2005-2006 Accords and Agreements

Monarch: Queen Elizabeth II
Prime Minister: Paul Martin, to February 2006; Stephen Harper, from February 2006
Premier: Gordon Campbell
Federal Ministry: Indian Affairs and Northern Development Canada

In the News

2005	The Supreme Court of Canada asserts Canada was 75% responsible and the churches 25% responsible for damages in Blackwater v. Plint.
2005 Nov	In Kelowna BC, First Ministers and National Aboriginal Leaders sign an agreement to strengthen relationships; this becomes known as the Kelowna Accord.
2005 Nov	The claims for compensation by thousands of Indian Residential School Survivors represented in class action lawsuits are resolved with the Indian Residential School Settlement Agreement.
2006 March	A new federal government dismisses the Kelowna Accord, advocating different strategies for Aboriginal affairs.
2006 March	The United Nations General Assembly establishes the UN Human Rights Council
2007	Duncan Campbell Scott and Joseph Trutch are placed on historian's panel of Worst Canadians.
2007 Sept	The United Nations Declaration on the Rights of Indigenous Peoples is signed in New York; Canada does not endorse it until 2010.

Backgrounder

The first decade of the 21st century was a pivotal time for the changing relationship between First Nations and other Canadians. Much of this was brought about through the courts.

In the 1990s Indian Residential School survivors began to take legal action to get compensation for physical and sexual abuse they had suffered. At first these were individual claims but in 1996 the first class action suit was initiated by Nora Bernard in Nova Scotia. By 1998 there were more than a thousand claims against the federal government. That year, Canada issued a "Statement of Reconciliation" apologizing for the tragedy of the Residential Schools.

The number of claims filed against Canada continued to grow, and in 2002 a National Class Action was filed for compensation for all former Indian Residential school students in Canada, as well as their family members.

As a result of further judgements by the Supreme Court going against Canada, and the overwhelming number of lawsuits seeking compensation, Canada and nearly 80,000 survivors reached an agreement, called the Indian Residential School Settlement Agreement, in 2005. Out of this agreement came the commitment not only for individual compensation, but for the creation of the Truth and Reconciliation Commission, and moneys dedicated to a healing process.

1 Supreme Court of Canada Judgement
Blackwater v. Plint 2005 (excerpts)

SUPREME COURT OF CANADA
Citation: Blackwater v. Plint, [2005] 3 S.C.R. 3, 2005 SCC 58
Date: 20051021
Docket: 30176

The judgment of the Court was delivered by

THE CHIEF JUSTICE —

1. Introduction

1 Are the Government of Canada and the United Church of Canada ("Church") liable to Aboriginal students who attended residential schools operated by them in British Columbia in the 1940s, 1950s and 1960s? If so, on what legal basis are they liable, and how should liability be apportioned between them? Finally, what damages should be awarded? These are the central questions on this appeal.

2 The appeal arises from four actions commenced in 1996 by 27 former residents of the Alberni Indian Residential School ("AIRS") claiming damages for sexual abuse and other harm. The children had been taken from their families pursuant to the Indian Act, S.C. 1951, c. 29, and sent to the school, which had been established by the Church's predecessor, the Presbyterian Church of Canada, in 1891 to provide elementary and high school education to Aboriginal children whose families resided in remote locations on the west coast of Vancouver Island. The children were cut off from their families and culture and made to speak English. They were disciplined by corporal punishment. Some, like the appellant Mr. Barney, were repeatedly and brutally sexually assaulted.

3 A number of former students, including Mr. Barney, brought an action for damages for the wrongs they had suffered. The trial proceeded in two stages; an inquiry into vicarious liability ((1998), 52 B.C.L.R. (3d) 18 ("1998 decision")) followed by a further liability and damages assessment three years later ((2001), 93 B.C.L.R. (3d) 228, 2001 BCSC 997 ("2001 decision")).

4 The trial judge found that all claims other than those of a sexual nature were statute-barred. He held a dormitory supervisor, Plint, liable to six plaintiffs for sexual assault. He held Canada liable for the assaults on the basis of breach of non-delegable statutory duty, and also found that Canada and the Church were jointly and vicariously liable for these wrongs. He apportioned fault 75 percent to Canada and 25 percent to the Church. The trial judge awarded Mr. Barney $125,000 general damages and $20,000 aggravated damages, against the Church and Canada. In addition, the trial judge awarded Mr. Barney punitive damages against Plint in the sum of $40,000 plus a future counselling fee of $5,000. Other plaintiffs were awarded amounts commensurate with their situations.

