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Chair

Ms. Nancy Karetak-Lindell

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● (1110)

[*English*]

The Vice-Chair (Mr. Jeremy Harrison (Desnethé—Missinippi—Churchill River, CPC)): I'm calling the meeting to order.

Pursuant to Standing Order 108(2), we are conducting a study on the effectiveness of the government alternative dispute resolution process for resolution of Indian residential schools claims.

Nancy won't be here for about another 15 minutes or so, so I'll be taking her place in the chair for that period of time.

For the first part, we have from 11 until 12 with witnesses from the Aboriginal Healing Foundation, Michael DeGagné, the executive director, and Wayne Spear, senior communications officer. From the National Residential School Survivors' Society we have Ted Quewezance. From the Children of Shingwauk Alumni Association we have Michael Cachagee, director. From Indian Residential School Survivors' Society, we have Robert Joseph, chief.

I think we have scheduled about ten minutes for each presentation. I'd ask that we expedite that as much as possible, because we are starting late today.

With that, we'll go to Mr. DeGagné, from the Aboriginal Healing Foundation.

Mr. Michael DeGagné (Executive Director, Aboriginal Healing Foundation): Thank you very much for this opportunity. We are very pleased to be invited and to be accepted to give our views here at this committee. I bring greetings to all of the members of Parliament here today, to the chair of the committee, and to my colleagues and friends who are seated around this table in the residential school healing movement.

The purpose of my brief will be to give you some background on the Aboriginal Healing Foundation. The Healing Foundation represents one of the organizations that is involved in the community-based healing piece of the continuum of options that residential school survivors have at their disposal. The Aboriginal Healing Foundation was established on March 31, 1998, in response to the Royal Commission on Aboriginal Peoples. We were formed to promote reconciliation between aboriginal and non-aboriginal people and to invest effectively a one-time $350 million grant, plus interest, which was directed to community-based healing services and activities addressing the legacy of physical and sexual abuse suffered in the Indian residential school system, including intergenerational impacts. Our mandate is an 11-year one that ends on March 31, 2009.

The Healing Foundation is an aboriginally managed and staffed, not-for-profit, private corporation. Policy is set in accordance with bylaws and with an agreement signed by the federal government. We have a 17-member board of directors and two of those directors are government officials. We're accountable to the Government of Canada and to aboriginal people through, for example, the funding agreement, the board appointments, yearly financial audits, proactive compliance audits, independent interim evaluations, of which we've had three, 27 regional meetings in which we've had to gather the support and opinions of aboriginal peoples who are involved in this movement, and regular presentations to aboriginal organizations and senior government officials.

The Aboriginal Healing Foundation's mission is to encourage and support aboriginal people in building and re-enforcing sustainable healing processes that address the legacy of physical and sexual abuse. I draw your attention specifically to the notion that our mandate is very focused on and limited to physical and sexual abuse in the residential schools. We do not concern ourselves, nor can we, based on our agreement with government, on language and culture. Language and culture, however, is predominantly the support that communities ask for.

How we fit into the overall resolution of the residential schools legacy is what I'd like to address now. The government's commitment to an alternative dispute resolution process is intended to resolve claims in a timely manner, more so than in-court settlements provide. The goal of all is to move beyond the current adversarial state of affairs. The Aboriginal Healing Foundation draws strengths from a government report put out by the Law Commission of Canada in the year 2000 called “Restoring Dignity”. In that report it was noted that compensation is but one means of reparation. Reparation should also include financial compensation, access to healing and education programs, memorials, truth commissions, and public education.

The Law Commission therefore recommends providing choices for survivors—we strongly agree with this—and encourages publicizing and promoting from-the-ground-up community-based initiatives, which is something we've supported since we were started seven years ago. Compensation is one important option. However, as compensation flows to individuals and communities, it should be received in the context of a healing environment. Healing is central to aboriginal people's ability to address and resolve pressing social and economic issues. A comprehensive, effective resolution of the residential schools legacies will require long-term strategic partnerships in which expertise in promoting community-based healing and community-driven capacity development is an integral element. This is the expertise that the Aboriginal Healing Foundation contributes.

● (1115)

The Healing Foundation has committed its resources as of October 2003. This would be approximately $425 million—$350 million plus interest. We've committed this to 1,340 community projects.

We've completed a draft of our final report. We've detailed all of our activities and our accomplishments. We've published three interim evaluations. We are beginning to downsize now, as our mandate comes to an end. This will result in a loss of expertise, not just at the Aboriginal Healing Foundation but also in the community where the work is being performed. Under the current scenario, funding to these projects will cease on March 31 of 2007, and we will close our doors in September of 2008. Although we've committed our funds, we continue to deliver the message to government and to Canadians that the healing has just begun. Healing and reconciliation require a long-term planning effort and resources.

