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February Update on Indian Residential School Claims

If you have questions about the status of the Class Action settlement you can check our website for updates (www.apmlawyers.com) or feel free to call my office. If I am not available my assistant Ashley Newton can answer your questions. Our toll-free number is 877-423-2050.

Review:

I have been proud to represent the Association for the Survivors of the Shubenacadie Indian Residential School (ASSIRS) for more than ten years. Between May to November 2005 I participated in negotiations with Canada on behalf of the Shubenacadie survivors. I was the only lawyer from Atlantic Canada who participated in the negotiations on behalf of the Shubenacadie survivors.

In November 2005 we were able to successfully negotiate a settlement that will compensate survivors of the Shubenacadie Indian Residential School and other survivors across Canada (that were alive on May 30, 2005).

The settlement covers survivors from all the Provinces and Territories across Canada. Because the settlement is part of a National Class Action, the terms of the settlement had to be reviewed and approved by Judges across Canada (to ensure that the settlement is fair and reasonable).

Nine Court Approval hearings (mini trials) were held across Canada through August, September and October 2006. I attended the Approval Hearing in Ontario on behalf of Nora Bernard and ASSIRS. I was the only lawyer who appeared in court on behalf of the Shubenacadie survivors and Atlantic Canada to make submissions to the court on behalf of the Shubenacadie Survivors.

In December, seven of the eight judges released court decisions approving the national class action settlement. In January the last judge released his decision approving the national class action settlement. All of the judges across Canada unanimously approved the class action settlement. That means that the class action settlement can proceed.

On January 26, 2007 a meeting was held with a panel of judges who are going to oversee the Class Action to discuss how the claims are going to be administered and to discuss the terms of a final national court order approving the national class action settlement.

Next Steps:

A Court Order is being drafted that will be signed by each of the judges across Canada. All survivors' claims will be joined into one National Class Action. The Court Order will set out the final terms and approval of the National Class Action settlement.

We anticipate that the wording of the court order will be finalized and the judges across Canada will be in a position to sign the court order in early March 2007.

Notice Period (Opt Out):

Class action laws in each province require that survivors be given **notice** of the class action settlement and time to review the settlement to decide if they want to participate in the settlement. This is what is known as an "opt out period". According to the terms of the settlement agreement, the notice period is **five months**.

If more than 5,000 (five thousand) people across Canada decide to opt out of the settlement agreement and sue on their own, Canada has the right to not to proceed with the settlement. We believe that the class action settlement is fair and reasonable and we have recommended that our clients participate in the class action settlement. We expect few (if any) survivors across Canada will opt out of the class action settlement.

Timing of payments under the Class Action:

If the final court order on the class action is signed by all of the judges in early March 2007 the Notice period will start in April 2007. Survivors should be able to apply for compensation under the class action settlement in **Fall of 2007**.

I have been advised that there is a rumour that payments are not going to be issued until next year (2008). If matters proceed as currently scheduled survivors should be able to apply for payment under the class action settlement in Fall 2007.

Could there be a delay in payments?

There is an ongoing dispute between the lawyers representing Canada and a law firm in Saskatchewan called The Merchant Law Group. Lawyers for Canada and Merchant have filed a court appeal in Saskatchewan. The appeal **is not** about the terms or fairness of the class action settlement. The appeal is about how much money the Merchant Law Group should be paid for legal fees under the class action settlement.

We have been working with the judges supervising the class action to move the settlement forward as quickly as possible. We do not believe that the court appeal in Saskatchewan will unduly delay the class action settlement.

Terms of Class Action Settlement:

There are two ways survivors can be paid compensation under the class action settlement:

1. The Common Experience Payment (C.E.P.); and/or
2. The Individual Assessment Process (IAP)

Common Experience Payment (C.E.P.):

Survivors who attended a Residential school and were alive on May 30, 2005 will receive compensation called the Common Experience Payment (C.E.P). The C.E.P. is to compensate for loss of language and culture, the horrible conditions in the schools and the constant minor physical abuse that took place in the residential schools.

The C.E.P. payment is **\$10,000.00** for the first school year plus **\$3,000.00** for every additional school year students attended an Indian Residential School. Depending on how long you attended the school, some survivors will receive less and some survivors will receive more.