Legal Glossary

- non-delegable statutory duty: an obligation that only one body can hold, and can not delegate
- statute-barred: when an offense occurred too far in the past to be allowed at trial
- vicarious liability: when one body is liable for the negligence of another body, even though the first body was not directly responsible for the injury.

5 All the parties appealed to the B.C. Court of Appeal. The Court of Appeal applied a doctrine of charitable immunity to exempt the Church from liability and to place all liability on Canada on the basis of vicarious liability ((2003), 21 B.C.L.R. (4th) 1, 2003 BCCA 671). It expressed the view that Canada was more responsible than the Church and in a better position to compensate for the damage, and concluded that vicarious liability should not be imposed on the Church. It also granted one of the plaintiffs, M.J., a new trial, and increased the damages of two others. The Court of Appeal awarded Mr. Barney an additional $20,000 for loss of future earning opportunity. Otherwise, it maintained the differing awards for sexual abuse.

6 The plaintiff Mr. Barney and the defendant Canada now appeal to this Court. Mr. Barney alleges errors in the application of the principles of liability and the assessment of damages. [...]

7 Canada raises the following issues relating to liability and fault:

1. Whether in the circumstances of this case the Court of Appeal erred in granting the Church

charitable immunity from vicarious liability;

2. Whether the trial judge erred in finding Canada owed and breached a non-delegable duty arising from the Indian Act such that Canada is liable for the abuse the plaintiffs suffered at the AIRS; and
3. Whether the trial judge erred in apportioning fault between Canada and the Church on anything but an equal basis in circumstances where both defendants were liable solely on no-fault legal principles.

8 The two appeals, considered together, raise the following legal issues, which I propose to deal with in order:

1. Negligence
2. Vicarious liability
3. The doctrine of charitable immunity
4. Non-delegable statutory duty
5. Fiduciary duty
6. Apportionment of damages
7. Damages: the effect of prior harm
8. General and aggravated damages: quantum
9. Punitive damages
10. Loss of future opportunity

9 A more general issue lurks beneath the surface of a number of the specific legal issues. It concerns how claims such as this, which reach back many years, should be proved, and the role of historic and social science evidence in proving issues of liability and damages. For example, to what extent is evidence of generalized policies toward Aboriginal children relevant? Can such evidence lighten the burden of proving specific fault and damage in individual cases? I conclude that general policies and practices may provide relevant context for assessing claims for damages in cases such as this. However, government policy by itself does not create a legally actionable wrong. For that, the law requires specific wrongful acts causally connected to damage suffered. This appeal must be decided on the evidence adduced at trial and considered by the Court of Appeal.

10 In the result, I conclude that the Court of Appeal erred in finding that the Church was protected by the doctrine of charitable immunity, and that the trial judge erred in finding a non-delegable statutory duty on Canada on the terms of the Indian Act. I would not interfere with the trial judge's conclusions on negligence, vicarious liability, breach of fiduciary duty or the assessment of damages.

-=-=-=-=-=-=-

2.2 Vicarious Liability

18 The trial judge accepted that the Church and Canada were vicariously liable for the wrongful acts of the dormitory supervisor, Plint. The Court of Appeal disagreed. While it upheld the trial judge's finding that Canada was vicariously liable because of its control over the principal and activities at AIRS, the court held that the Church's non-profit status exempted it from any liability.

19 I conclude that the trial judge was correct in concluding that both the Church and Canada are vicariously liable for the wrongful acts of Plint.

20 Vicarious liability may be imposed where there is a significant connection between the conduct authorized by the employer or controlling agent and the wrong. Having created or enhanced the risk of the wrongful conduct, it is appropriate that the employer or operator of the enterprise be held responsible, even though the wrongful act may be contrary to its desires: Bazley v. Curry, [1999] 2 S.C.R. 534. The fact that wrongful acts may occur is a cost of business. The imposition of vicarious liability in such circumstances serves the policy ends of providing an adequate remedy to people harmed by an employee and of promoting deterrence. When determining whether vicarious liability should be imposed, the court bases its decision on several factors, which include: (a) the opportunity afforded by the employer's enterprise for the employee to abuse his power; (b) the extent to which the wrongful act furthered the employer's interests; (c) the extent to which the employment situation created intimacy or other conditions conducive to the wrongful act; (d) the extent of power conferred on the employee in relation to the victim; and (e) the vulnerability of potential victims.