Our legacy is detailed in the work and the evaluations that we provide. We've reached some 130,000 people who have participated in healing projects, many of whom have not done so before. We have been involved in the training of 26,000 individuals and we've supported 3,000 communities, or communities of interest, in some fashion or another.

If the Healing Foundation closes, as foreseen, at the end of our current mandate, the Government of Canada stands to lose several things. You stand to lose the ability to maintain an effective continuum of care, which maximizes the potential for long-term benefits. You stand to lose the benefit of accumulated experience and expertise in the area of residential school trauma treatment in the community; to lose the opportunity to better research and evaluate the long-term impacts of community-based funding; and you will lose a non-political vehicle with an established record, uniquely situated and uniquely accountable under the Auditor General's guidelines for accountability, transparency, and cost-effectiveness. We believe we're an effective service model of delivery to aboriginal communities.

In conclusion, we recommend the following. As suggested by the Law Commission of Canada, survivor choice is paramount. Survivors should be provided with a full complement of options, including a mix of healing and compensation. Secondly, to truly resolve present and future claims, governments should contextualize compensation within a larger, long-term strategy to address meaningfully the effects of historical trauma. The benefits of compensation will be enhanced if they are received within a healing context. Finally, because community-based healing initiative are making significant gains, the Aboriginal Healing Foundation recommends seizing the opportunity to use our organization or another similar organization to continue to deliver resources and to establish support for projects.

Thank you very much for your attention to this. We believe that healing is a good-news story; it's a very positive part of the government and aboriginal people's actions to date, and the impact of this investment has been substantial and long-lasting.

Thank you.

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Thank you very much for your presentation.

My apologies to the committee for coming in late; I had some other commitments to take care of.

We shall now go on to the National Residential School Survivors' Society, represented by Mr. Quewezance. I understand you're the interim chairman of this society.

Welcome.

Mr Ted Quewezance (Chairman, National Residential School Survivors' Society): My name is Ted Quewezance, chairman of the National Residential School Survivors' Society.

I am a residential school survivor. I come from a family of 14 children. Within our family, there are 76 years of residential school. We have five different fathers in our family. There's been sexual abuse and physical abuse within our family.

First of all, on behalf of the National Residential School Survivors' Society, I'd like to welcome this opportunityto address the Standing Committee on Aboriginal Affairs and Northern Development on theeffectiveness of the government alternative dispute resolution process.

The National Residential School Survivors' Society is an organization ofIndian, Inuit, and Métis residential school survivors from across Canada. The idea for thesociety emerged as a result of an informal gathering of survivor groups in August of 2003 that recognized the importance of forming a national organization to facilitate working together toserve survivors.

An interim working group of representatives from survivor organizations fromacross Canada met in a series of meetings and teleconferences that resulted in theestablishment of an interim board of directors. The interim board formally established theorganization and a national office in 2004.

The National Residential School Survivors' Society has been developed and is directed by survivors as a vehicle of our sharing, healing, and learning together, and as a means of our speaking with one voice and advocating onour own behalf as a group.

As a society, the National Residential School Survivors' Society represents our coming together as family,as many of us are for one another the only family we ever knew as children.

As an organization,the National Residential School Survivors' Society is a means of our restoration, of our taking back or putting back what was takenaway. It is a catalyst to promote healing, empowerment, restoration, justice, and reconciliationfor individuals, families, and communities, and for ensuring that residential school-history is understood and addressed by all Canadians, and never forgotten.

Designed and driven by survivors, the National Residential School Survivors' Society is committed to being a non-political nationalvoice for the best interests of survivors and their descendants. The National Residential School Survivors' Society strives to promote thehealing, restoration, and reconciliation needs of survivors and their descendants by receiving and gathering information from residential school survivor members, survivors, and survivorgroups that serve to address their needs and concerns; by providing information on options to meet survivor needs and concerns; by providing information and facilitating opportunities for survivors and survivor groups tonetwork locally, regionally, and nationally; by establishing working relationships with local, regional, and national aboriginal groups, thefederal government, and other governmental, non-governmental, and private organizations,including the churches of Canada; and by representing grassroots survivors nationally by presenting survivor concerns andperspectives on residential school issues to national governments, non-governmentalorganizations, and media.

● (1120)

Regarding the effectiveness of the current alternative dispute resolution process for Indian residential school resolutions in Canada, the concerns of survivors and survivor groups are largelyfocused on three main areas. Number one is the need for a quick, simple, and less painful settlement of claims, especially for the elderly and the sick. Number two is the need to continue community and residential-school-based initiatives for healing, restoration, and reconciliation. Number three is the need for more knowledge, education, and participation in relation to the history and addressing the legacy of residential schools at all levels throughout Canada. Each of these can be addressed more fully.

