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INDIAN RESIDENTIAL SCHOOLS UPDATE MAY 2004

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This publication deals with subject matter that may trigger memories and painful feelings for some readers. The Government of Canada recognizes the need for safety measures to minimize the risk associated with triggering.

A toll-free Indian Residential Schools Help Desk (1-800-816-7293) has been set up to provide general information on the Resolution Framework and the Alternative Dispute Resolution (ADR) process.

For emotional and crisis services, please call the 24-hour Indian Residential Schools Crisis Line at 1-866-925-4419 if you or someone you know has difficulty while reading this publication.

Message from Minister Denis Coderre



The Indian Residential Schools Update is an overview of the work that the Government of Canada has undertaken over the past six years to address the legacy of the residential school system. From January 1998, when the government offered its *Statement of Reconciliation* and a profound apology to victims of sexual and physical abuse at Indian residential schools, we have worked to build an understanding of the past with the guidance of former students, their lawyers and the churches.

Many people believe that the government is only concerned with settling claims, but our work goes well beyond simply resolving legal claims. We have come to recognize the many unique challenges of addressing the grievances that make up the legacy of Indian residential schools. We are dedicated to working with the advice we have received from former students to build supportive programs that are focussed on healing and reconciliation.

This commitment for a broader approach guided us in the development of the National Resolution Framework that was launched in December 2002. It is the direct result of listening to former students, Aboriginal healers and leaders, legal counsel, and church leaders across the country. Former students told us through two years of roundtable talks in 1998 and 1999, and through another four years of advisory committee meetings, that options needed to be developed which could address the broadest range of their experiences. Specifically, the government heard that victims of sexual and physical abuse needed a humane way to settle their compensation claims in a fair, safe and timely manner. Most importantly, they told us that those who were sexually and physically abused must be dealt with first and foremost.

The result of our partnership and efforts is found in this document. We talk here about the various parts of the Resolution Framework such as the Alternative Dispute Resolution (ADR) process, newly-created health and personal supports, commemorative activities and litigation. With this background information, we hope to help former students make informed decisions about the best route for each individual to address their personal experiences.

The ADR process does not address claims based on the loss of language and culture. The federal government is currently implementing a 10-year \$172 million initiative to work with Aboriginal people to preserve, revitalize and protect Aboriginal languages and cultures for all Aboriginal people, reinforcing at the same time Canada's commitment to address the full range of impacts stemming from the Indian residential school system.

As Minister, I support the goal of working with former students, families and communities in support of projects that promote healing and reconciliation and deal with intergenerational impacts.

As stated in the Speech From the Throne, "achievements of worth and permanence take time." The government has been focussing on programs for resolving abuse claims which treat former students in a respectful and compassionate manner. I am very honoured to have received these responsibilities at a time when the government has committed to "work with its partners on practical solutions to help Aboriginal people respond to the unique challenges they face."

Gathering Strength

On January 7th, 1998, the Government of Canada announced *Gathering Strength—Canada’s Aboriginal Action Plan*. It called for a renewed partnership with Aboriginal people based on recognition of past mistakes and injustices, the advancement of reconciliation, healing and renewal, and the building of a joint plan for the future.

As part of its plan, the federal government presented the *Statement of Reconciliation*, which acknowledged its role in the development and administration of Indian residential schools. The government also said to the victims who suffered sexual and physical abuse at residential schools that it was deeply sorry.

“The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry.”

The Honourable Jane Stewart,
Minister of Indian and Northern Affairs
January 7, 1998



Background:

the Indian Residential School System

Residential schools were boarding schools for Aboriginal children, between the ages of 5 and 16 years old, that operated throughout Canada for well over a century. Some Aboriginal children, between the ages of 1 and 5 years old, were also placed in residential schools because they were orphaned.

The Indian residential school system was created before Confederation and, in part, grew out of Canada's missionary experience with various religious organizations.

The federal government began to play a role in the development and administration of this system as early as 1874, mainly to meet its legal obligations under the *Indian Act*, as well as to assist with the integration of Aboriginal people into the broader Canadian society.

The Government of Canada operated most residential schools jointly with church organizations until 1969, when it assumed full responsibility for the schools. Residential schools were located in every province and territory, except Newfoundland, New Brunswick and Prince Edward Island.

It is estimated that there are approximately 87,500 former students alive today. Of the 130 schools that existed over time, up to 100 of these schools are involved in residential school claims. Most residential schools closed by the mid-1970s. Around the same time, the Government of Canada transferred responsibility for managing some of the schools to those First Nations who wanted to take over their operation. The last federally-run Indian residential school (IRS) in Canada closed in 1996. The last Indian residential school in Canada closed in 1998.

It is not uncommon to hear some former students speak about the positive experiences in these institutions. Their stories, however, are overshadowed by disclosures of abuse, criminal convictions of perpetrators and the findings of various studies such as the Final Report of the Royal Commission on Aboriginal Peoples, which tell of the tragic legacy that the residential school system has left with many former students. Overall, the residential school experience continues to have devastating effects on many former students, their families and communities.

Milestones along our path to healing

A cornerstone of *Gathering Strength* was the government’s commitment of \$350 million to support community-based healing initiatives for Aboriginal people who were affected by the legacy of physical and sexual abuse arising from the residential school system.

On March 30, 1998, after consultations with former students and Aboriginal organizations, a funding agency called the Aboriginal Healing Foundation was established as an Aboriginal-run, not-for-profit corporation, independent of the government and the representative Aboriginal organizations. Over the past six years, the Aboriginal Healing Foundation has provided \$330M to over 1,200 community-based healing initiatives across the country.

In 1998 and 1999, the Government of Canada held a series of meetings across the country to discuss residential school issues. These exploratory dialogues involved residential school claimants (former students pursuing compensation for abuse they suffered), Aboriginal healers and leaders, lawyers, church leaders and government representatives. Participants considered the impacts of residential schools on former students, their families and communities and explored possible responses by government and the churches. The government committed itself to ongoing discussions with survivors of residential schools.

At the wrap-up meeting of the dialogues, survivors, church leaders, Aboriginal organizations, plaintiffs’ counsel and the government agreed to a set of principles that provide a framework for working relationships when dealing with residential school claims.

Other guiding principles are:



In 1999, government responded to these dialogues by initiating a series of dispute resolution pilot projects which explore various approaches to resolving these claims. There are currently six alternative dispute resolution projects, in various stages, set up across the country, in addition to three projects that have just concluded. Of the 430 former students who have participated in the pilot projects to date, there have been over 160 settlements with the remaining participants completing their validation hearings.

In February 2001, the government invited several participants of the exploratory dialogues to provide further advice on how it should continue to respond to the increasing IRS litigation caseload. Following an initial meeting with federal representatives, this ad-hoc group of former student representatives collectively chose to meet with government and the churches on an ongoing basis. Following a number of other sessions with the federal government, this informal former student representative group adopted the name of the Aboriginal Working Caucus.