21 I turn first to the vicarious liability of the Church. On the documents, the Church was Plint's immediate employer. Plint was in charge of the dormitory in which Mr. Barney slept and was answerable to the Church. The trial judge considered the legal test for vicarious liability and concluded that the Church was one of Plint's employers. It employed him in furtherance of its interest in providing residential education to Aboriginal children, and gave him the control and opportunity that made it possible for him to prey on vulnerable victims. In these circumstances, the trial judge found the Church, together with Canada, to be vicariously liable for Plint's sexual assault of the children. However, the Court of Appeal concluded that because of management arrangements between the Church

and Canada, the Church could not be considered Plint's employer for purposes of vicarious liability.

22 The trial judge made at least eight factual findings that support his conclusion that the Church was one of Plint's employers in every sense of the word and should be vicariously liable for the assault.

[Paragraphs 23 to 31 not included]

32 The Court of Appeal, in rejecting the Church's vicarious liability, relied on Canada's degree of control over AIRS, the Church's specific mandate to promote Christian education, and the difficulty of holding two defendants — Canada and the Church — vicariously liable for the same wrong. I conclude that none of these considerations negate the imposition of vicarious liability on the Church.

33 The Court of Appeal's first reason for not imposing vicarious liability on the Church is that this would be inappropriate, given the degree of control over the operations exercised by the government. [...]

34 Despite these assertions, the incontrovertible reality is that the Church played a significant role in the running of the school. It hired, fired and supervised the employees. It did so for the government of Canada, but also for its own end of promoting Christian education to Aboriginal children. The trial judge's conclusion that the Church shared a degree of control of the situation that gave rise to the wrong is not negated by the argument that as a matter of law Canada retained residual control, nor by formalistic arguments that the Church was only the agent of Canada. Canada had an important role, to be sure, which the trial judge recognized in holding it vicariously liable for 75 percent of the loss. But that does not negate the Church's role and the vicarious liability it created.

35 The Court of Appeal's second reason for not holding the Church vicariously liable is that Plint's employment as dormitory supervisor fell outside the only area in which the Church was mandated to make decisions — the provision of a Christian education. Again, this argument flies in the face of reality. The Church in fact ran the dormitory, as well as other parts of the school. Whether or not that fell within some formal definition of its objects is irrelevant.

36 The third reason, and the one that seems to drive the decision of the Court of Appeal on the Church's vicarious liability, is discomfort with the idea that two defendants can be vicariously liable for the same conduct.

37 This concern, however, may be misplaced. There is much to support the view of P. S. Atiyah in Vicarious Liability in the Law of Torts (1967), that "[t]here is, of course, no reason why two employers should not jointly employ a servant, and this would normally be the case with the employees of a partnership. Here the servant is the servant of each partner and of all jointly, and they are all jointly and severally liable for the servant's torts": p. 149. Thus, joint vicarious liability is acceptable where there is a partnership.

38 In this case, the trial judge specifically found a partnership between Canada and the Church, as opposed to finding that each acted independently of the other. No compelling jurisprudential reason has been adduced to justify limiting vicarious liability to only one employer, where an employee is employed by a partnership. Indeed, if an employer with de facto control over an employee is not liable because of an arbitrary rule requiring only one employer for vicarious liability, this would undermine the principles of fair compensation and deterrence. I conclude that the Church should be found jointly vicariously liable with Canada for the assaults, contrary to the conclusions of the Court of Appeal.

-=-=-=-=-=-=-

3. Conclusion

97 I conclude that the Court of Appeal erred in finding that the Church was not vicariously liable for the sexual abuse to Mr. Barney. The Court of Appeal also misapplied Bazley to find the Church immune from liability. The trial judge erred in finding a non-delegable statutory duty on the terms of the Indian Act. The trial judge correctly apportioned the damages unequally between the Church and Canada. No basis has been established for finding negligence, breach of fiduciary duty or for reassessing the damage awards in this case.

98 The appeal of Mr. Barney is dismissed. The appeal of Canada is allowed in part. The judgment of the trial judge on the issues of joint vicarious liability against the Church and Canada, and assessment and apportionment of damages, is restored. The judgment of the Court of Appeal on the issue of charitable immunity is set aside. The Court of Appeal's award to Mr. Barney for loss of future earning opportunity is upheld. In the circumstances, I would make no order as to costs, leaving each party to bear its own costs.