On expediting claims settlement, especially for the elderly and for the sickly, it is said that justice delayed is justice denied. Justice is also denied if it is too difficult ortoo expensive to obtain. The current ADR process is seen by many survivors in this country, especially elders, asbeing too long, too difficult, and too expensive in relation to the settlements that have been or canbe obtained.

Many survivors have already passed on without settlement or closure in relation tothe abuses they have suffered. This was extremely distressing for them and remains a source of distress fortheir families, communities, and other survivors. Many others are frustrated at the delays in processing claimsthat have already been approved. Others are concerned about the difficulties and pain they havegone through or will have to go through in making a claim. Considerable anxiety about theprocess remains a concern, and survivors question whether the overall cost of the ADR initiativeis worth the benefit it provides. Information about the process seems limited to urban centres.Remote communities seem less well informed.

Regarding alternatives to the ADR process, survivors are generally supportive ofan across-the-board approach that would include all who attended the schools receivingcompensation, with special individual claims for specific abuses being addressed through animproved ADR process.

On continuing community and residential-school-based initiatives for healing andrestoration, survivor groups are very strongly supportive of the continuation ofcommunity-based and individual residential-school-based healing initiatives, especially thosethat integrate traditional cultural views and practices into their activities. They are verycommitted to restoring themselves, their families, communities, and nations to putting backwhat was taken away. Family and community rebuilding and language and cultural restorationremain important.

● (1125)

Opportunities to participate in healing activities such as workshops; family and group retreats; accessing and sharing of photos, memories, and stories of residential school experiences with schoolmates, family, and friends; school reunions and sharing circles; information sessions and displays; and other like activities and projects are highly desirable and effective. Many want access to school records, information, and histories to confirm their memories and memories passed on to them by parents and relatives. They want to address individual and intergenerational impacts by sharing this information with descendants.

Unfortunately, such information is difficult and costly to obtain. They suggest that such healing and restoration activities, especially done in partnership with churches, government, schools, and community groups, are desirable and effective.

In all activities it is important that survivors themselves be highly involved at all levels. They want to take ownership of their experience and the healing and restoration process. They also want to see the process expanded. They want a leadership role in developing and implementing a comprehensive, long-term, multi-generational strategy.

The ADR process only recognizes individual criminal abuse claims. Of course, this is very important, and this kind of claims process must be improved and continued, but for many survivors, some of whom suffered criminal abuse, it is far too narrow. Many who proceed with individual claims, as well as many who do not, remain deeply committed to the broader process of healing and restoration both at their individual and family levels and at community and national levels. They see the traumatic impacts of residential school abuse as far more comprehensive than does the current ADR claims process.

Residential school experience and history should be known by everyone, acknowledged and addressed throughout Canada. Survivors and survivor groups see the education and participation of all aboriginal and non-aboriginal Canadians as crucial to healing, restoration, and reconciliation across the country. How will the challenges presented by the impacts of the schools that are not addressed through the ADR claims process or through the courts be met? This is an important question.

Survivors increasingly recognize the profound need for a national residential school education, truth, and reconciliation strategy to address the broad and deep impact of Canada's more than century-long national residential school policy, a policy that affected all Canadians, aboriginal and non-aboriginal. Until a project of sharing, healing, and learning and of putting back what was taken away is understood and embraced by all Canadians, the consequences of the abuse that rose to tragic proportions in the schools will be repeated indefinitely across the country for as long as the sun shines and the rivers flow.

The legacy of this policy is an important part of Canada's history, mosaic, and culture, one that will continue to impact negatively upon all of us, upon who we are, what we do, and all of our relationships, until we come together under the leadership of our governments to heal, restore, and reconcile our nations.

● (1130)

Individual survivors, families, and communities are still waiting for a truly national apology from the Prime Minister of Canada and a truly national strategy from the Government of Canada. One that is on behalf of and for all Canadians will truly address and help to overcome our national tragedy and our national shame.

In closing, no one in this country has stepped forward and taken legal responsibility for what happened to us, the little children, from the 1930s to the 1940s, and right up to the 1960s.

The National Residential School Survivors' Society thanks the Standing Committee on Aboriginal Affairs of the House of Commons of Canada for this invitation and opportunity to voice the concerns of Canada's residential school survivors on this very important matter.

Thank you very much.

● (1135)

The Chair: Thank you very much for your presentation. We take it to heart.

We shall now go to Mr. Michael Cachagee, director of the Children of Shingwauk Alumni Association.

Mr. Michael A. Cachagee (Director, Children of Shingwauk Alumni Association): You have it right.

The Chair: Thank you. It's one of the only things that has gone right for me today.

Mr. Michael A. Cachagee: Greetings. *Wachiyea*.

First, I want to thank the members of the committee for the invitation and the opportunity for our organization to address them today on such a passionate and deeply moving issue, known as the Indian residential school legacy.

