

Courts to Review Final Settlement Agreement In Ontario

by Georgianna Barlow

APC

The courts in nine jurisdictions across Canada will be reviewing the Final Settlement Agreement reached between the Assembly of First Nations, Canada, legal counsel for churches and survivors and representatives for the Inuit and Metis, to determine if the Agreement is fair and just for former Indian Residential School survivors in Canada. The Final Settlement Agreement consists of compensation, an advance compensation payment to the elderly, truth telling and reconciliation, commemoration, healing and changes to the Alternative Dispute Resolution process.

The Atlantic Policy Congress has visited eight Mi'kmaq and Maliseet First Nation communities in the month of July to discuss the Final Settlement Agreement. They are:

- Woodstock First Nation (July 3rd)
- Eskasoni First Nation (July 4th & 5th)
- Wagmatcook First Nation (July 6th)
- Whycocomagh First Nation (July 7th)
- St. Mary's First Nation (July 25th)
- Tobique First Nation (July 26th)
- Elsipogtog First Nation (July 27th)
- Chapel Island First Nation (July 30th)

The Atlantic Policy Congress visits communities to give updates on the Indian Residential School issue. The main points of the Final Settlement Agreement are:

Common Experience Payment (CEP)

The Common Experience Payment is for loss of language, loss of culture and loss of family life for former Residential school students in Canada in the amount of \$10,000 for the first year spent in the school and \$3000 for every year thereafter after May 30th, 2005. For those former students who passed on after May 30th, 2005, their families could receive the CEP. The CEP will not affect social assistance, pensions and is non-taxable. In order to accept the CEP, a survivor must sign a waiver, releasing Canada and the churches of any further liability, except in the case of physical and sexual abuse by then which the survivor could proceed through the Independent Assessment Process.

An advance payment has also been issued to survivors who are 65 years and older as of May 30th, 2005 to receive \$8000 in advance of their common experience payment. Those who are eligible must fill out the application form between May and December of this year in order to receive it. If the Final Settlement Agreement is not approved, those who receive the \$8000 are not required to pay the money back to the Government.

Independent Assessment Process (IAP)

The Independent Assessment Process is a process in which to proceed with claims of abuses that took place while in the Indian Residential abuse. A survivor would begin by filling out an application, detailing the abuses that have happened to them while in the Residential School. The application could be accepted or denied with reasons given to the survivor. Should the application be accepted, out of court hearings could take place in a nine month period anywhere the survivor chooses. Witnesses could be called in for the survivor and documents could be presented to support the survivor's claim. The accuser could also be brought in to talk at the hearings as well. This process could award up to \$275, 000 for abuses and up to \$250, 000 could be rewarded for loss of opportunity. Loss of opportunity means if a survivor could not hold down a job or even get a job as a result of their experiences in the Indian Residential School.

Healing

If the Final Settlement Agreement is ultimately approved by the courts and former Indian Residential School survivors, the Aboriginal Healing Foundation could also receive \$125 million to continue healing programs and initiatives with First Nations people and communities.

Truth and Reconciliation

A Truth and Reconciliation Commission could be set up to receive \$60 million to document stories of survivors at the National and community level. This commission will also set up a national archive and research center for all Canadians to be made aware of what Indian Residential Schools were and why they were set up as many Canadians are unaware of this legacy.

Commemoration

The existing commemoration fund could receive up to an additional \$10 million in which survivors can apply to have their own gatherings and events in their communities. Survivors could choose how they wish to commemorate their experiences of being in an Indian Residential School, such as their own special day of activities or even a plaque or monument.

Court Hearings for Atlantic Survivors

For survivors who live in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador or outside of Canada, the court hearings will take place in Ontario from August 29th to the 31st. Many survivors are asking why the courts will only be reviewing the Agreement in Ontario and not in Nova Scotia. The reason for this is that there is currently no class action legislation here in Nova Scotia which means that class actions cannot take place in the province of Nova Scotia. The current class action lawsuit in the Atlantic has teamed up with the Baxter class action lawsuit in Ontario for that very reason. The Baxter class action lawsuit is also for former Indian Residential school students in

Ontario.

Pending court approval, two phases must take place. The first is the notification plan which is currently taking place. The notification plan is letting survivors across Canada know about the court schedules and where survivors can attend the hearings that are close to them. The second phase is that if the courts do approve the Final Settlement Agreement, a notification plan will be implemented. This means that the courts will announce payment dates and how the Final Settlement Agreement will ultimately proceed. The courts will also advise how survivors can opt out of the Agreement. There will also be community outreach sessions so survivors are aware of what the courts have decided so that they can make an informed decision as to whether they should opt out of the Final Settlement Agreement. It's being suggested that survivors should talk to a lawyer to determine if they are making an informed decision to approve the Agreement or to opt out of the Agreement. If 5000 former students do opt out of the Final Settlement Agreement between November of 2006 to March of 2007, the Agreement will not come into effect. If survivors do accept the Final Settlement Agreement, the administration of the Common Experience Payment would proceed through Service Canada.

Role of Lawyer Mike Taylor

The Atlantic Chiefs passed a resolution at their last meeting in June that survivors had an opportunity to voice any concerns over the Final Settlement Agreement and this needed to be addressed. The Chiefs have asked for someone objective to have survivor's issues and concerns raised and Mike Taylor of Presse Mason, Barrister and Solicitor of Bedford from Halifax, Nova Scotia has been chosen. Mr. Taylor has been hired by the APC to work on behalf of survivors and bring survivor's issues forward and formulate them in a way that can be brought before the court hearings in Ontario on August 29th to the 31st.

Mr. Taylor can also represent survivors in the Independent Assessment Process which is contained in the Final Settlement Agreement. Survivors who do not have legal representation can contact Mr. Taylor and hire him to be their lawyer. If survivors would like more information on how to be involved with Mr. Taylor or to ask for any free legal advice, he can be contacted at:

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For any information on the Final Settlement Agreement, advance payment forms or school records forms, you can contact Georgianna Barlow with the Atlantic Policy Congress toll free at (877)667-4007 and/or by email at georgianna.barlow@apcfn.ca.