Source: http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2239/index.do

2 Supreme Court of British Columbia Approves the Residential School Settlement Agreement, 2006

IN THE SUPREME COURT OF BRITISH COLUMBIA

Quatell v. Attorney General of Canada,

2006 BCSC 1840

Date: 20061215

Before: The Honourable Chief Justice Brenner

Reasons for Judgment

INTRODUCTION

[1] This is an application for certification of this action as a class proceeding and for approval of a proposed settlement. The underlying case relates to claims arising throughout Canada as a result of the existence and operation of institutions known collectively as "Indian Residential Schools." Parallel proceedings have been filed in nine jurisdictions in Canada and approval of the proposed settlement in each jurisdiction is a condition precedent to the resolution of all of the pending class action cases.

[2] The residences and numbers of the proposed class members may be seen in the following information assembled in 2001 and provided to the court by one of plaintiff's counsel:

Ontario (including Atlantic) - 11,257
Quebec – 10,479
Manitoba – 8,736
Saskatchewan – 14,911
Alberta – 11,002
British Columbia – 14,391
Territories – 7,724

Counsel advise that these numbers have likely reduced by some 6% as of 2006.

[3] The parties authorized the judges in the nine jurisdictions to communicate with each other prior to, during and following the hearings in each jurisdiction. [...] My colleagues have summarized the history of the residential schools and the tragic consequences for many who attended. They also describe and analyze the settlement terms. I concur with their reasons and analysis.

[4] I conclude that the requirements for certification pursuant to the Class Proceedings Act, R.S.B.C. 1996, c. 50 have been met and the proposed settlement is fair, reasonable and in the best interests of the Class, subject to the matters raised by Winkler J and itemized by Ball J at paragraph 19 of his reasons. In these reasons, I deal with certain additional matters raised during the B.C. application

[5] In this court the hearing proceeded for five days. In addition to the submissions of counsel, in excess of eighty objectors spoke directly to the court. Many others filed written submissions either at the hearing or subsequently. In his reasons, Winkler J comments that the residential school policy "has now been widely acknowledged as a seriously flawed failure." In their statements to the court, the objectors underscored the accuracy of that observation. Most spoke of their experience at residential school. While each had an individual story to tell, there were also common shared themes that ran through many of the submissions: being taken from home, often forcibly, at an early age; having their language and culture banned; and being prevented from even communicating with their siblings at the same school. They described poor or inadequate food, harsh corporal punishment and instances of physical and sexual abuse.

[6] Many of the objectors had concerns with the proposed settlement. Others supported it. Yet others spoke of being torn between the advantage of accepting the proposed settlement and their concerns with a number of the provisions of the Settlement Agreement.

[7] This settlement represents a compromise of disputed claims. For that reason it is undoubtedly the case that claimants will not be happy with every provision of the settlement. Some might well choose to reject it. However, those members of the class who decide that the disadvantages of the Settlement Agreement outweigh its advantages are free to opt out of the provisions of the Class Proceedings Act and pursue their individual claims against the defendants. If they choose to opt out, nothing in this class proceeding will affect them or any actions they may choose to bring. In my view, the opt out right supports approval of the agreement.

[8] Another factor favouring approval of the agreement is the Common Experience Payment ("CEP"). This may be claimed by any class member solely on the basis of attendance at an Indian Residential School. They do not have to prove that they suffered any injury or harm; they are only required to establish the fact of their attendance.

[9] A repeated theme in these cases is the effect that attendance at Indian Residential Schools had on the language and culture of Indian children. These were largely destroyed. However, no court has yet recognized the loss of language and culture as a recoverable tort. Even if such a loss was actionable, most claims would now be statute barred by the Limitation Act, R.S.B.C. 1996, c. 266. The CEP can therefore be viewed, at least in part, as compensation for a loss not recoverable

at law. In my view, this represents an important advantage to the class.

[10] The class members who wish to also advance a claim for serious physical or sexual abuse can choose to participate in the Independent Assessment Process("IAP"). The IAP should provide a fair and expeditious means of having these claims assessed and paid. Since most claims for abuse of a non-sexual nature are also statute barred under B.C. law, the IAP offers a recovery mechanism not otherwise available to the class members in this province.

[11] That said, it is nonetheless imperative that the administrative deficiencies raised by Winkler J be addressed. For more than 100 years, Canada was principally responsible for the residential schools. In the leading case of Blackwater v. Plint, [2005] 3 S.C.R. 3, 2005 SCC 58, the Supreme Court of Canada ruled that Canada was 75% at fault for the abuse suffered by students at the Alberni Indian Residential School.