The Aboriginal Working Caucus (Caucus) is non-political and is currently made up of 12 volunteers from different regions of the country. Each member of the Caucus has personal or professional experience in dealing with the impacts of the residential school system on individuals, families and communities.

In addition to meeting regularly with representatives of the federal government—primarily through Indian Residential Schools Resolution Canada (IRSRC)—and the churches to provide advice on how to address various issues and challenges relating to residential schools, the Caucus has been instrumental in assisting IRSRC to obtain broader input from former students concerning the development of the Resolution Framework. Since its establishment in February 2001, the Caucus has also helped IRSRC to:

- ✻ Conduct a series of focus groups to “workshop” the initial design of an Alternative Dispute Resolution (ADR) process; and
- ✻ Meet with several individual communities who are in the process of dealing with the legacy of the IRS system.

In September 2001, the Caucus, the churches and IRSRC agreed to be guided by certain overarching principles that came out of the exploratory dialogues:

- ✻ Commitment to just redress for residential school claimants and restoring and enhancing their relationships for the future.
- ✻ Development of a framework of alternative approaches and additional tools to resolve disputes and historic grievances which address physical and sexual abuse issues and seek ways to respond to the broad impact of the schools.

- ✦ Provision of a broader framework from which to make informed choices about redress, healing and reconciliation that will enable people to bring closure to these issues and find new directions or beginnings in their lives.
- ✦ Continuation in the spirit of the dialogues to create means whereby information and ideas can be received, stored and shared.

The Caucus has been successful in having their recommendations implemented in the Resolution Framework. The Caucus, church leaders and plaintiffs' lawyers raised concern about the scope of a proposed "release form" to be used in ADR proceedings which would have shielded the Government of Canada from any future litigation. This would have meant that a former student with a valid claim for sexual and physical abuse could not pursue further legal action against the government and a participating church with respect to language and culture.

After careful consideration of all of the factors, two contentious "release" requirements were changed. As well as addressing the scope of the release, claimants will not be required to sign the release until after the adjudicator has rendered a decision. With respect to the scope issue, claimants who accept compensation awards or settle litigation will not be precluded from the possibility of pursuing future litigation for loss of language and culture, if and when the courts create a basis for such suits.



As well, the Caucus highlighted that money for the health and safety of the claimants was inadequate to cover their actual needs. In the development of the Resolution Framework, the government ensured that there was adequate funding for health supports by earmarking \$74M.

Indian Residential Schools Resolution Canada

In June 2001, the Government of Canada created a new department, Indian Residential Schools Resolution Canada, to manage and resolve issues arising from the legacy of Indian residential schools.

The Government of Canada is profoundly committed to achieving lasting solutions to the legacy of Indian residential schools.

In December 2002, the Honourable Ralph Goodale, then Minister Responsible for Indian Residential Schools Resolution Canada, announced a comprehensive plan—the Resolution Framework—designed to guide

our ongoing work in addressing the legacy of the IRS system. A key element of the Resolution Framework is a new Alternative Dispute Resolution (ADR) process, which is now accepting applications.

The Framework provides options for former students who want to pursue their legal claims for sexual and physical abuse they suffered in residential schools. It also provides for specific and dedicated funding for counselling support, commemoration and dispute resolution processes. These services are available to claimants and members of their families who need them. It further refines the existing litigation management strategy that has been put into place over the past five years to guide the government's response to litigation and manage the increasing number of claims.

Paying compensation to former Indian residential school students with proven claims of sexual and physical abuse is an obligation of the Government of Canada—whether compensation is awarded through alternative dispute resolution, out-of-court settlements or court judgments.

Since the Royal Commission on Aboriginal Peoples published its final report in 1996, the population of former students has declined by 12%. Approximately 2,000 of the individuals who have filed claims against the government are 70 years of age or over or are in ill-health. They cannot be expected to wait much longer to have their claims settled. IRSRC will give priority to processing the claims of these former students.

**Priority is being given
to claimants who are
elderly or in poor health.**

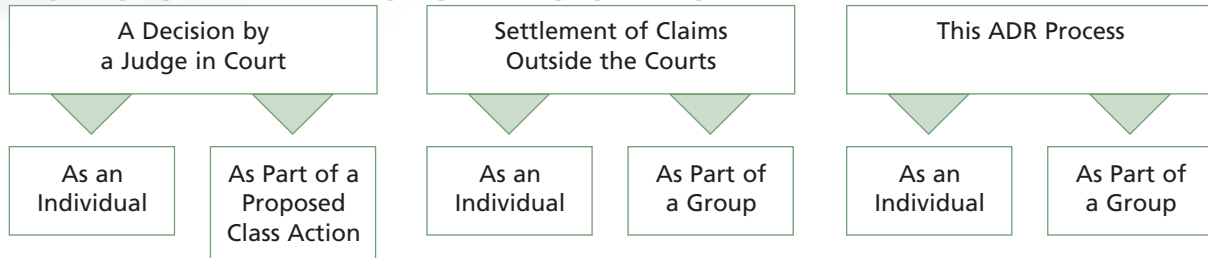
The Government of Canada anticipates that the ADR process should have the capacity to resolve most claims of sexual and physical abuse within seven years. The total estimated cost is \$1.69B over seven years, of which \$954.2M is budgeted for settlements and the balance includes funding for the process.

The cost of the Resolution Framework includes elements such as:

- ✦ Funding survivor organizations (\$3.5M);
- ✦ Health and personal support, including counseling for victims of abuse (\$73.6M);
- ✦ Hearing and adjudication processes across Canada (\$214.7M);
- ✦ Validation of claims including research, document searches and contacting alleged perpetrators (\$82M);
- ✦ Ceremonial/commemoration activities upon request (\$10.1M);
and
- ✦ Federal government lawyers and research for the continuing and new court cases (\$285M).



OPTIONS AVAILABLE TO FORMER STUDENTS



Residential school applicants with claims of sexual and physical abuse who want to proceed through the ADR process together can apply as a group. A group of former students with claims of sexual and physical abuse will be able to negotiate certain changes to the process to better suit the needs of the group. For example, the group could:

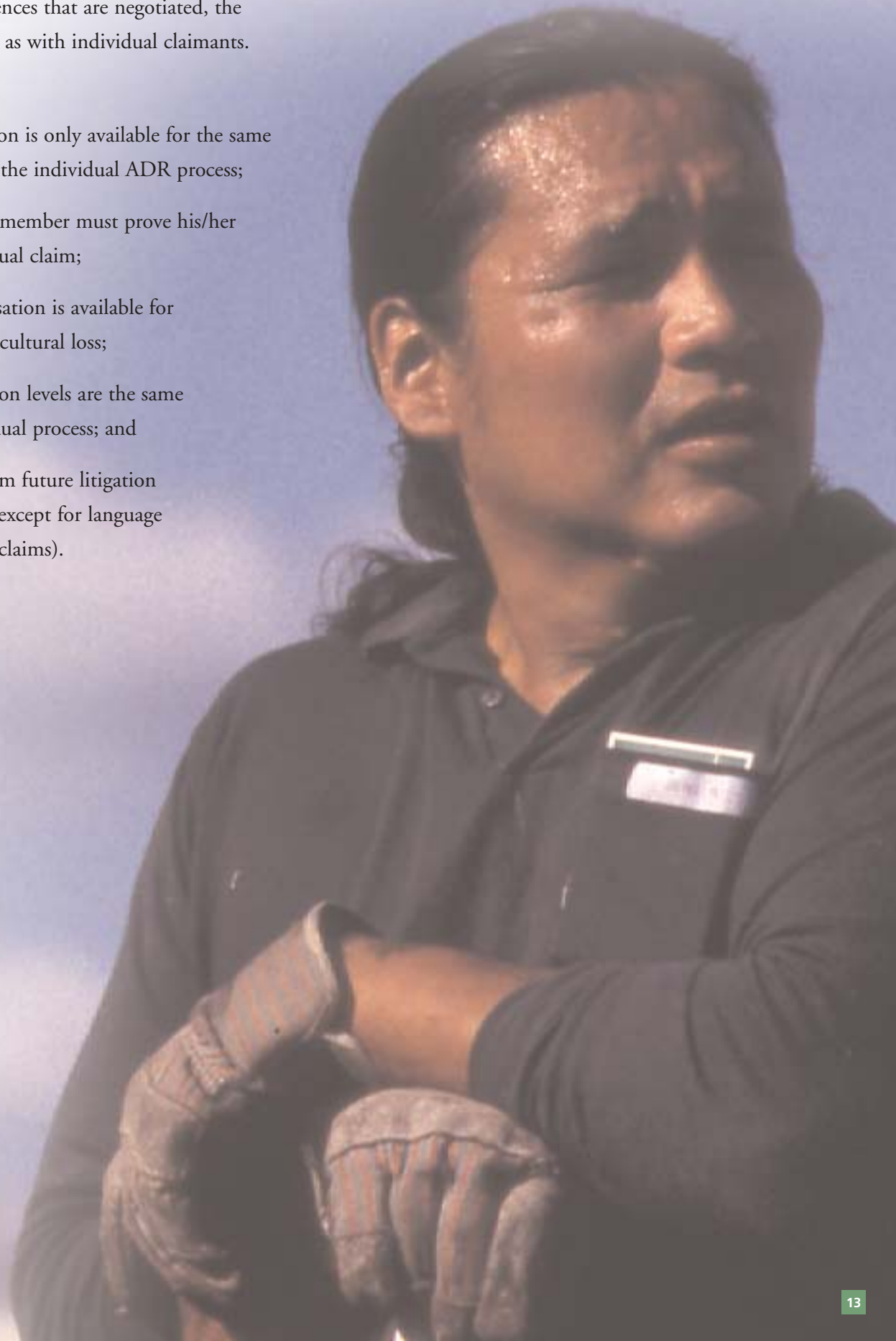
- ✻ Agree on a specific adjudicator to hear the cases;
- ✻ Agree on a specific expert to provide advice to the adjudicator;
- ✻ Agree on specific negotiated health supports;
- ✻ Agree on changes to how the hearings would be conducted; or
- ✻ Agree on a shared closing ceremony or memorialization initiative.

The Resolution Framework offers options to former students, who suffered sexual and physical abuse, in their pursuit of compensation, healing and closure of the legal process.

Other than those differences that are negotiated, the process will be the same as with individual claimants.

This means that:

- ✿ Compensation is only available for the same abuses as in the individual ADR process;
- ✿ Each group member must prove his/her own individual claim;
- ✿ No compensation is available for language or cultural loss;
- ✿ Compensation levels are the same as in individual process; and
- ✿ A release from future litigation is required (except for language and culture claims).



An Overview of the Resolution Framework

The Framework is based on considerable research, consultation and discussion with former students, their communities, legal counsel, the churches, other government departments and advice from a variety of experts. It builds on our experience to date, in particular that which was gained through the implementation of a series of ADR pilot projects involving approximately 400 former students, the government and, in some cases, church representatives.

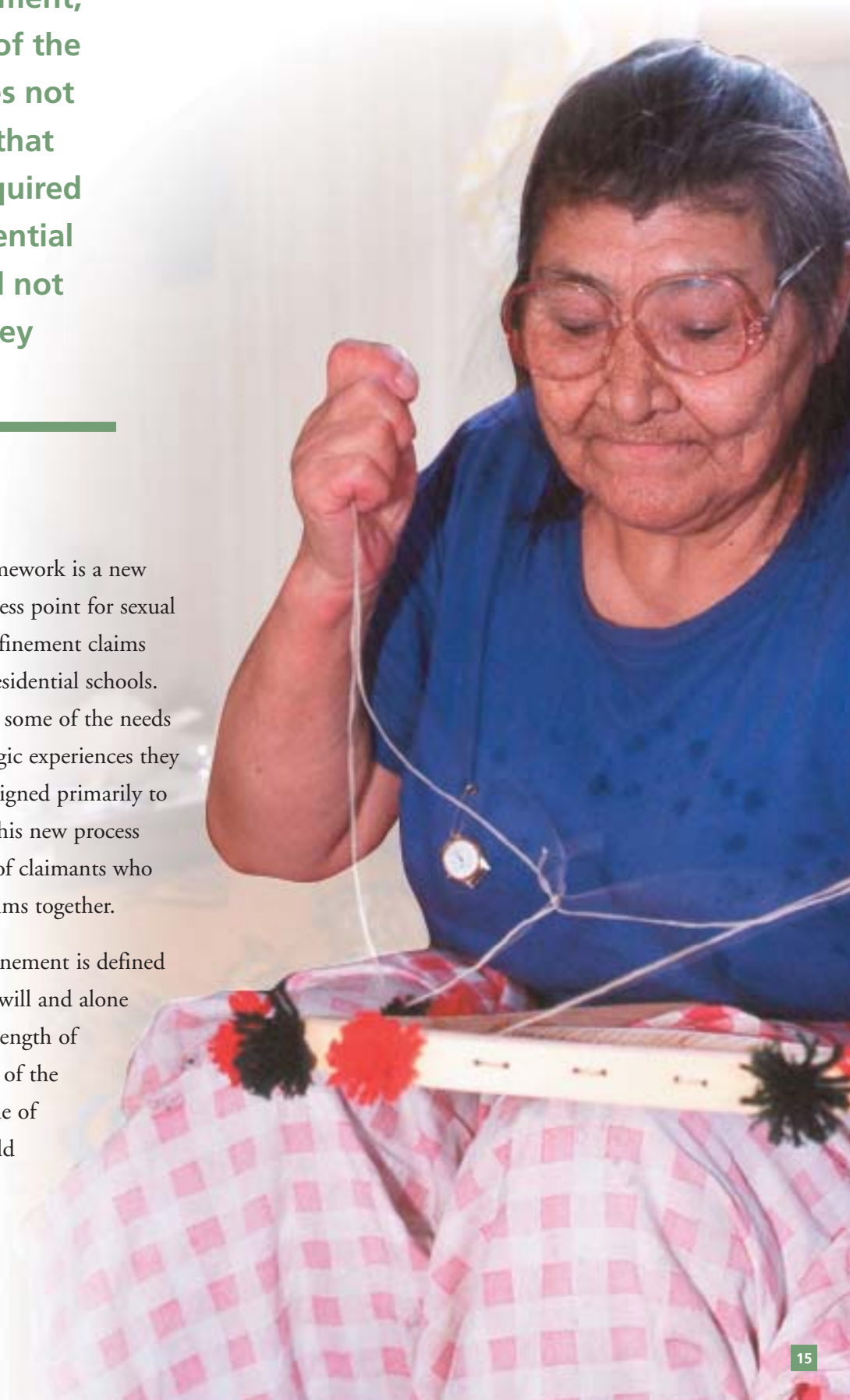
It is estimated that there are some 87,500 former residential school students alive today. Currently, more than 12,000 of these individuals have legal representation with registered claims in Canadian courts for compensation for abuses suffered as students of Indian residential schools. The new Resolution Framework includes an ADR process for individuals and groups; health supports for people with abuse claims; commemorative initiatives; and litigation.

