

# Compensation & The Agreement in Principle

by **Georgianna Barlow**  
APC

**A**greement in Principle (AIP) Common Experience Payment (CEP) Alternative Dispute Resolution Process (ADR) Independent Assessment Process (IAP)

In this month's issue of the Mi'kmaq, Maliseet News, we are going to address one aspect of the Agreement in Principle which is the proposed Assembly of First Nations compensation package and other ways to resolve claims of abuse in Indian Residential Schools. In the next articles to come, other issues of the AIP will be addressed. The Agreement in Principle is not the final word on compensation, truth and reconciliation, commemoration and changes to the Alternative Dispute Resolution Process. The AIP is not a done deal.

The Agreement in Principle which was signed on November 20th, 2005 still needs to be made into a legal document and have the approval of the courts in 6 provinces and 1 territory. The AIP is also subject to approval by the former students of Residential schools in Canada. If 5000 former Residential school students in Canada reject the Agreement in Principle, it will no longer exist and where the discussions go from there, has not been made clear. The courts and the students are the deciding factors if the AIP becomes a Final Settlement Agreement. Although a new Government has been sworn in on February 6th, Prime Minister Stephen Harper has stated the Federal Government will honor the settlement package if the AIP enters into a Final Settlement Agreement and if the Agreement in Principle is approved by the Courts. The courts will begin reviewing the AIP in the months to come and the opt-out period for survivors to reject the AIP will take place between June to December of this year. If the AIP is accepted by the courts and the former stu-

dents, the \$10,000 plus the \$3000 could begin in January of 2007 for all survivors in Canada.

## AFN proposed compensation

In the Political Agreement signed on May 30th, 2005, the proposed lump sum payment to survivors in Canada for loss of language and culture is in the amount of \$10,000 for the first year attended in the school and \$3000 for every year attended after.

The Agreement in Principle supported the lump sum payment but changed the name of the payment to the Common Experience Payment. The Common Experience Payment will go to every living survivor after May 30th, 2005, regardless of whether you settled a claim with the Federal Government or not. What I mean by this is, is that if you have already received compensation for abuses suffered in the Residential school, you will still be eligible for the Common Experience Payment. If survivors accept the CEP, they must then sign a waiver releasing Canada and the Churches of any further responsibility for abuses at an Indian Residential School and any claims for physical and sexual abuse will be settled under the Independent Assessment Process which is discussed in this article.

For the former students who have passed away before the May 30th, 2005 date, their families will not be receiving the Common Experience Payment. Families of deceased former students who passed away after May 30th, 2005 will receive the CEP and a \$5000 contribution towards funeral costs.

The Common Experience Payment will not affect your social assistance, your pension, or your old age. No money will be deducted from your Common Experience Payment. The CEP will be yours completely. The CEP is also protected from legal fees.

The early payment for survivors in the amount of

\$8000 in advance of the common experience payment has been approved by the Governor General Michaele Jean who has signed a warrant of release on January 21st, 2006. This payment will be made to survivors once the new Federal Government approves the release of the advance payment. While this payment was supposed to begin in January and February for survivors over the age of 65, it will take a little longer before the payment is sent out and the date for the early payment is unknown at this time.

## Court Class Actions

Court Class Actions across Canada that have to do with groups of survivors fighting for compensation under the Residential School will no longer exist upon approval by the Courts and former students in Canada. Lawyers who represent survivors in Class Action suits will receive payments for work that they have done for survivors by the Federal Government. Lawyers who represents some survivors in the Baxter Class Action lawsuit, agreed to accept a payment from the Federal Government if the Agreement in Principle is approved, which means that they cannot touch the Common Experience Payment or ask you for payment out of your pocket. This also means that lawyers may no longer represent survivors in the Class Action suit should the AIP be approved. It is stated in the Agreement in Principle that any money that could go to survivors will be protected from legal fees.

If you do accept the Common Experience Payment, you must sign a waiver stating that you will not sue the Federal Government and the Churches in Canada for any further compensation with regards to abuses suffered in the Indian Residential School. If you wish to fight for claims of physical and sexual abuse, you will have to take your claim to the newly improved Alternative Dis-

pute Resolution process, which would be change to the Independent Assessment Process.