The establishment of the Indian residential school system in Canada can be considered to be one of the darkest, most regrettable, and most disturbing chapters that exist in the relationship between the European settlers and the original peoples of Turtle Island. Without entering into a long and protracted description of what occurred in many of the Indian residential schools, the focus of today's presentation is to be centred on the pros and cons of the effectiveness of this government's alternative dispute resolution or ADR process.

The ADR process, as most Indian residential school survivors know, was the unilateral creation of the Government of Canada. The reason and the sole purpose was to address and compensate the victims for some of the criminal wrongs that many of the survivors endured and suffered while attending these federally funded and controlled church-operated schools. The manner in which the ADR process is described by its designers—or perhaps more appropriately, promoted and defined—is that of a process that is more compassionate and expedient than what is normally available to individuals who wish to file a claim by using the existing legal systems.

In 2004 the Children of Shingwauk Alumni Association was selected to be one of the federally funded pilot projects that delivered public information and explained the application process of the ADR initiative. I was one of the alumni selected by our association to begin making contact with survivors who lived in Ontario and northern Quebec. A conservative estimate of the number of survivors I did meet in 2004 would be in the neighbourhood of 500 to 600 people.

Overall, the reaction from most of the survivors who attended the ADR information sessions was initially that of anger and then disbelief, in that the only three elements of wrongs that Canada was willing to address in the ADR process were those that are considered to be criminal in nature. The acts of physical and sexual abuse, along with some forms of forceable confinement, were the only three elements that we could mention during our presentations. All of the other negative impacts in this treatment by the Indian residential schools were not open for discussion during the ADR information presentations. Needless to say, upon conclusion of the ADR information sessions, the discussions that followed were highly charged, poignant, and extremely emotional.

The secondary reaction of amazement, and perhaps the most difficult part of the whole ADR prescription experiment, came when the application booklet was presented, along with what was required for the necessary for a claimant to file a claim. While the managers of the ADR process have stated that one of the primary target groups to be fast-tracked through the system would be the elderly and infirm, very little consideration was given to these groups' special needs, culture, language, and background. There wasn't, nor has there ever been, any form of translation provided or considered that would overcome the different language barriers that exist in many of the northern remote first nation communities, nor was there due consideration given to cover the costs incurred by many of the elderly survivors who wished to participate but had limited resources.

Our alumni association, through our own initiative and at our expense, did undertake to complete a glossary of terms used in the ADR booklet and translated these terms into both Cree and Oji-Cree. As well, on several occasions, our ADR form filers had to supply many of the elderly survivors with the funds needed in order for them to return to their homes and communities upon the completion of the information sessions.

These are only but a few examples of the shortfalls that we have found in the ADR process. It would be an understatement to say the current ADR fails to meet the expectations and the needs of the survivors. It fails miserably to address the multitude of wrongs and abuses that were endured by the survivors as they were forced to attend these Indian residential schools.

Furthermore, and as an added insult to the survivors, the Crown recently announced its plans to pay millions of dollars a year to private investigators to check out the abuse claims of the survivors. Most, if not all, of the alleged perpetrators are now dead. It sickens me to see the Crown spending more time and money to challenge survivors rather than compensate them. Over $250 million has been spent so far by Indian Residential Schools Resolution Canada, but only a tiny fraction has gone to the survivors.

● (1140)

If there is one outstanding issue that has remained with me throughout this process and after my meetings with the survivors, it is the need for the Government of Canada to recognize the gravity, the severity, the magnitude, and the multitude of the wrongs that were committed against indigenous people in these schools. To narrow them down to only three that are identified in the ADR process would be an injustice to all Canadians.

I believe that in order for Canada and the churches to move beyond where we are today, a new approach must be taken. I will provide you with examples that I believe to be attainable and workable solutions that will address this dark episode of Canada's history.

The Assembly of First Nations has undertaken a very comprehensive and critical overview of the current ADR process, and its final report identifies a number of areas where changes could occur in the ADR process. As well, a national consortium of plaintiffs' lawyers has made similar overtures in recommending changes to the Government of Canada. I would strongly suggest that serious consideration be given to adopting many of the recommendations, in a reworked Indian residential school settlement framework agreement.

The recognition of the totality of the inflicted damages and the intergenerational and continuing effects of the continuing Indian residential school legacy deserve serious and immediate corrective action. Too many of our survivors have passed on, taking with them the unbearable pain and memories of being torn away from their loved ones and sent off to an alien and destructive environment.

Individual compensation, based upon the survivor's experience within a residential school, has to be the position of primary reference whenever consideration is given to closure and reconciliation.

Reconciliation also has to provide due consideration to the restoration and retention of the indigenous languages and cultures. To undertake such an initiative will require not only financial and human resources, but more importantly, it will provide Canada with the opportunity to further fulfill its role and duties as specified in the treaties, the relationship that the Crown has with many of the first nations of this country. The need to develop and control our own educational institutions would be more in keeping with what the first nations believe they were being promised when education was mentioned in the treaty discussions.