[12] Many objectors expressed concern over the fact that Canada, the very party that was largely responsible for creating this problem, will be administering this settlement. Not surprisingly, the class members do not have a high level of confidence in Canada's ability to fairly or properly deal with them. In my view, this particular dynamic adds additional weight to the concerns articulated by Winkler J.

[13] I agree that Canada's administrative function should be completely isolated from the litigation function, with an autonomous supervisor or supervisory board reporting ultimately to the courts. As Winkler J states in his Reasons, this separation will serve to protect the interests of the class members and insulate Canada from unfounded conflict of interest claims.

[14] In saying this I am not critical of the efforts of the parties, including Canada, to date in this case. Likely, the parties focussed on reaching an acceptable settlement and only when that was done turned their minds to its execution. Some of the challenges are accurately described in the affidavit material filed by Canada. However, what is readily apparent to everyone in this case is the necessity to avoid yet another exercise in failed paternalism, real or perceived. For this reason I agree with Winkler J and would condition my approval on the filing of an administration plan acceptable to the courts.

LEGAL FEES [paragraphs 15 to 20 not included]

ISSUES ARISING

[21] I now propose to respond to a number of issues that arose during the B.C. hearing.

DAY STUDENTS NOT COVERED

[22] This agreement and the certification will cover only those individuals who were in residence at an Indian Residential School. Many individuals attended these schools, but only as day pupils. While they did not live at the residential schools, their housing arrangements were nonetheless problematic. They, as well, were forced to live far from their homes and families; they too suffered loss of language and culture. They were subject to abuse both at the residential schools during the day and in the homes where they lived outside school hours. They experienced similar challenges to those who resided at the schools.

[23] Counsel for the plaintiffs advised me that the inclusion of the day students in the settlement was the subject of extensive negotiation. They said that the agreement was a compromise, which in the result meant they could not achieve the inclusion of these students in the class.

[24] However, although they are excluded from the settlement, the defendants have agreed that day students will be eligible to advance an IAP claim should they so choose. If they participate in the IAP process, those day students who suffered serious physical abuse will be able to advance claims that are likely statute barred. Those who wish to advance claims for sexual abuse will have a choice between the IAP process and the court system. In addition, since the day students are not class members, there will be no need for them to formally opt out in order to preserve their IAP claim, which they will be at liberty to advance within the time limits set out in the Settlement Agreement.

HEALING FUND

[25] Canada has agreed to commit $125 million over five years for a healing fund. Many objectors said that the funding would be insufficient and the time line too short. Many objectors observed that the damage done by the Indian Residential Schools went on for over a century and that the healing process would likely and understandably take longer than five years.

[26] The healing fund is a very positive aspect of the Settlement Agreement. While more may be required, it does contain a provision (paragraph 8.01) wherein Canada can revisit the question of the healing fund on or before the fourth anniversary of the fund. While Canada is not obligated to extend the time or the funding under the Settlement Agreement, that provision at least contemplates a review to assess whether the object of the healing fund has been met.

VERIFICATION PROCESS

[27] To receive the CEP, class members must prove their attendance at an Indian Residential School. For most members

of the class this will not cause any difficulty as attendance records are available. However, for some members of the class particularly the older members, the Churches and/or Canada have either lost or destroyed the attendance records and, hence, it will be difficult for them to prove their CEP claims. At the hearing, counsel advised me that Canada was working to overcome this difficulty. At the end of the hearing counsel advised that Canada has agreed to convene a meeting of the National Administration Committee to consider solutions. Counsel advised that they expected to be able to report a resolution of this problem to the court by the end of November.

[28] It is important that CEP recoveries for the class members not be prejudiced because Canada or the other defendants have discarded the attendance records. Given the advanced years of those most affected by this, an early solution is imperative. I will look forward to the further report from counsel.

NOTIFICATION[[paragraph 29 not included]

APOLOGY

[30] The Settlement Agreement and the financial commitments of Canada and the other defendants to resolve the Indian Residential School claims is a very positive development. However, many of the objectors said that if the parties, both class members and defendants, are to successfully put the tragedy of the Indian Residential Schools behind them, it is necessary that a full and appropriate apology be proffered to those who have suffered as a result of these schools. Minister Jane Stewart did read a statement of regret in the House of Commons several years ago,but many of the objectors said that this was insufficient.