## Alternative Dispute Resolution Process

The Assembly of First Nations, as stated in the Political Agreement wanted changes made to the Alternative Dispute Resolution process. This process has existed since 2003 as a way for survivors to fight for physical and sexual abuse and wrongful confinement, which means, for example, if you were locked in a dark space for a period of time. It is an out of court, closed hearing which takes 9-10 months to complete. You could go through the ADR alone or with a group of survivors and fight together. Like the courts, you may receive compensation or you may not, which depends on the ruling of the adjudicator. An adjudicator is not a judge. The adjudicator has been given information about Aboriginal culture, child abuse and the Residential school system and is fully trained to work in the ADR process. The adjudicator determines if you are entitled to compensation. In determining compensation, a point system is used. For example, you could receive between 45-60 points for repeated incidents of anal and vaginal intercourse. The survivor can also submit documents, such as medical history, school records and have witnesses testify on their behalf, such as another

student who attended the Residential school with them and the survivor's psychologist can also testify. Once the points are counted up for proven acts of abuse, the adjudicator will ask you if you will accept a compensation amount and it's up to the survivor whether they want to accept the settlement. A lawyer is recommended in this process so the survivor knows their rights and is aware that should they accept a settlement proposed to them under the ADR, they can no longer sue the Federal Government for further compensation. The fee for getting legal advice is \$600 which the Federal Government will pay so you don't have to. The Federal Government will also contribute 15% towards legal fees should the survivor win compensation under the ADR process. The ADR process is a current way of settling your claim.

A survivor would have a lawyer or form filler fill out a 35 page application discussing the abuse that took place at the Residential School. The Federal Government will let the survivor know if their application has or hasn't been accepted. If having to discuss your abuses is too hard to handle emotionally, survivors would have a counseling hotline to call which is located on the application form. Mental health support is also available to survivors, such as counseling. If a survivor does win compensation, they could

receive up to \$245,000. The only thing was that this high payment only applied to survivors who lived in specific provinces, such as British Columbia or Ontario and not to survivors who live in the Atlantic Provinces. The payments did not treat survivors fairly. The reason for this is the Federal Governments contribution agreements with the different religions that ran the Residential schools. The Government's arrangement with the churches is that they would pay 70% of the compensation and the churches would pay 30% of the compensation, making that 100%. Since the Roman Catholic churches took their contribution and gave it to the Aboriginal Healing Foundation, survivors who attended a Catholic school and received compensation would only get 70% of their compensation and not the remaining 30%. Now, the Federal Government is fully responsible for ensuring that all survivors who receive compensation are given 100% of their compensation regardless of what church ran the Residential school and this includes the Catholic Church. If survivors are interested in proceeding in the ADR as an individual or as a group, you can write a letter to your lawyer stating that you no longer require their services. The ADR is still in existence but if the AIP is accepted by the courts and the former students, it will change as I explain further.

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**CAPE BRETON UNIVERSITY**

Human Resources Department  
Tel: (902) 568-1159 Fax: (902) 568-1459  
E-mail: [humanresources@ns.aliantel.net](mailto:humanresources@ns.aliantel.net)  
P.O. Box 5800, 1250 Grand Lake Road, Sydney, NS, Canada B1P 6L2

Full posting available at [www.capebretonu.ca](http://www.capebretonu.ca)

Director, Mi'kmaq College Institute  
Reference #MCI0602

*Closing Date: March 31, 2006*

Cape Breton University (CBU) seeks a dynamic individual from within the Mi'kmaq community to assume the directorship of the Mi'kmaq College Institute (MCI). The Director will provide leadership in the development, expansion and implementation of Mi'kmaq programs and services at CBU. The successful candidate must have undertaken graduate studies in education, business, science or the social sciences. Experience in senior management within a First Nations and/or postsecondary environment is desirable, as is fluency in the Mi'kmaq language. A position profile is available upon request to all interested candidates.

Please visit our website to view the full job posting.