The last element I wish to address today is the whole concept and the application of the healing component in relation to the Indian residential school legacy, and most importantly, to the survivors themselves.

I am a survivor. I spent over 12 years in three different schools in northern Ontario, and I take offence to being deemed as having a mental health issue of some sort or other. As survivors, we are neither emotional misfits nor are we mental incompetents on the verge of self-destruction, as many of those in the Indian residential school industry want us to believe. We are your elders, teachers, caregivers, and leaders of your first nations and our nations, and we demand that we be treated with the same respect and honour due such persons.

To diminish what we endured at those Indian residential schools to something that is classified as a treatable mental health sickness is a revictimization of the survivor and shows an extreme lack of respect. Far too many people out there who have a stake in maintaining the status quo as the new and expanding “Indian residential school industry” takes flight continue to flourish, while the real acts of justice and reconciliation become more obscure and clouded for the survivors.

In closing, I want to thank you for the time and consideration that you have provided towards the issue of Indian residential schools. I also implore you as members of Parliament to return to the House and accept the challenge ahead of you. You have a responsibility to find and implement an honourable solution, a solution that will help heal and restore the sacred treaty relationship that the Crown has with many of the first nations peoples of Turtle Island.

Meegwetch. Thank you.

● (1145)

The Chair: Thank you very much.

We now have our last presenter for this first hour, representing the Indian Residential School Survivors' Society, Chief Robert Joseph.

Welcome.

Chief Robert Joseph (Indian Residential School Survivors Society): Thank you. Good morning, everybody.

My name is Chief Joseph. I've been asked to speak on behalf of the Indian Residential School Survivors' Society. With me today is the executive director, Sharon Thira.

As you can see, I was wearing my ceremonial robes as a sign of respect for your parliamentary traditions and the standing committee, of course. We really are grateful to be able to address you on this very grave issue before all of us today.

The Indian Residential School Survivors' Society has been around for ten years. So we have ten years of experience in trying to bring resolution to the issues around residential schools. We were in fact mentioned in the federal government announcement on *Gathering Strength*, as a provincial model of success. So we've done some work, we have a track record. We've had some successes. We still have far-reaching aspirations that are yet to be achieved.

There are times in our lives when we as men and women are called upon to do the extraordinary, times when we must do the honourable thing, times when we are compelled to rise above the accustomed simple solution and to struggle to reach for the hard, principled one. These are such times. We call upon you and Canada to do this with us.

When we first heard about the statement of reconciliation we hoped that it would provide such an answer, but it was not an answer. When we first heard of the federal alternative dispute resolution process we thought that might be the comprehensive response that survivors so needed. But it is not. So from a survivor perspective, then, what useful comment can we make about ADR?

In presenting an alternative to the civil court system ADR promised to be a more humane and expedient way to receive compensation, and we find that it is. For the sick and the elderly ADR promised to expedite claims, and it appears to do so. For those who have been sexually abused and who are able to speak about their abuse ADR is indeed a better alternative to the courts. Beyond these, ADR falls far short in addressing the majority of survivor needs for comprehensive redress.

As it exists, then, ADR is simply an imperfect and incomplete alternative, no more, no less, for survivors who have been sexually and physically abused. The national working caucus of aboriginals, the church, and the federal government understand this and strive continually to improve the model. From a western and narrow legal perspective it could be said to be world class, but if it resolves little, it has little value.

For us and Canada to turn the page on this chapter of our mutual history we need a broader response than what ADR can deliver. So here we must heed the survivor voices. For the past ten years over 40,000 survivors in over a thousand focus groups and workshops in British Columbia have told us what that broader response should be: an apology, compensation, funding for healing, and future reconciliation.

With respect to the apology, survivors want and need a full apology delivered by the Prime Minister on the floor of the House of Commons. As recently as last week we went to a focus group in Port Alberni, and this was exactly what they brought up: there should be an apology by the Prime Minister in the House of Commons. Such an apology would provide much-needed recognition, validation, and acknowledgement of abuses suffered in schools, a necessary step for the healing process to begin.

● (1150)

For an apology to work, it must be understood and performed symbolically in terms of the ritual that it is. It must offer the potential for transformation of all involved. With a nationally imposed system like the residential school system, transformation cannot occur unless the key players in the ritual are involved—the apology, the Prime Minister, and the House of Commons. Anything less would be like a priest delivering the Pope's Easter Sunday message in a chapel.

With respect to lump sum compensation, survivors are entitled to and want financial redress for the pain and suffering—loss of language and culture, loss of family and childhood, loss of self-esteem, addictions, depression, and suicide—we've endured. The residential school system failed to educate aboriginal peoples, condemning us, for the most part, to the ranks of the unskilled labourer, the resource industries, and the social welfare system. To compensate for these losses, any recognition by Canada necessarily must include a token lump sum payment to survivors.

