

RESIDENTIAL SCHOOLS
FINAL SETTLEMENT AGREEMENT
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It seems the wait is over. After months of uncertainty regarding the proposed compensation package, the Federal government announced on May 10, 2006 that a final settlement agreement had been reached by the Government's representative, the Honourable Frank Iacobucci, and the representatives of former residential school students, the legal representatives of the Churches, the Assembly of First Nations and other involved Aboriginal organizations. This final version of the agreement in principle will be submitted for court approval in nine Canadian jurisdictions. Once court approval is received and a five month opt-out period has passed, the Settlement Agreement will come in to effect. If more than 5,000 eligible former students opt out of the deal by the end of those five months, the Settlement Agreement will not come into force.

The new settlement package includes many of the same components announced in the Agreement in Principle by the Liberal Government on November 22, 2005. Those components include an early advance payment, common experience payment, and independent assessment process, as well as additional funds for reconciliation, commemoration and healing activities. All of the components are meant to address the devastating legacy of the Indian Residential Schools

Early Advance Payment (EAP)

Residential school students who turned 65 years of age or more on May 30th, 2005, will be eligible, upon application, to receive an \$8,000 up front advance payment. The advance payment will then be deducted from any common experience or other settlement payments they may receive in the future. Advance payment applications can be found on-line at www.irsr-rqpi.gc.ca or you may call Indian Residential Schools Resolution Canada Help Desk at 1-800-816-7293. The deadline for Advance Payment applications is December 31, 2006.

Common Experience Payment (CEP)

Once the Settlement Agreement comes into force, any eligible former students of a recognized Indian Residential school*, who was alive on May 30, 2005, can apply to receive the common experience payment (CEP). If a former student passed away after May 30, 2005, his estate executor or next of kin can apply for the CEP. However, the money will go to the person's estate and be distributed accordingly. There is no compensation available of any kind for children or other descendants of residential school survivors.

The CEP has a \$1.9 billion budget. Each eligible applicant is entitled to receive a \$10,000 lump-sum payment for the first year (or part year) in residential schools and an additional \$3,000 for each subsequent year. An application form will be available on-line after the Settlement Agreement comes into effect. Once the Settlement Agreement comes into effect, applicant will have four years to apply for the CEP.

The federal government is currently in talks with the provincial and territorial governments to make sure that any payments falling in this category do not affect any social assistance payments that residential school survivors receive. Moreover, the payments will be exempt from income tax.

You do not need to get a copy of your school records to apply for Advance Payment or the Common experience payment as long as the records match. All you need to do is fill out the application form and the government will check its own records. However, if the government cannot find any proof of attendance, it will review application on a case by case basis. You are then encouraged to submit copies of any other supporting document such as a report card, medical report, etc.

Moreover, you do not need to hire a lawyer to apply for any of the payments. However, should you choose to get a lawyer to represent you in the IAP, the government will provide a small percentage, in addition to your compensation entitlement, to pay for your lawyer's fees.

Moreover, students who are deemed to qualify, but have previously settled their claims through litigation, the ADR process or the ADR pilot projects, will still be able to apply for the Advance Payment and the CEP.

Independent Assessment Process (IAP)

Prior to the negotiations of the Settlement agreement, residential school survivors turned to the Alternative Dispute Resolution (ADR) method of pursuing and settling claims of serious physical and/or sexual abuse. However, the ADR process proved to be not only limited in scope, but also had a questionable success rate. The ADR process will be replaced by the Independent Assessment Process (IAP). However, until the IAP is approved by the courts, the ADR process will continue to deal with compensation for former students.

The IAP will be available from a period of five years, starting from the Agreements implementation date. The IAP process will widen the scope of claims to include not only sexual and serious physical abuse, but will also include unlawful confinements, abuse from other students, and any physical injuries suffered while attending residential schools. After the Settlement Agreement comes into force, this will be the only way to pursue the above claims, unless you have formally opted out of the agreement.

Unlike the previous ADR process in which the payment was shared by the Government and the Catholic Church on the proportion 70% to 30%, the compensation will be paid fully by the Government, after the claim has been validated by an independent adjudicator. If the Church contributes any funds for compensation, that money will be given to the Aboriginal Healing Foundation.

The application form for this payment is not yet available.

Truth and Reconciliation Fund

The Truth and Reconciliation Fund has a budget of \$60 million over five years. The purpose of this fund is two fold: it will promote public education and awareness of the legacy of Residential Schools and it will also provide former students, families and communities affected with an opportunity to share their experiences in a safe and culturally appropriate place. This a form of restorative justice intended to heal relationships between the parties involved in residential schools by uncovering facts, dispelling myths and allowing acknowledgement, mourning and healing.

A Truth and Reconciliation Commission is currently collecting residential school records and it will establish an accessible research centre for the information collected. It will also organize national and community events addressing this topic.

Commemoration Fund

Similarly to the Truth and Reconciliation fund, \$20 million has been put aside to pay for events and memorial commemorating the legacy of Residential schools. This fund will be managed by the government and the Truth and Reconciliation Commission.

Healing Fund

Another \$125 million has been set aside to fund the Aboriginal Healing Foundation programs for five years. The Churches who were involved with the Residential school are to donate an additional \$100 million in cash and services that will go towards healing programs and initiatives.

To find out more about the Residential Schools Settlement package, you can visit [Indian Residential Schools Resolution Canada](http://www.irsr-rqpi.gc.ca) at <http://www.irsr-rqpi.gc.ca>, the [Assembly of First Nations website](http://www.afn.ca) at <http://www.afn.ca> or the [Nishnawbe Aski Nation website](http://www.nan.on.ca) at <http://www.nan.on.ca>

*A list of recognized Indian Residential Schools can be found in Schedules E and F of the Settlement Agreement. You can view the Settlement Agreement at http://www.irsr-rqpi.gc.ca/english/pdf/Indian_Residential_Schools_Settlement_Agreement.PDF