2011, “Support for Indian Residential Day Scholars,” July 2011.
41. This class action concerns attendance at five residential schools from 1949 to their respective closure dates. The Supreme Court of Newfoundland and Labrador held in June 2010 that the class action could proceed; the Attorney General of Canada appealed this decision in late 2010. See Anderson v. Canada (Attorney General), [2010] N.J. No. 195 (Supreme Court of Newfoundland and Labrador).

42. The Truth and Reconciliation Commission is assisted in an advisory capacity by a 10-member Indian Residential Schools Survivor Committee. See Truth and Reconciliation Commission of Canada, Meet the Members of the Indian Residential School Survivor Committee (IRSSC).

43. National events have so far taken place in Winnipeg (June 2010) and Inuvik (28 June–1 July 2011), with the next one to be held in Halifax from 26 to 29 October 2011. Nine events are expected to be held in total; a closing ceremony will be held in Ottawa at the end of the Truth and Reconciliation Commission’s mandate.


45. For discussion on the meaning of “reconciliation” in this context, see Paulette Regan, Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada, UBC Press, Vancouver, 2010; Tom Clark and Ravi de Costa, “Exploring non-Aboriginal Attitudes towards Reconciliation in Canada: The Beginnings of Targeted Focus Group Research,” in Ashok Mathur et al., eds., Cultivating Canada: Reconciliation through the Lens of Cultural Diversity, Aboriginal Healing Foundation, Ottawa, 2011.