To date, the government has reached more than 1,100 settlements with former students. Twenty-seven of the individuals received court awards and the remaining 1,100 claimants have settled out of court. Out-of-court settlements mean that the claims were resolved within the group dispute resolution pilot projects, or before a claim went to trial.

Wrongful confinement, for the purposes of the ADR process, does not include a claim that students were required to attend a residential school and could not leave when they wanted to.

A key element of the Resolution Framework is a new ADR process that will provide an access point for sexual and physical abuse and wrongful confinement claims made by former students of Indian residential schools. It is flexible enough to accommodate some of the needs of claimants as they deal with the tragic experiences they had at a residential school. While designed primarily to accommodate individual claimants, this new process will also be able to deal with groups of claimants who wish to pursue resolution of their claims together.

For the ADR process, wrongful confinement is defined as the act of being kept against one's will and alone in a space where both the space and length of time were not appropriate for a child of the claimant's age at the time. An example of wrongful confinement is a young child being kept in a closet overnight as punishment.



The Resolution Framework is comprehensive. It supports a variety of initiatives intended to provide counselling support to those who are dealing with their experiences at a residential school, which can help former students and their communities to learn more about their history and to honour and pay tribute to one another through commemoration. It also provides additional options for individuals and groups to pursue legal claims for sexual and physical abuse.

Using lawyers in the ADR process

Claimants may choose whether or not they want a lawyer to represent them through the ADR process. However, because of the legal issues involved in having their claim dealt with in this process, the government recommends that they hire a lawyer before filling out the *Application Form*.

If a former student decides to hire a lawyer to represent them through the entire process, and they are successful in being awarded compensation, the Government of Canada will contribute an amount equal to 15% of their compensation towards their legal fees. This contribution will be in addition to the claimant's compensation. Claimants will be responsible for paying any additional amount they agreed to pay their lawyer over and above the amount the government pays.

As well as legal costs for successful claims, the government will pay for reasonable out-of-pocket expenses that a claimant or their lawyer will have in order to participate in this process. Claimants will be required to provide receipts for their expenses to have them paid by the government.

The government will not reimburse claimants, who resolve their claims in ADR, for legal costs or expenses related to any claim already before the courts unless those costs or expenses directly apply to this process. Whether or not a claimant hires a lawyer to represent them throughout the entire process, they will have to meet with a lawyer (or their own lawyer if they have one) to receive legal advice on the Release and to get

a *Certificate of Independent Legal Advice* from the lawyer before they receive compensation. A *Certificate of Independent Legal Advice* is a document signed by a lawyer confirming that he or she has given you advice on what it means to sign the Release.

The government will pay the lawyer \$600 for advising claimants and for providing them with a *Certificate of Independent Legal Advice*. This payment is made when the advice is given. The lawyer will be paid whether or not the claimant signs the Release. The \$600 payment is a one-time payment. If a claimant changes lawyers, the government will not pay this cost again.

**ADR is offered as a choice
for a timely, supportive
and effective route to
settlement that promotes
privacy and confidentiality.**

**Participation in ADR is
strictly voluntary.**

Alternative Dispute Resolution

Resolving abuse claims through the Resolution Framework's ADR process is voluntary. It is timely and effective and provides claimants with support while they resolve their claims. ADR will:

- ✿ Add to the resolution choices for residential school claimants who suffered physical and sexual abuse;
- ✿ Ensure that claims accepted into this process are properly verified;
- ✿ Give the alleged abuser an opportunity to respond to a claim;
- ✿ Provide timely settlements and payments for validated claims;
- ✿ Provide compensation amounts similar to those awarded by the courts in each province or territory;
- ✿ Provide a supportive environment through hearings that are closed to the public;
- ✿ Ensure impartial decisions about claims;
- ✿ Adjudicators' decisions will be arms-length from government and will not come under the control of the government or the church organizations;
- ✿ Provide access to a Help Desk;
- ✿ Provide access to counselling support;

- ✿ Provide payment of reasonable travel costs to bring claimants and a support person (such as a family member or friend) to hearings;
- ✿ Provide contributions towards certain legal costs and payment of out-of-pocket expenses;
- ✿ Provide options for commemoration to mark the significance of residential school experiences; and
- ✿ Provide an opportunity to proceed individually or as part of an approved group.

Who can apply for ADR

Anyone who has suffered sexual abuse, physical abuse or wrongful confinement at a residential school can apply to make a claim for compensation through this Alternative Dispute Resolution Process.

Eligible claimants will be informed in writing, directly or through their lawyer, that they have been accepted into the ADR process.

Who cannot apply for ADR

An individual cannot apply for ADR:

- ✿ If they have settled a residential school claim either in the court process or in an existing ADR pilot project and have signed a Release agreeing to make no further claims against the Government of Canada;
- ✿ If their case has been decided by a judge in a court; or
- ✿ If they are a claimant who has given evidence at their own hearing in one of the existing ADR pilot projects.