A lump sum payment would address all important losses. Other groups have received compensation for harm that has happened to them, such as the Japanese Canadians and the hepatitis C tainted blood victims. By neglecting to address residential school survivors and forcing them through an onerous process like ADR, Canada accepts the risk of being accused of institutional racism yet again. This history has been acknowledged. Why then are survivors dying today without any resolution?

We support the AFN solution for a lump sum compensation where eligibility is determined by attendance at residential schools, without the sexual or physical abuse limitation. Those who were sexually and physically abused could then have the option of applying for further compensation in the ADR process. In addition, survivors are insulted by model B in the ADR. It should be eliminated.

The third thing survivors want and need is healing. The legacy of residential schooling has created a complex group of symptoms that exceed the regular post-traumatic stress disorder cluster. Add in cultural discontinuity and racism, and a genocidal cocktail ensues. These responses have become normalized in family and community systems, and we are constant witness to the devastation in our communities. The cycle must be broken, but western therapeutic interventions, while suitable for mainstream urban dwellers, are not frequently effective for non-urban aboriginal peoples.

As recommended in the 2000 Law Commission of Canada report on institutional child abuse, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*, victims need to be involved at the grassroots level in the design and implementation of their own healing programs. What is needed here are community-based healing programs that allow for indigenous and culturally specific practices that survivors can relate to, thereby hastening their healing.

In the Aboriginal Healing Foundation we had a system for the delivery of funds to this type of program. The foundation's record speaks for itself. It received 4,590 applications, but could only fund 1,337 programs. This clearly demonstrates the need for these programs.

Directly related is a concern that arises from the new ADR process. For the first time a survivor can enter into a compensatory process without anyone, other than public servants, knowing about it. Since public servants have a specific administrative job to do, they are not equipped to assess the risk level for survivors engaging in the process. Without community support programs, we are afraid of the impact on survivors of filling out the very long application form. We know of one suicide already.

Therefore, we strongly recommend that the Aboriginal Healing Foundation be re-funded to provide funding to community programs for much-needed support of all survivors.

Lastly, survivors want reconciliation. In its statement of reconciliation, the federal government recognized that reconciliation is an ongoing process. Survivors agree. We want reconciliation, reconciliation with ourselves, with our families, with our communities—and also with Canada. While we struggle with our pain, suffering, and loss, we know that our culture and traditions are embedded in the need for balance and harmony—reconciliation. One obvious reconciliatory process is of course a public inquiry.

● (1155)

Canadians do not know enough about the residential school legacy. Survivors have a compelling need to tell their stories. Any truth-telling process, public inquiry, will be at the heart of ultimate reconciliation. If we can do this together, we can set the world stage to manifest true reconciliation.

In summary, we need to give new life and meaning to the statement of reconciliation that was so boldly made by Canada. Canada must be continually guided by the principles and goals set out in this expression. Sustained dialogue and collaboration between Canada and its aboriginal people must take place to maintain mutual ownership and the credibility of the document.

Appropriate emphasis and resourcing of initiatives to promote reconciliation must take place. An apology by the Prime Minister in the House of Commons would give great emphasis to healing and reconciliation. Lump sum compensation, as prescribed by the Assembly of First Nations in their ADR review, would foster much healing and reconciliation, and help to restore balance and harmony in relationships between aboriginals and other Canadians. The need for extending the mandate and funding for the Aboriginal Healing Foundation is imperative; the cost of not doing so would be too high.

The task then is left to us—mostly to you, but to us as well. My task is to tell you what happened to me, to tell you what I've seen, to tell you what I have heard. We don't want to go to our graves without having heard that this was not our fault or our parents' fault. We need you to stand today and tell us now that you hear us, and that you're sorry this happened.

We need you to look beyond the bottom line at the grandmother who will never speak of her pain but whose children can bear silent witness to its daily enactment. We need you to look at the men who drank and drank until their pain could no longer be killed by drink, so they had to kill themselves to end the pain. We need you to look at our children, who have been hit over and over by unseen blows extending down from the long arm of discipline and pain in those schools. We need you to look, listen, and do something.

Finally, all parties need to work together to bring resolution for survivors, and reconciliation for all. Government, churches, aboriginal organizations like the AFN and others, survivors, and plaintiff counsel like Baxter and others should meet in a summit to talk about these things. We agree with the Baxter consortium that if there is ever a negotiated settlement, it should be court-supervised.

Thank you very much for listening today.

The Chair: Thank you very much to you, Chief.

We'll start our round of questioning of these witnesses with the Conservatives, led by Mr. Jim Prentice.

Mr. Jim Prentice (Calgary Centre-North, CPC): Do we have time for questions?

The Chair: We'll make time. We'll do a round and see.

