



ASSEMBLY OF FIRST NATIONS BULLETIN

Key Elements of the Settlement Package

November 23, 2005

Introduction

An historic and unprecedented 'Agreement in Principle' was signed on Sunday, November 20, 2005 by the National Chief, Phil Fontaine, on behalf of the Assembly of First Nations and The Hon. Frank Iacobucci, on behalf of Canada. The parties entered into a settlement agreement for the largest and most comprehensive settlement package in Canadian history which covers decades in time, innumerable events and countless injuries to First Nations individuals and communities.

The 'Agreement in Principle' builds on and is rooted in the Political Agreement signed by Canada and the AFN May 30, 2005. The overall standard the AFN required of the settlement package was that it be demonstrably fair and just to survivors and that it would lead and contribute to reconciliation. The Agreement in Principle meets that standard and in so doing, represents an enormous, historic victory and vindication for the survivors, the AFN and National Chief, Phil Fontaine.

Key Elements of the Settlement Package

The settlement package consists of several key elements:

1. For individual survivors:

- an early payment of \$8,000 for elderly survivors 65 years and older has been created;
- a fund of \$1,900,000,000 to permit lump sum payments of "10 plus 3" for all survivors for loss of language and culture and loss of family life has been created;
- protection from legal fees on the lump sum has been added;
- interest earned on the lump sum (approx. \$80,000,000) will go towards benefiting survivors;
- an individually directed healing fund up to \$3000 for each individual survivor will be available out of lump sum surplus;
- a significantly enhanced, (by approximately \$800,000,000) compensation package for individual survivors who suffered serious physical, sexual or psychological abuse;

- an agreement between Canada and the Catholic entities which results in survivors receiving 100% of their settlement, not 70% as previously was the case.
- Expanded categories of perpetrators have been added;
- Expanded categories of harms and injuries have been added;
- Survivors are provided with a 15% payment over and above their settlement to go towards legal fees.
- Imposed time lines on the DR have been added to ensure payments are completed within an expedited timeframe;
- The control over the implementation of the settlement will be removed from Canada and a key and central role for the AFN in the supervision of all aspects of the ongoing implementation of the settlement has been secured.

2. For the families, communities and the Canadian public:

In addition to the compensation package for individuals, the settlement addresses truth, reconciliation and healing needs of survivors and their families and communities and the rest of Canada in the following way:

- a five year endowment of \$125,000,000 has been created for the Aboriginal Healing Foundation for the benefit of survivors as well as any surplus which may exist after the lump sum payment is made;
- a Truth and Reconciliation Commission for \$60,000,000 has been created which will emphasize education of the Canadian public through both community and national events and healing and reconciliation at the community level;
- The Truth and Reconciliation Commission will establish a national archive and research center;
- a fund of \$20,000,000 for commemoration projects and activities has been added.

The details of the key elements of the settlement are as follows:

1. The early payment

The settlement provides that an early payment of \$8,000.00 will go to each survivor 65 years old and older. It will be paid out as soon as possible and will be a down payment on the recipient's lump sum payment. Survivors who are 65 years or older will be able to apply for their payment on a simple application form.

2. The Lump Sum payment

A lump sum payment to compensate survivors for loss of language and culture and loss of family life will be paid to individual survivors alive on May 31st, 2005 irrespective of whether they have an additional claim for serious abuse. It will be calculated on the "10 plus 3" formula: \$10,000 for the first year or partial year in attendance at an Indian Residential School and \$3,000 for every year or partial year in attendance thereafter.

The lump sum will be paid out of a fund of \$1.9 billion dollars deposited into an interest bearing account. The interest earned (likely about \$80M) will be put back into the fund for the benefit of survivors.

After the lump sum payments have been made, if a surplus is left in the fund, each survivor will be entitled to an amount up to \$3,000 for healing of their own choosing from a list of culturally sensitive healing options. Any balance left in the account after the individual healing fund is depleted will be paid to the Aboriginal Healing Foundation for the benefit of survivors.