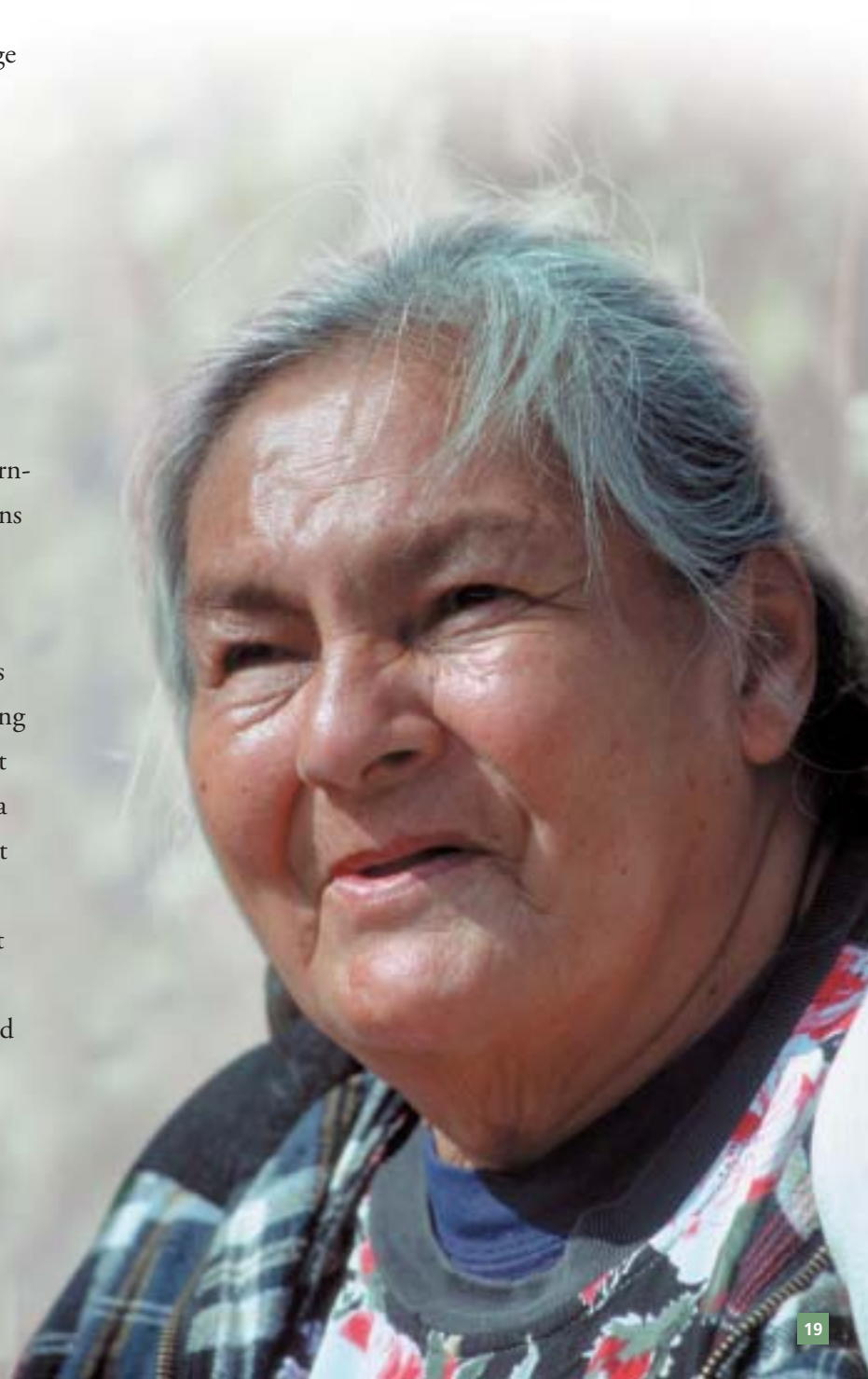
All completed application forms will undergo a basic review to make sure they meet the elements of the model for which the claimant applied. The eligibility criteria of the ADR process are public and are available in the *Guide* to the ADR process.

Eligible claimants will be informed in writing, directly or through their lawyer, that they have been accepted into the ADR process.

The application process

Adjudication hearings will start in 2004. The government is giving priority to processing the applications of elderly claimants who are 70 years or older and claimants who are in ill health.

Generally, it is expected to take about nine months from the time an application is accepted to a hearing if all of the documents have been provided. As part of the validation process, claimants' attendance at a residential school will be confirmed. Research must also be done, by the government and church, to find any documents that will help the independent adjudicator in reaching a fair and just conclusion. The research may take longer if a claimant attended more than one school, or if the adjudicator needs to seek expert advice related to a claim.



Incomplete applications will not be processed until the required information is submitted. Claimants are responsible to make sure that their application is as complete as possible to avoid undue delays.

To be considered for certain levels of compensation at the hearing, claimants must collect and submit documents that support their claim. These documents could include:

- ✻ Treatment records;
- ✻ Worker's compensation records;
- ✻ Corrections records;
- ✻ Income tax or employment insurance records; and
- ✻ Secondary and post-secondary school records.

The specific documents they must collect and submit depend on the level of compensation they are claiming. Claimants who are unable to collect the required documents must advise IRSRC of what attempts they made and why they are unable to collect them.

In addition to the documents that claimants must submit to support their application, they may voluntarily submit other documents about their experience at the school, including:

- ✻ Any documents they have from when they were a student at an Indian residential school, such as:
 - Pictures;
 - Report cards;
 - Diploma;
 - Letters; and
 - Newspaper clippings.
- ✻ Any written statement they have or testimony they have given about their experience at an IRS, such as:
 - Statements they made to the police;
 - Previous written statements provided by them to a priest (or pastor or religious person or employee of the school);
 - Personal diary or diaries recording information supporting their claim; and
 - Certain video statements they have previously made.

As part of the application process, claimants will be asked to sign a Declaration, confirming that they understand the ADR process and that they will commit to the confidentiality requirements. All parties will be asked to sign an agreement that requires them to keep information about a claim protected. This means everyone agrees to keep private all information and documents about a claim submitted in this process. These agreements will not prevent claimants from discussing the results of their hearing or the compensation they receive. By signing the Declaration, claimants also confirm that they understand how their evidence will be used by the defendants in any subsequent proceedings if the claim is not resolved in the ADR process.

Claimants who do not have a lawyer can access a “form filler support service” if they need help completing their application forms. The form filler’s role is limited to explaining what a question is asking and why the information is needed. The form filler does not provide legal advice or tell claimants what to say. Call the Help Desk for more information at 1-800-816-7293.

Claimants whose applications do not qualify will be given the reasons why. In certain cases, they may get an opportunity to resubmit their application.