Mr. Jim Prentice: Thank you very much for your thoughtful presentations, and thank you for the courage you've shown in coming today and speaking with us about something you understand, which I personally can only struggle to understand. So thank you.

We have limited time, so I would like to ask you this question, focusing on the ADR process. Chief Joseph, and Michael, you've been involved in the pilot projects in particular. I have trouble understanding how this process has gone so seriously wrong. There are different numbers, depending on which report you read, but my understanding is that as we sit here today, there's been over $125 million invested in the ADR process, and fewer than 50 cases have been settled, outside of pilot projects, with compensation of less than $1 million. So $125 million has been expended, but less than $1 million of that has gone to the claimants.

I have trouble understanding how a system could have gone that far off track, especially one that was tested through pilot projects over a number of years. I wonder if you can help us understand that, and if you can relay to us what was taking place and what input was being sent back to the government.

● (1200)

Chief Robert Joseph: I think one of the differences in the pilot projects that took place is all of the pilot projects were group ADRs, so for the one to three years they spent developing these model pilot projects, they were modelled around group ADRs, which meant that people came forward in groups of 20, 30, 40, or more. The newer model was designed to deal primarily with individual survivors who came forward to press claims for physical and sexual abuse.

Further compounding the whole implementation of the new model initiative was the fact that Canada did not have the capacity to immediately apply the model effectively. There were not enough adjudicators in place, and there were a number of administrative drawbacks that didn't lend to Canada being able to proceed in any expeditious way to put forward the ADR model.

I understand from speaking to Mr. Hughes that they were going to have 40 or 50 hearings. That's far fewer than they had anticipated, even for the first year, because of their unreadiness to launch the program with all of the capacity, resources, and administrative staff needed. Mr. Hughes told me yesterday that in the new fiscal year they hope to be able to process a minimum of 1,000 of the cases before them.

Mr. Michael A. Cachagee: I worked on the front lines, on the ground per se, and my experience was that there were a number of barriers. The first one was that there were concepts contained within the application, in the ADR format itself, that were alien to first nations people. One in particular was forcible confinement. It cost us $10,000 to get our glossary of terms and we did that on our own initiative, of our own volition. The act of forcible confinement is a concept that's alien to first nations people; it does not exist. We never did it, so when we did the translation on that, it took three and a half pages of description to explain to claimants what forcible confinement was.

A lot of the concepts that were contained in the application itself were alien. We couldn't really find, for example, one or two descriptive words when we did the translation. This scared the hell out of the applicants—virtually. They didn't know how to handle it.

Civil litigation or anything of that nature is also a foreign concept to first nations people. We don't sue each other. We don't use the courts in that manner. We understand going through the criminal system quite well. If you do something wrong, you're taken to the court, you're put in front of a judge, and you're sentenced, fined, or found not guilty; that's a very simplistic way of looking at it. But going into civil litigation and doing what's involved in it are a foreign concept. That was never explained. When you take this prescription written according to concepts of non-native people and the concepts are taken as a prescription and given to a first nations people, it doesn't fly. What happened was that a lot of them got afraid of it.

The other thing is that in a small community like the ones I went into, everyone knows—it goes back to small-town Canada—who's getting what at the post office. Because sexual and physical abuse were the two elements that were attached to the ADR process, a lot of the older people, especially the grandmothers, were reluctant to make application because what happened was that they were stigmatized again. They got the mail back and someone was told, oh, your grandmother was sexually abused by a priest; that's why she's doing this. A lot of these nuances that are attached to a community were never considered.

Again, it goes back to a racial bias. The document is a racial document created in an Anglo-Canadian context as another prescription for first nations people. Some of the ones who've lived in an urban environment—I always say they're so far away from the grassroots they forgot the colour of grass—can understand this. This is their environment.

There's another thing about the people I deal with, the elders and the infirm. While a lot of them spent 10 or 12 years in a residential school, most of them, the average, would come out of there with grade 6 because they only went to school for half a day. So the language used in the application booklet, the nomenclature, was way beyond their comprehension, and that's basically why we had so many problems with it. We'd spend a lot of time but they couldn't really understand some of the questions they were being asked.

A lot of the communities I went into have a very strong Christian element, and if you don't know the protocols when you go into that community, you don't know there are questions you don't ask. You don't publicly mention anything in relation to sex or any violation of one's sexual being.

So the system was fraught with a lot of problems that were never considered. It was a document created in one of the offices in Ottawa and then sent out to the first nations people.

● (1205)

The Chair: Thank you.

Mr. Cleary, for the Bloc.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): Thank you, Madam Chair.

First of all, I'd like to congratulate the witnesses on their presentations.

[*English*]

The Chair: There's a problem with the sound.

Mr. Michael A. Cachagee: We had a similar situation last week in Vancouver. My colleague from Quebec couldn't speak English but we found he could understand my language. Maybe you can speak Cree.

