

## RESIDENTIAL SCHOOL AGREEMENT FREQUENTLY ASKED QUESTIONS

### ***Q: What is the Indian Residential School Settlement Agreement (the "Agreement")?***

The Agreement is an attempt to resolve all Residential school claims in one national settlement and is the result of a year of negotiations between Canada, independent legal counsel representing former students, including Peter Grant & Associates, legal counsel for the Churches, the Assembly of First Nations and Inuit Organizations.

### ***Q: What are the key benefits of the Agreement?***

A **Common Experience Payment** of \$10,000 for the first year of attendance at Residential school plus \$3,000 for each subsequent school year or part to be paid to all eligible former students who resided at recognized Indian residential schools and were alive on May 30, 2005.

An **Independent Assessment Process ["IAP"]** allows for compensation of up to \$275,000, for claims by former Residential school students of serious physical abuse and/or sexual abuse suffered at an approved school, in a process

which is easier and more timely than the current court process.

A **Truth and Reconciliation Process** was Established in June 2009 to provide a forum for survivors to tell their stories and have their experiences validated and recorded.

**\$20,000,000 for Commemoration** initiatives, events projects and memorials with respect to Residential schools at the local and national level.

**\$125,000,000 for Healing** over a five year period to address the legacy of harms, including physical and sexual abuse, suffered in Residential Schools.

### ***Q: When did the Settlement Agreement come into force?***

September 19, 2007

### ***Q. What if I attended a Residential School but was boarded at a place which is not on the School List?***

At the present time, the Agreement does not allow for payment if you were taken away from your home and placed in a boarding home outside of the listed Residential Schools but attended the Residential School. This is an issue that may well be raised before the Courts.

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If the Courts approve that persons who were placed in boarding homes for the purpose of attending one of the listed Residential Schools should be eligible for the CEP, there will be a further notice program for such students. Unfortunately, until there is clarification on this issue by the Courts who are supervising the Agreement, persons who attended boarding homes are not able to get CEP payments.

### **THE COMMON EXPERIENCE PAYMENT**

***Q: Who is eligible for the Common Experience Payment?***

All former students who resided at an approved Residential school and who were alive on May 30, 2005 are eligible.

***Q: Will Common Experience Payments affect my social assistance or pension benefits?***

Not in British Columbia. It may vary in other provinces. Canada has agreed to use its best efforts to obtain agreements with the provincial governments to ensure that receipt of any payment under the Settlement Agreement, whether it is the Advance Payment, the Common Experience Payment or a settlement under the Independent Assessment Process shall not affect social assistance or pension benefits.

Peter Grant & Associates lobbied in 2000 that court awards and other payments arising out of

abuse suffered at Indian residential schools would be exempt in British Columbia from social assistance. Manitoba has also exempted these payments. This process is ongoing in each province to endeavor to ensure that receipt of any payments under the Settlement Agreement will not affect other benefits payable to an eligible recipient.

***Q: Will the Advance Payment or Common Experience Payment be subject to income tax?***

No. Neither the Advance Payment nor Common Experience Payment are subject to income tax.

***Q: Am I eligible to apply for the Common Experience Payment if I have already settled my claim through either litigation or the Alternative Dispute Resolution (ADR) process?***

Yes.

### **DAY STUDENTS AT RESIDENTIAL SCHOOLS**

***Q: If I attended a listed Indian residential school during the day and did not reside at the residence, will I be eligible for the Common Experience Payment?***

No. You must have resided at the school residence or have been placed in a residence at one of the listed Residential Schools away from

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the family home by the federal government for the purpose of education to be eligible for the Common Experience Payment.

If an individual attended a listed Indian Residential School during the day and was permitted on the school grounds for sports, music lessons or other activities and if they suffered sexual abuse or serious physical abuse while at the school, they may file an abuse claim under the Independent Assessment Process.

## **LIST OF INDIAN RESIDENTIAL SCHOOLS**

### ***Q: What are the listed Indian residential schools?***

The list of Indian residential schools can be found at:

[www.residentialschoolsettlement.ca/ScheduleEResidentialSchools.PDF](http://www.residentialschoolsettlement.ca/ScheduleEResidentialSchools.PDF)

and an additional list at:

[www.residentialschoolsettlement.ca/Schedule\\_FAdditionalResidentialSchools.PDF](http://www.residentialschoolsettlement.ca/Schedule_FAdditionalResidentialSchools.PDF)

### ***Q: Addition of New Schools to the Settlement Agreement***

Canada has received applications for over 1000 schools to be added. So far, they have allowed 3 schools to be added.

There is an appeal in Ontario with respect to 2 schools in Northern Ontario. We anticipate that there will be appeals in other cases for the addition of schools.

One impact of payments under the CEP is that some schools have only been limited time wise to when Canada provided funding. These include Lac la Biche (Notre Dame des Victoires), St. Augustine's Mission School (Manitoba) and Coqualeetza.