Former students who feel they have a valid claim for physical and/or sexual abuse and/or wrongful confinement, as defined, can receive further details through the *Application Form* and accompanying *Guide*. Specifically, the *Guide*:

- ✦ Outlines who should apply for ADR;
- ✦ Explains the types of claims that will be compensated;
- ✦ Provides information on the funded services and programs available through this ADR process;
- ✦ Provides information about the involvement of church organizations that jointly operated residential schools and their participation in the resolution of claims in this process;
- ✦ Provides information about the Chief Adjudicator, Senior Adjudicators and Adjudicators who will decide the claims;
- ✦ Explains the differences between the Model A and Model B processes;
- ✦ Explains how ADR works;
- ✦ Provides frequently asked questions and answers about the ADR Process;
- ✦ Explains the Compensation Guidelines and levels of compensation for Model A and Model B;
- ✦ Provides the guidelines adjudicators will use in assessing whether physical force went beyond acceptable discipline;
- ✦ Lets claimants know what documents they will have to submit if they are accepted into ADR Model A, and where to find them;
- ✦ Outlines what documents the government will collect relating to a claimant’s residential school claim;
- ✦ Explains the level of proof claimants will have to meet to receive compensation; and
- ✦ Outlines the government’s travel expense reimbursement guidelines.

The table below shows the claims that the government accepts and those it does not accept for the Alternative Dispute Resolution Process.



CLAIMS ACCEPTED FOR ADR	CLAIMS NOT ACCEPTED FOR ADR
<ul style="list-style-type: none"> • Physical Abuse • Sexual Abuse • Wrongful Confinement • Any Combination of the Above 	<ul style="list-style-type: none"> • Loss of Culture Claims • Loss of Language Claims • Treaty Rights Claims • Level of Education Claims • Abuse Not Connected to Residential Schools • Any Other Claims Besides Those Listed in Column 1

An individual who has a court claim that has not yet been decided or resolved can submit an *Application Form* in this process. Individuals accepted into this process will have to put their court claim on hold. If the claimant accepts the adjudicator’s decision, they will have to sign the Release and put an end to their court claim.



If a claimant resolves their claim(s) of sexual abuse, physical abuse or wrongful confinement (as defined in the *Guide*) through ADR, they will not be able to sue the government, and in some cases a church organization, for any other legal claims related to their residential school experience. They will not, however, be prevented from bringing certain claims of language and culture loss.

ADR provides two models for resolving abuse claims:

Model A is for:

-  claims of physical abuse resulting in physical injuries lasting more than 6 weeks and/or requiring hospitalization or serious medical treatment;
-  claims of sexual abuse.

Model B is for:

-  claims of physical abuse that did not result in physical injury lasting more than 6 weeks;
-  claims of wrongful confinement.

Both processes promote privacy and confidentiality.

	MODEL A	MODEL B
DOCUMENTS	Claimants claiming for certain kinds of harm will have to provide the required documents in List 1 of the Appendix D of the <i>Guide</i> .	Claimants are not required to submit any documents but they may do so if they wish.
EXPERT REPORTS	In certain situations, the decision-maker can order that an expert examine you to help assess the value of the claim.	Expert reports will not be requested by the decision-maker.
COMPENSATION	Higher amounts of compensation are available for the types of claims dealt with in Model A, and can include amounts for future care and loss of opportunity. The decision-maker will assess the amount of compensation based on the compensation guidelines in Appendix A of the <i>Guide</i> .	Compensation to a maximum of \$3500.00 is available. Amounts for the future care and loss of opportunity are not awarded in Model B. The adjudicator will assess the amount of compensation based on the compensation guidelines in Appendix B of the <i>Guide</i> .

DIAGRAM OF THE ADR PROCESS

STAGE 1 – Application

Claimants complete the *Application Form* and send it to the offices of Indian Residential Schools Resolution Canada.

STAGE 2 – Eligibility

Eligible claimants are accepted into the Alternative Dispute Resolution process. Ineligible applicants are told the reason(s) for their ineligibility. They may be able to resubmit their *Application Form*. If claimants are accepted into the Alternative Dispute Resolution process, the government will sign the **Declaration and Agreement** in your *Application Form* and return it to you or your lawyer.

STAGE 3-5 – Research and Exchange of Information

The government and any participating church organization research the claim. The claimant may have to provide documents depending on their claim. The claimant and others involved in the claim share information. The government tries to find the alleged abuser, so that he or she may be given a chance to answer to the claim. All participants can identify witnesses. The adjudicator receives all information relating to the claim before the hearing.

STAGE 6 – Hearing

The claimant, the government, and any participating church organization attend a hearing. The claimant describes their residential school experience and is questioned by an adjudicator. Witnesses, person(s), alleged abuser(s) and experts may also give information to the decision-maker and answer questions.

STAGE 7-9 – Decision

The claimant or their lawyer receive the decision from the adjudicator.

POSSIBLE OUTCOMES

No compensation awarded

Claimant can use other options to resolve their claim.

Compensation awarded

Claimant accepts the compensation. Claimant has to sign the Release and get a *Certificate of Legal Advice*.

Claimant refuses the compensation. Claimant can use other options to resolve their claim.

Claimants in Model A and B can ask that the decision be reviewed by a second adjudicator. The government can also ask the Chief Adjudicator to review the decision. The second decision will replace the first one. The options outlined above are the same whether or not the decision is reviewed.

ADR hearings will be non-adversarial and will take place before an independent adjudicator who has reviewed the *Application Form*. Hearings will not be open to the public and claimants will not face hostile cross-examination.

Independent adjudicators

An adjudicator is an independent decision-maker who will preside over hearings in the ADR process. The adjudicator manages the hearing and is the only person at the hearing who can ask questions of the claimant throughout the process. At the conclusion of the hearing, the adjudicator decides whether a claim is proven and, if so, what the compensation will be.

All adjudicators were chosen with the participation and agreement of the Chief Adjudicator, representatives of Aboriginal people, lawyers who act for residential school claimants, church organizations and the government. They are independent and report directly to a Chief Adjudicator who was chosen jointly by these groups. Including the recommendations from the Caucus and having survivors, their legal counsel and the churches involved in the selection process demonstrates that the government is listening as this process was born from the principles set out in the dialogues in 1998 and 1999. It honours the principles of transparency, inclusion and fairness.

To be selected as adjudicators, candidates had to have previous experience conducting adjudication, interviewing people and assessing credibility. They also had to show knowledge of and sensitivity to physical and sexual abuse issues, knowledge of and sensitivity to Aboriginal cultures and history and knowledge of personal injury law and damage assessment.

Every adjudicator answers only to the Chief Adjudicator, who will manage the work of the adjudicators including assigning cases and instructing them on how to apply the process and compensation rules. The Chief Adjudicator was involved in the hiring and development of training of all adjudicators and he will deal with any complaints about their performance. The Chief Adjudicator and the Adjudicators are independent of government, though staff at the Adjudication Secretariat are government employees.

The Chief Adjudicator answers to a Reference Group made up of two representatives from each of the following groups: Caucus representing former residential school students, former students' lawyers, churches and government. This ensures that all parties have an equal role in the important task of overseeing the Chief Adjudicator. The Reference Group meets monthly and provides advice to the Chief Adjudicator on culturally relevant issues and adjudication issues. The Reference Group also promotes effective communication between the Chief Adjudicator, parties to the ADR process and the public.