[31] The Leadership Council of British Columbia is an unincorporated entity comprised of the Executive of the Assembly of First Nations (BC Region), the First Nations Summit and the Union of British Columbia Indian Chiefs. The Leadership Council submitted that "a formal and unequivocal apology from the Prime Minister of Canada to the Aboriginal People of Canada must be an integral part of this settlement. It is further submitted that in order to work towards achieving true resolution, the form of apology should include a request for forgiveness."

[32] As I explained at the hearing, the court does not have the power to order or direct Canada to issue such an apology. Even if the court had such power, an apology offered pursuant to an order of the court would be of doubtful value; its underlying compulsion would destroy its effectiveness.

[33]However, I received many eloquent and passionate submissions from objectors seeking a suitable recognition by Canada of the inordinate suffering of the Aboriginal peoples caused by the Indian Residential School experience and expressing the hope that they could receive a full apology from the leader of Canada's government.

[34] There is an important cultural component to this. As submitted by counsel for the Leadership Council of British Columbia: "Aboriginal Justice Systems almost always stress reconciliation. Aboriginal Justice Systems also usually stress the need to restore harmony and peace to a community. Leaving parties dissatisfied or with feelings of inadequacy or lack of completion does not restore community harmony or peace. For Aboriginal students of Residential Schools and their families, an apology will acknowledge the wrong suffered by them and validate their struggle for compensation and redress."

[35] Although I am making no order and I am issuing no directions, I would respectfully request counsel for Canada to ask that the Prime Minister give consideration to issuing a full and unequivocal apology on behalf of the people of Canada in the House of Commons.

[36] Clearly by committing to these settlement negotiations and by entering into the Settlement Agreement and the ongoing process, Canada has recognized its past failures with respect to the Indian Residential Schools. However, based on what I heard during these hearings and in other residential school litigation, I believe that such an apology would be extremely positive and would assist the objective of all parties in achieving the goal of a national reconciliation.

[37] I would also respectfully suggest that Canada give consideration to offering an appropriate statement at the opening of the Truth and Reconciliation Commission. While this is ultimately for Canada and the Commission to decide, I would suggest that such a statement delivered in the early stages of the Commission's hearings would do much to emphasize both Canada's recognition of the extent of the failure of past policy as well as Canada's desire to achieve a national reconciliation with the Aboriginal people of Canada. It would also serve to underscore and emphasize the importance of the work to be carried out by this Commission.

CONCLUSION

[38] I conclude by confirming that I find this action should be certified and that the proposed settlement is fair, reasonable and in the best interests of the class members. I propose an early hearing with counsel so that the administrative deficiencies in the agreement can be rectified and the appropriate orders finalized and entered.

D. Brenner, CJSC

The Honourable Chief Justice Brenner

3

May 8, 2006

Indian Residential Schools Settlement Agreement

WHEREAS:

A. Canada and certain religious organizations operated Indian Residential Schools for the education of aboriginal children and certain harms and abuses were committed against those children;

B. The Parties desire a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools;

C. The Parties further desire the promotion of healing, education, truth and reconciliation and commemoration;

D. The Parties entered into an Agreement in Principle on November 20, 2005 for the resolution of the legacy of Indian Residential Schools:

(i) to settle the Class Actions and the Cloud Class Action, in accordance with and as provided in this Agreement;

(ii) to provide for payment by Canada of the Designated Amount to the Trustee for the Common Experience Payment;

(iii) to provide for the Independent Assessment Process;

(iv) to establish a Truth and Reconciliation Commission;

(v) to provide for an endowment to the Aboriginal Healing Foundation to fund healing programmes addressing the legacy of harms suffered at Indian Residential Schools including the intergenerational effects; and

(vi) to provide funding for commemoration of the legacy of Indian Residential Schools;

E. The Parties, subject to the Approval Orders, have agreed to amend and merge all of the existing proposed class action statements of claim to assert a common series of Class Actions for the purposes of settlement;

F. The Parties, subject to the Approval Orders and the expiration of the Opt Out Periods without the Opt Out Threshold being met, have agreed to settle the Class Actions upon the terms contained in this Agreement;

G. The Parties, subject to the Approval Orders, agree to settle all pending individual actions relating to Indian Residential Schools upon the terms contained in this Agreement, save and except those actions brought by individuals who opt out of the Class Actions in the manner set out in this Agreement, or who will be deemed to have opted out pursuant to Article 1008 of The Code of Civil Procedure of Quebec;

H. This Agreement is not to be construed as an admission of liability by any of the defendants named in the Class Actions or the Cloud Class Action.

THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out herein, the Parties agree that all actions, causes of actions, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any Class Member or Cloud Class Member ever had, now has or may hereafter have arising in relation to an Indian Residential School or the operation of Indian Residential Schools, whether such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and the Releasees will have no further liability except as set out in this Agreement.

4 FIRST MINISTERS AND NATIONAL ABORIGINAL LEADERS STRENGTHENING RELATIONSHIPS AND CLOSING THE GAP

KELOWNA, BRITISH COLUMBIA

NOVEMBER 24-25, 2005

INTRODUCTION

First Ministers and National Aboriginal Leaders agree to take immediate action to improve the quality of life for the Aboriginal peoples of Canada in four important areas – health, education, housing and relationships. They also agree that enhancing economic opportunities is a key priority area for multilateral action. To ensure that tangible progress is made, First Ministers and National Aboriginal Leaders have set goals and agreed on the need for indicators to measure progress.

Aboriginal and treaty rights, including rights under modern land claim agreements, play an important role in improving the quality of life of the Aboriginal peoples of Canada.

The Aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada. This is inclusive of all Aboriginal peoples, who may reside on reserves or settlements, in rural or urban areas, or northern and Arctic regions.

Indians (First Nations), Inuit and Métis have unique histories, cultures, traditions and relationships with federal-provincial-territorial governments. Their social and cultural distinctions are a defining feature of Canada and form an important context for cooperative efforts to improve their well-being. In addition, this document contains commitments that address the interests of Aboriginal peoples living in urban and rural areas.

This meeting fulfills a commitment made at the September 2004 Special Meeting of First Ministers and Aboriginal Leaders to convene a meeting dedicated to Aboriginal issues, including the key determinants of health.

PRINCIPLES

The following principles will guide how the parties will work together:

• Recognizing and respecting the diverse and unique history, traditions, cultures and rights of the Aboriginal peoples of Canada which include the Indian, Inuit and Métis peoples of Canada – by adopting a distinctions-based approach;

• Addressing the differing circumstances of Aboriginal peoples in all regions and communities regardless of place of residence (on reserves or settlements, in rural or urban areas, or northern and Arctic regions) or legal status under the Indian Act;

• Working collaboratively with First Nations, Inuit and Métis women to address their needs through their participation in the development of culturally relevant policies and programs that affect Aboriginal peoples;

• Working collaboratively with First Nations, Inuit and Métis in an inclusive manner on policy and program development to ensure that their interests are appropriately reflected in programs and services that affect all Aboriginal peoples, as well as, where appropriate, engaging Aboriginal service delivery organizations;

• Respecting existing bilateral, tripartite and multilateral agreements and processes;

• Respecting regional differences; and,

• Being accountable and reporting regularly to their respective constituencies on achieving progress through agreed-upon culturally relevant indicators and targets, at regional and national levels, as appropriate.

Source: http://www.health.gov.sk.ca/aboriginal-first-ministers-meeting

5 DOCUMENT : 800-044/ 012

MEETING OF FIRST MINISTERS AND NATIONAL ABORIGINAL LEADERS

VERBATIM TRANSCRIPT (Unrevised) Public Session November 24, 2005
KELOWNA, British Columbia

CHIEF PHIL FONTAINE (AFN): I want to extend greetings to all the first ministers, our brothers and sisters from the Métis and the Inuit and to the Okanagan Nation who are our host for this meeting. I also want to express my deepest thanks and appreciation to all of those kind people that blessed the success of this gathering. [...]

I want to begin by speaking to a very recent development, the agreement in principle we achieved yesterday with the federal government on a fair and just settlement package for residential school survivors. It is of crucial importance that we resolve this issue from our shared past if we are going to truly engage in a discussion of our shared future.

Simply put, yesterday was a great day. I hope today will be another great day and the beginning of a new era in the relationship between First Nations and first ministers. [...]

My message today is straightforward. Poverty among First Nations can be eliminated. This goal is achievable within the near, not the distant, future and our achievement will benefit Canada as a whole.

Every First Nation citizen and every human being is entitled to have their basic needs met and governments have the responsibility to establish the conditions to make this possible. This principle lies at the heart of the constitutionally protected treaty agreements between the First Nations and other people. This principle must lie at the heart of the relationship between our people and other governments in Canada now and in future.

The denial of the existence of First Nations people and their rights has led to the deplorable social and economic conditions and crushing poverty in our communities. We need a new government-to-government relationship based on recognition, respect and accommodation of Aboriginal title, inherent rights and treaty rights. Through this new relationship, we can commit to the reconciliation of Aboriginal and Crown titles and jurisdictions.