3. The Improved Compensation Process for Serious Abuse Claims

The DR system for serious abuse has been significantly improved from the previous model in its structure, time lines, and amounts of money available for compensation. The increase in value of the DR is approximately \$800,000,000 more than the earlier DR. The following changes have been made:

- a) There will be one common national grid with a cap of \$275,000, eliminating the two grids that existed prior to the settlement;
- b) Survivors will receive 100% of their compensation award, not 70% as was the case prior;
- c) Students who were abused by other students will be added as a new category for compensation;
- d) Students who were abused by non-employees of the schools will be added as a new category for compensation;
- e) Students who were severely psychologically abused will be added as a new category for compensation;
- f) Injuries and harms unique to women have been added;
- g) It is now easier for the survivor's to prove their claims;
- h) New categories of harmful acts have been added;
- i) a new category of actual income loss has been added up to a maximum of \$250,000 over and above the \$275,000 cap.
- j) Mandatory time lines have been added to speed up the process and get the money to survivors faster.
- k) Additional aggravating factors have been added to the list which can augment the compensation of an individual claim by up to 15%.
- l) Additional monies have been added to the future care needs of survivors up to \$15,000 per claim;
- m) Survivors will receive an additional 15% of the amount of their settlement to pay legal fees.
- n) Survivors will have access to the courts if the evidence indicates that their claim would exceed the amounts available in the compensation package;
- o) Straightforward claims can be decided without a hearing;
- p) Health supports will be provided for the hearing process for survivors if required;
- q) Reasonable travel costs for survivors and their support person to travel to their hearing will be provided;

- r) Cultural ceremonies will be incorporated into the hearings to the extent possible, if desired by the survivor;
- s) Survivors have the right to choose the location of the hearing, subject to reasonable costs;
- t) Survivors may appeal their settlement offer to another adjudicator or to the Chief Adjudicator;
- u) Hearings will respect the privacy of the survivor and the survivor may request that the transcript of their evidence be archived in the national archive created by the Truth and Reconciliation Commission;
- v) Survivors may choose to represent themselves instead of hiring a lawyer or they may choose an agent who is not a lawyer to act on their behalf;
- w) an oversight committee will oversee and monitor the implementation of the compensation to survivors. The AFN will have a member on this oversight committee for the duration of the settlement.

4. The Truth and Reconciliation Commission

- A well funded (\$60,000,000) Truth and Reconciliation Commission will be created which will have a five year mandate but will complete the national events and report to the Canadian public within two years about what happened in Indian Residential Schools to Indian, Métis and Inuit children.
- The involvement of government, churches and others, and the consequences of the schools on individuals, families and communities will be investigated and documented.
- Community truth telling processes may continue for a further three years and individual survivors will have no time limit on filing their own personal statements in the archives.
- The Commission will have three commissioners appointed by the Executive in consultation with the AFN.
- The Commissioners will be advised by a survivor's committee and assisted by regional representatives of the commission.
- Truth and Reconciliation events will be held in First Nations and Inuit communities and in major urban centers.
- Community events will be designed by community members with the assistance of the national commission with a view to individual and community empowerment, safety, creating and preserving a historical record, healing and establishing better relationships within and outside the communities.

- Canada and the churches have agreed to provide all relevant documents subject only to overriding privacy interests on individuals. In such cases, the Commission will still have access to the documents provided privacy is respected.
- A national archive and research center will be created which will act as a resource and for all Canadians, researchers and educational institutions.

5. Commemoration

- A fund of \$20,000,000 is available for commemoration events, activities, memorials, and projects at both the national and community levels.

6. Healing

- Canada will provide an endowment to the Aboriginal Healing Foundation for 5 years in the amount of \$125,000,000 to address the harms of the legacy of residential school on Indian, Métis and Inuit children.
- An evaluation will be undertaken in the fourth year of the endowment to determine whether and to what extent funding should be continued.
- The Aboriginal Healing Foundation will receive any surplus amounts from the lump sum fund once the survivors have been paid their individual compensation and healing compensation.