The adjudicators have all successfully completed training on how to deal with claims in the ADR process. This training was jointly developed in consultation with former students, their lawyers, churches and government. The training provides adjudicators with, among other things, information about Aboriginal cultures, the residential school system, and child abuse and its effects.

Adjudicators will specialize in one or more residential schools and will be given various documents about each of the schools. This information will help the adjudicator understand the experience of former students and assist in their questioning of applicants, witnesses and alleged abusers. Claimants cannot choose the adjudicator who will hear their case, but they can choose whether the adjudicator will be a woman or a man.

Counselling support

The Caucus recommended the implementation of support for claimants during their hearing and the government recognized that sharing experiences about abuse can be stressful and traumatic. The following program was established to ensure former students have access to an appropriate level of counselling support services throughout the process of resolving their claims. There is \$73.6M for counseling support over the next seven years which will be administered by Health Canada. Metis, Inuit and First Nations are equally eligible for counseling supports throughout the process.

In recognition of the stresses of sharing their experiences, claimants are being offered special health supports regardless of how they choose to resolve their claims in litigation or the ADR process.

Once accepted into ADR, claimants will have access to one-on-one counselling and the paid travel costs of a friend or family member for support at their hearing.

The IRS Mental Health Support Program includes the following:

- ✿ Resolution Health Support Workers provide emotional support services in each region and will be provided by individual Resolution Health Support Workers contracted by Aboriginal or Aboriginally-affiliated organizations funded by the First Nations and Inuit Health Branch.

- ✦ Professional mental health counselling services for individual claimants who are in the process of resolving their claim either in litigation or ADR;
- ✦ Reasonable transportation costs to and from approved counselling sessions and traditional healing supports. The Government may pay reasonable travel costs to visit a traditional healer if one does not live in the claimant's home community;
- ✦ Reasonable travel costs for a support person (e.g., a family member or Elder) to attend a hearing; and
- ✦ A toll-free Crisis Line at 1-866-925-4419 to get emotional or crisis referral right away, or to find out how to get other health supports from the Government of Canada.

These services are available to IRS claimants (Non-Aboriginal, Métis, Inuit, First Nations and Non-status Indians) with a claim against Canada who are in the process of actively resolving their claims through the ADR process or the courts.

Former students who have a claim against the government in court, or who have been accepted into ADR, may call the Health Canada office in their region to start getting professional counselling. They may also seek out community-based programs, including those funded by the churches.

Compensation levels

Compensation awarded to former students who have had their claims validated by independent adjudicators is based upon guidelines that provide consistency and are flexible enough to take into account a person's experience. An individual's story and other proof will be taken into consideration in making decisions on awarding compensation.

Compensation being offered to former students with valid claims of sexual abuse and physical abuse is based on previous court cases in Canada.



The government has relied upon the experience of the courts and case law across Canada in developing these guidelines for independent adjudicators. Because of higher court awards in British Columbia, Ontario and the Yukon, adjudicators hearing claims will be working with separate guidelines for claimants who attended schools in these provinces and territory.

Due to the two separate models used in the ADR process for hearing the different kinds of residential school claims, higher amounts of compensation are available in Model A and can include amounts for future care and loss of opportunity. Model A also addresses the levels of physical and sexual abuse that involve the personal details of the assault including the number of times it happened, the amount of violence, the personal intrusiveness and the period of time it went on for.

The guidelines take into account aggravating factors such as violence that accompanied sexual abuse, humiliation, verbal abuse, threats, degradation and racist acts, in addition to a person's inability to hold a job, maintain personal relationships or long-term suffering in various forms.

The adjudicator will assign points for each of the factors then add them up in order to assess the total number of points. He or she then assesses damages within the range determined by the points. At that time, consideration may also be given to adding more money to the compensation amount if the applicant shows a need for counselling or other types of care in the future.

The compensation range in Model A is as follows:

- ✻ From \$5,000 up to \$245,000 in British Columbia, Ontario and the Yukon;
- ✻ From \$5,000 up to \$195,000 in the rest of Canada.

Compensation ranges up to \$3,500 in Model B.

Model B is for:

- ✻ Claims of physical abuse that did not result in physical injury lasting more than 6 weeks;
- ✻ Claims of wrongful confinement.

In Model B, adjudicators use a compensation guideline for physical abuse that did not result in physical injuries lasting longer than 6 weeks and for wrongful confinement. Aggravating factors in these cases are based on:

- ✻ The age of the student at the time the acts happened;
- ✻ The frequency of the incidents over an extended period; and
- ✻ Threats, intimidation, racism, humiliation, degradation or verbal abuse accompanying the physical abuse or wrongful confinement.

When a church organization agrees to contribute to compensation, a claimant will be paid 100% of the compensation. Currently the Anglican and Presbyterian churches have reached agreements with the government

to participate in ADR and will pay their 30% share of all claims. While there is no agreement with the United Church of Canada, the church has paid its 30% share in all proven claims where it was involved.

Those church organizations without an agreement may, and in many cases do, participate and contribute their share of the compensation. If a church organization does not pay voluntarily, the claimant will receive 70% of compensation awarded from the government, leaving the claimant to pursue the church organization for the remainder.

After April 1, 1969, the involvement of church organizations decreased and by the mid 1970's eventually ended. As a result, the Government of Canada will pay 100% of compensation awards for accepted claims of abuse that occurred after April 1, 1969.

The compensation rules are found in the *Guide* that has been distributed to applicants, plaintiffs' lawyers and adjudicators to provide transparency, consistency and fairness.

Court cases will be monitored and the compensation rules modified to stay in line with evolving case law.



In order to resolve claims as quickly as possible, the government continues to work with church organizations to reach agreements on their shared responsibilities to compensate residential school claimants.

For more information, please see the website at <http://www.irsr-rqpi.gc.ca> or call the Help Desk at 1-800-816-7293.

The Government of Canada is seeking lasting solutions to the legacy of Indian residential schools that include closure of the legal process and healing for all parties, including former students, their families and communities, churches and government.

Standards of the day

In some cases, the adjudicator will have to decide whether the physical force used by the alleged abuser was abusive or within acceptable discipline of the day. For guidance, the government looked at the way judges have decided the same questions. From these court cases, which are few in number, the government developed a set of standards that adjudicators in this process will use to decide whether there is an acceptable claim for compensation.

It is expected this will generally reflect changes in what was considered acceptable discipline in different time periods. As more cases are taken to court, judges may continue to develop the law in this area. If so, the government will adjust the standards for this process.

The adjudicator will award compensation if the claimant proves that force was applied and that either:

- ✿ It went beyond the standards of the day for discipline; or
- ✿ The force was applied for an improper purpose.

Discipline standards

Because standards of discipline change over time, the standards that apply can vary depending on when the events happened. However, some things have never been acceptable, so, no matter when it happened, an adjudicator can find that punishment went beyond the standards for discipline at that time. These standards are outlined in the ADR *Application Form* and *Guide* found on the departmental web site at: www.irsr-rqpi.gc.ca or can be requested by calling the Help Desk at 1-800-816-7293.