The **minimum payment** under the C.E.P. is \$10,000.00. There is no cap on the maximum payment that can be received under the C.E.P.

I have been told by survivors that a recent article in the Mi'Kmaq - Maliceet news reported that every survivor would receive \$24,000.00. That is not correct.

How do Survivors Apply for the C.E.P.?

After the opt out Notice period runs out in the Fall 2007 Canada will send out application forms for Survivors to apply for their C.E.P. compensation. The application forms will **not be sent out** until after the Notice period runs out.

The C.E.P. application form will be a simple form that survivors will sign confirming that they attended a Residential School. Canada will check the school records to confirm that the student attended the Residential school and will issue the C.E.P. compensation payment to the survivor.

Survivors **will not** have to talk about the abuse that happened to them in the school. in order to receive the C.E.P. payment.

Survivors will not have to go to court to receive the C.E.P. Survivors will not have to attend a hearing to receive the C.E.P.

In order to receive the C.E.P. survivors will only have to **fill out an application** form and **prove that they attended a Residential School.**

No legal fees on C.E.P.:

Because we represented the Shubenacadie Survivors in the class action negotiations, we have agreed that we will not charge our clients legal fees to help our clients apply for the C.E.P. payment.

Individual Assessment Process (I.A.P.)

If you suffered **sexual abuse** in the school you have the choice to apply for more money to compensate you for the sexual abuse and the effects of the abuse.

If you suffered **serious physical abuse** in the school you have the choice to apply for more money to compensate you for the serious physical abuse and the effects of the abuse.

If you suffered abuse that caused **serious psychological effects** you have the choice to apply for more money to compensate you for the serious psychological effects of the abuse.

For the last ten years, we have been collecting information to help prove our clients claims. If you have questions about whether you will qualify for compensation under the I.A.P. you can call me or my assistant Ashley Newton at 1-877-423-2050.

If you want to apply to receive compensation for serious physical abuse, sexual abuse, or serious psychological effects, **we will need specific details** about the abuse that you suffered. You may have to attend a hearing to talk to about what happened

to you. If you are thinking about applying for compensation under the I.A.P. you can call me or my clerk Adrienne Switzer at 1-877-423-2050 for more information.

Choice:

Every survivor who attended a Residential School that was alive on May 30, 2005 is entitled to receive the Common Experience Payment C.E.P. (\$10,000 plus \$3,000 per school year).

Survivors also have the choice to apply for extra compensation for sexual abuse, serious physical abuse or serious psychological effects under the I.A.P.

Minor Physical Abuse ADR Claims Deadline:

A number of years ago Canada set up a compensation process called the Alternate Dispute Resolution program (A.D.R.). We thought the A.D.R. process was flawed and we recommended that our clients not participate in the A.D.R..

The A.D.R. process will be phased out and replaced by the programs under the class action settlement (the Common Experience payment C.E.P. and the Individual Assessment Process I.A.P.).

If you **did not** suffer **any** sexual abuse, **any** serious physical abuse or **any** serious psychological effects in the Residential School you **may** have a claim for minor physical abuse under the A.D.R. The A.D.R. pays up to \$1500.00 compensation to survivors who suffered **minor physical abuse**.

If you want to apply for compensation for minor physical abuse you may want to contact Canada's A.D.R. helpline at 1-800-816-7293. The helpline will be able to tell you if you have a claim for minor physical abuse under the A.D.R.

Once the final class action approval order is signed the A.D.R. process will be closed and survivors will be able to apply for the C.E.P. and/or the I.A.P.

The A.D.R. claims deadline will be posted on Indian Residential Schools Resolution Canada's website (www.irsr-rqpi.gc.ca). The deadline has not been set/posted. We expect the deadline will be sometime in March.

Conclusion:

While this claim has taken a long time to resolve we are pleased that a settlement has been reached.

When Nora Bernard was not able to find any law firm in the Province that would represent the Shubenacadie survivors, we were prepared to take the claim. We have been involved with the Shubenacadie claims from the very beginning. We participated directly in the negotiations with Canada that lead to the National Class Action settlement. We have been proud to represent the Survivors of the Shubenacadie Indian residential School for the last ten years and we look forward to representing the Shubenacadie survivors with their Common Experience Payment applications and the ongoing-claims in the Individual Assessment Process.