Clarification as to the years for which these schools would be determined to be eligible may be addressed to the Courts who are supervising the Agreement.

## **Our Firm's Work on Residential School Claims**

Lawyers and staff at Peter Grant & Associates are inspired by the courage and dignity displayed by Residential School clients, who suffered unimaginable abuse while at Residential Schools. Counsel is honoured to assist them in their healing and their quest for justice.

We advocate a high standard of practice in working with residential school survivors. It is critical that victims of childhood abuse be acknowledged as being in control of their cases. Prospective clients meet face to face with the lawyer they will have before deciding if they want the firm to represent them. We

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have adopted the CBA Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools.

Most importantly, Peter Grant & Associates recognizes that a financial settlement or award plays only a small part in the survivors' efforts to take control. The firm actively supports the need for ongoing healing and planning for healing after the case is over.

Our law firm became involved with Residential School claims in 1995. At the time, there had been no court case in Canada for damages arising from Residential School abuse. In *Mowatt v. Clarke and Canada and the Anglican Church of Canada*, our firm succeeded in obtaining a precedent setting judgment in the British Columbia Supreme Court as Justice Dillon found that the Anglican Church of Canada was negligent and both the Anglican Church and Canada were liable for the sexual assaults perpetrated on Mr. Mowatt.

The firm represented twenty-one survivors from the Port Alberni Indian Residential School (*Blackwater v. Plint*), and the cases of a further eight survivors from St. George's Indian Residential School (*T.W.N.A. v. Clark*). After years of difficult litigation, counsel obtained precedent setting judgements in both *Blackwater* and *T.W.N.A.* In *T.W.N.A.*, the Court awarded punitive damages against the Church.

The firm has been fully involved in negotiating settlements in over 100 other Residential School cases and obtained numerous successful settlements under the Federal government's ADR process and IAP process.

Between 2005 and 2007, the firm worked with the Assembly of First Nations, the Inuit and on behalf of approximately 20 law firms from across Canada, in negotiating with Canada and a variety of Church entities, the Indian Residential School Settlement Agreement. Peter Grant of our law firm represented Independent Counsel in the negotiations of the Final Agreement which was approved on May 23, 2006.

The Court approved the Agreement in December 2007 and Court Orders were made on March 19, 2007. The Indian Residential School Settlement Agreement came into effect on September 19, 2007.

Peter Grant is one of seven representatives on the National Administration Committee ["NAC"]. The NAC deals with appeals of denials of partial payments of the Common Experience Payment. We are also mandated to ensure the implementation of the Agreement.

At the present time we have 4 lawyers in our law firm who are working on IAP claims for individuals. Our philosophy is to work intensely with individuals and therefore we limit the number of IAP claims that we are dealing with at any particular time. The four

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lawyers are Peter Grant, Allan Early, Brian O'Reilly and Lee Schmidt.

If you have any questions or concerns please feel free to contact our office and speak to any one of these persons. Their email addresses are, [pgrant@grantnativelaw.com](mailto:pgrant@grantnativelaw.com), [pglaw@telus.net](mailto:pglaw@telus.net), [boreilly@grantnativelaw.com](mailto:boreilly@grantnativelaw.com) and [lschmidt@grantnativelaw.com](mailto:lschmidt@grantnativelaw.com). Our office phone number is located under the contact information on the website, you may also call our office toll-free if you are outside the Vancouver area by calling 1-800-428-5665.

### CASES

*F.S.M. v. Clarke HMTQ and the Anglican Church of Canada*  
[1999] B.C.J. No. 1973  
[Link to Case here](#)

*Blackwater v. Plint*,  
[2005] 3 S.C.R. 3, 2003 BCCA 671, 2001 BCSC 997  
[Link to Case here](#)

*T.W.N.A. v. Clark*  
2003 BCCA 670, 2001 BCSC 1177  
[Link to Case here](#)

### LINKS

[National Settlement Agreement](#)

CBA Guidelines

<http://www.cba.org/CBA/resolutions/pdf/07-09-MC.pdf>

### PUBLICATIONS

- The Depth of the Ocean: General and Aggravated Damages for Childhood Sexual Abuse in Residential Schools (Paper presented at 3rd Annual National Summit on Institutional Liability for Sexual Assault and Abuse, Toronto, Ontario, February 21 and 22, 2002)
- Residential Schools Resolution: The Plaintiffs' Perspective on Litigation (Paper presented at the Canadian Bar Association conference, Winnipeg, Manitoba, April 29 and 29, 2000)
- Prosecuting Residential School Claims (Paper presented at the mid-winter Canadian Bar Association conference, Saskatchewan, 1999)
- Residential School Update: *Blackwater v Plint* (Aboriginal Writes, July 1998, p. 4)

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