A claim can be compensated if the force used did not exceed acceptable discipline during the relevant time period but the applicant can prove that it was applied for an improper purpose. Force applied for an improper purpose is force that was:

- ✿ Applied without any reason;
- ✿ The result of uncontrolled anger;
- ✿ Intended to bully the student;
- ✿ Applied as revenge for complaints made by the student; or
- ✿ Used to try to force the student into sexual activity.

Release from further litigation

To obtain compensation, claimants must accept the adjudicator's decision. Claimants must also be prepared to release Canada and the participating church from any further legal action related to their experiences at Indian residential schools. The Release does not prevent claimants from bringing future claims for loss of language and culture, if and when the courts decide to hear them.

A Release is a normal legal document used to finish resolving claims of this kind. Claimants will be asked to sign the Release within 30 days of being formally notified of the adjudicator's decision, including the amount of compensation to be awarded the claimant. Compensation will only be awarded if the Release is signed.

Commemoration

Another key element of the ADR process is the opportunity to participate in commemorative activities if they so desire. Commemoration is a way of honouring and paying tribute to all former residential school students, whether they pursue a claim for compensation or not.

Commemoration advances individual and community healing, closure and reconciliation so that former residential school students can resolve their claims with a sense of personal satisfaction and move forward. It contributes to former students' sense of belonging to their communities by giving them an opportunity to share experiences, support one another, strengthen community relationships and recognize and celebrate their strengths.

Commemoration allows former students to embrace their past and to deal with their history and memories in ways which permit a greater opportunity for closure. It includes public acknowledgment of former student experiences and could include an activity in which family, friends, and community participate. It also provides an opportunity to bring their interests to the attention of the broader population and for Canadians to acknowledge former students' experiences and needs.

Commemorative activities that pay tribute to former students and acknowledge their experiences will be available to help people heal.

Commemorative activities might include a "names project" in which survivors celebrate former students and erect a plaque in their honour. They could include documentation of a school's history, or a monument in tribute to those who attended a residential school.

Community celebrations, pow-wows, storytelling, and history workshops could also serve as commemorative activities. A community could choose a traditional activities workshop, a healing ceremony and feast, or a closing ceremony, with traditional drumming, singing and speeches, in which claimants, their families, federal and territorial officials, and church representatives could participate.

The government invites people to think about commemoration activities that are meaningful to them. The federal government will work with Aboriginal communities to fund and facilitate these commemorative activities.

Language and Culture

Compensation will not be provided for loss of language and culture. The Government of Canada believes that loss of language and culture is better addressed by Aboriginal families and communities. By providing increased and focused programming, the government is addressing the loss of Aboriginal languages and cultures.

The loss of Aboriginal languages and cultures has many causes (demographic shifts, urbanization, migration, ongoing assimilation and mass communication) that

affect all Aboriginal communities, not just those individuals who attended residential schools.

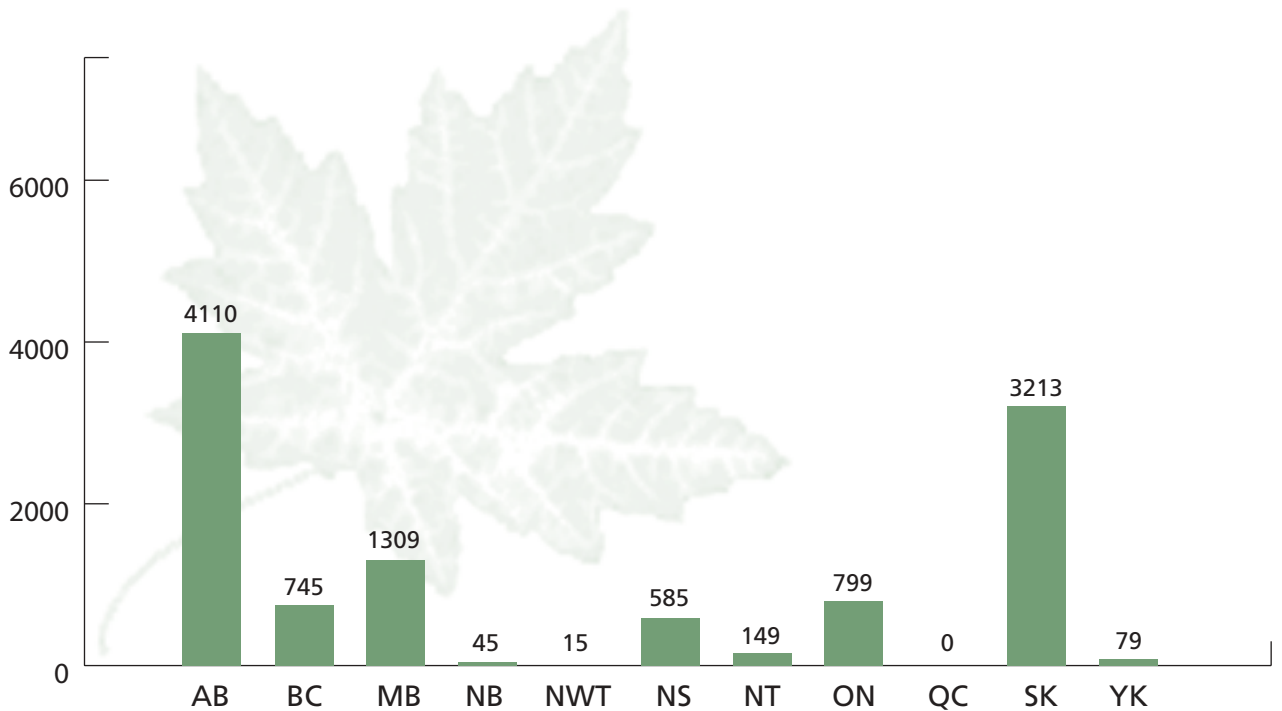
In December 2002, the Minister of Canadian Heritage announced an Aboriginal Languages and Cultures Centre, including a commitment of \$172.5 million over 10 years toward the establishment and operation of the Centre as an important component of the Government's response to the legacy of Indian residential schools. The creation of the Centre is part of the Government of Canada's approach to preserve, revitalize and promote Aboriginal languages and cultures, as stated in the 2002 *Speech from the Throne*, and addresses issues of the loss of knowledge of traditional languages and cultures by Aboriginal peoples. It will not only aim to address the needs of former IRS students, but will also respond to the needs of a broader Aboriginal population in search of assistance to revitalize and recapture Aboriginal languages and cultural practices.



“The Government has always been committed to healing and to ensuring that people are able to make informed choices about redress, about healing and about reconciliation.”

The Honourable Denis Coderre,
Minister Responsible for
Indian Residential Schools Resolution Canada
February 9, 2004

INDIAN RESIDENTIAL SCHOOL CLAIMANTS IN CANADA



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