I know that there are pessimists and cynics who think I am too optimistic. We are well aware of the many decades of failed efforts to tackle the oppressive conditions in many First Nations communities. It is my hope that we have finally learned a fundamental lesson.

Social theorists have confirmed that poverty is a structural outcome, not an accident or the result of some flaw in First Nations character. Quick fixes or, worse yet, blaming the victims of poverty will not work. Poverty can only be undone by dismantling the structure that created it in the first place, structures like the Indian Act. It will be necessary to replace this with a commitment to new structures that recognize and implement First Nations governments and their jurisdictions. [...]

First Nations governments and people require our federal and provincial partners to step up and make a first real installment and a real investment in this project.

Let me be very clear, this is not a handout or a guilt tax. This is about Canada resolving its unfinished business. It is a dividend to the First Nations who have contributed and continue to contribute so much to the prosperity of this country by investing in our lands and resources. With this dividend, First Nations governments will reinvest in their communities and their people.

In all the areas we will be discussing at this meeting, the First Nations seek three basic elements: recognition, investment and development. We must cast aside all approaches and outdated thinking. We must challenge ourselves to be creative and to do nothing less than imagine the new federation and the new Canada.

I have no doubt that when we conclude this meeting there will be those outside this room who will not be satisfied. This refrain plays in the background of every bold leap and brave step forward. I have my critics. I am sure you have noticed. Mr. Prime Minister, I understand that even you on occasion have your critics.

I just wanted to express my thanks to all who have made it possible for us to be gathered here in this historic and fundamentally important meeting. I believe we will satisfy everyone eventually because we will have created better homes, healthier communities, stronger citizens that live and breathe the spirit and intent of their treaties, strong, revitalized self-governing nations that care for their citizens and a country that can serve as a model for the rest of the world. The fact is that sometimes the hardest thing to do is to say yes because fundamental change can create fear and fear leads to paralysis. [...] It is my sincere hope that we are all brave enough and bold enough to say yes, yes to a new beginning and yes to a better future.

6

Transformative Change Accord

-between-

Government of British Columbia

-and-

Government of Canada

-and-

The Leadership Council

Representing the First Nations of British Columbia

The Government of British Columbia, First Nations and the Government of Canada agree that new approaches for addressing the rights and title interests of First Nations are required if First Nations are to be full partners in the success and opportunity of the province.

At the First Ministers' Meeting on Aboriginal issues on November 24th/25th, 2005, First Ministers and Aboriginal Leaders committed to strengthening relationships on a government-to-government basis. and on focussing efforts to close the gap in the areas of education, health, housing and economic opportunities.

This accord respects the agreement reached on November 25th and sets out how the parties intend to implement it in British Columbia.

Two important documents preceded the First Ministers' Meeting:

- *First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nations Governments* signed in May 2005
- *The New Relationship* - A vision document setting out an initial work plan to move toward reconciliation of Aboriginal and Crown Titles and Jurisdictions within British Columbia

The goals in each document continue to be pursued and the understandings reached in both serve as the foundation for this tripartite accord.

The purpose of this Accord is to bring together the Government of British Columbia, First Nations and the Government of Canada to achieve the goals of closing the social and economic gap between First Nations and other British Columbians over the next 10 years, of reconciling aboriginal rights and title with those of the Crown, and of establishing a new relationship based upon mutual respect and recognition.

The Accord acknowledges and respects established and evolving jurisdictional and fiduciary relationships and responsibilities, and will be implemented in a manner that seeks to remove impediments to progress by establishing effective working relationships.

The actions and processes set out herein are guided by the following principles.

- Recognition that aboriginal and treaty rights exist in British Columbia.
- Belief that negotiations are the chosen means for reconciling rights.
- Requirement that consultation and accommodation obligations are met and fulfilled.
- Ensure that First Nations engage in consultation and accommodation, and provide consent when required, freely and with full information.
- Acknowledgement and celebration of the diverse histories and traditions of First Nations.
- Understanding that a new relationship must be based on mutual respect and responsibility.
- Recognition that this agreement is intended to support social and economic wellbeing of First Nations.
- Recognition that accountability for results is critical.
- Respect for existing bilateral and tripartite agreements.

Signed November 25, 2005

Source: Government of BC http://www.newrelationship.gov.bc.ca/agreements_and_leg/trans_change_accord.html