[*Translation*]

Mr. Bernard Cleary: Unfortunately, I don't speak the language.

[*English*]

The Chair: We've found out that pulling them out first is the only way you can untangle these wires.

[*Translation*]

Mr. Bernard Cleary: I wanted to be certain that you could hear me, especially so that I might congratulate you on your wonderful presentations.

I'm an aboriginal myself. I'm an Innu from Mashteuiatsh in Pointe-Bleue. On countless occasions, I've had the opportunity to work in your communities.

The system still isn't working. Eventually we'll get the bugs out. We have lots of time.

[*English*]

The Chair: Are you all getting Greek? You can turn the volume up.

Mr. Michael A. Cachagee: We should have stuck with Greek.

Some hon. members: Oh, oh!

[*Translation*]

Mr. Bernard Cleary: First of all, I'd like to congratulate the witnesses on their presentations. Your testimony has shed light on issues that may not have been perfectly clear to us before.

As I was saying earlier, I'm an Innu myself from Mashteuiatsh in the Lac Saint-Jean area. I've worked on aboriginal issues for the past 40 years and for several months now, I've been a Bloc Québécois MP and critic.

I decided to step into the political arena to advance the cause of aboriginal people. I used to be more of an activist, but today, I hope to help you in a different way.

From what you're saying, you're all unhappy about the current state of affairs. Complex processes always take a great deal of time. Aboriginals always come up against such things. The aboriginal students you mentioned earlier probably won't live long enough to be adequately compensated for all the suffering they endured. Unfortunately, once again, it will be too late for them. If more time passes, all aboriginals sent to residential schools will have died. Therefore, the government must do everything it can to make amends. All you're asking for is an apology. How hard can that be?

The former Minister of Indian Affairs and Northern Development, Ms. Jane Stewart, further to the Royal Commission report, acknowledged that the findings were accurate and that this was not something to be proud of. If that's true, then Canada should act so that the victims of residential schools at least get an opportunity to live out their days in relative comfort, free of bitterness. How hard can that be? Government officials are complicating matters. They are incapable of doing anything simply or of devising easy solutions. Things always have to be complicated, so much so that people get bogged down by procedural considerations.

I can understand why you feel lost, because I often feel the same way too. I have first hand knowledge of the situation, and I feel lost. You do understand that we — that is to say the people on both sides of the table — will try to facilitate matters. We cannot accept any more delays in the process of finding solutions to this problem, especially after hearing your demands.

Healing is a nice concept, but it's takes a long time. To begin the healing process at a certain age... imagine how long this would take. However, before any healing can begin, we need to consider other dispute resolution mechanisms. Compensation must not be a secondary stage in the process. Victims must be compensated first, so that they can then begin the healing process in a positive frame of mind.

As matters now stand, you are initiating the healing process without knowing what the final outcome will be. You do have the capability to measure outcomes.

● (1210)

We need to let you know what the outcome will be. Simply put, we need to issue an apology and to give you what you rightfully deserve. We're going to work on doing just that.

Thank you, Madam Chair.

[*English*]

The Chair: Thank you.

We have to move on to Mr. Martin, please.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Madam Chair.

Thank you to all of you for having the courage and the strength to be with us today to give us an update on what, I agree with you, is a shameful chapter in Canadian history. I view this whole experience as a catastrophic failure of epic proportions.

In my riding of Winnipeg Centre there are 16,000 first nations, Métis, and Inuit people who self-identify on the census. I see the intergenerational effect of this historic insult, I believe, on a daily basis.

I understand that you said an important starting point would be for the Prime Minister of Canada to stand up in the House of Commons and give a full public apology. I agree with you. I join you in calling upon the Prime Minister of Canada to apologize publicly as a starting point to a resolution. If he hears you as we heard you today, I don't see any barrier, obstacle, or reason that it shouldn't be done without delay.

In the specifics of what we've chosen to undertake today, the review of the alternative dispute resolution mechanism, if I understand Mr. Prentice's figures, we're looking at a program that burns up or pisses away 99% of the dollar value of the program, and 1% is delivered as actual product or compensation. That has to be the definition of a failed program. It has to be the epitome of a catastrophic failure of a program for any type of institution or organization, company or business, private or public sector. It's a disaster.

When the general public heard about $350 million in Aboriginal Healing Foundation spending, I think there's a misconception that you took the number of survivors, divided the $350 million by the number of survivors, and each individual would get *x* number of dollars. Nothing could be further from the truth.

I accept the view some of you have made that the eligibility for compensation should simply be proof of attendance. If you have evidence that you were in attendance at a residential school between this year and that year, compensation should be granted without re-victimizing the victims and forcing them to relive experiences, etc.

My specific question to any of you who care to answer is this. What would be the dollar value per individual for that initial blanket compensation, subject to the fact that there are specific criminal offences that may be above and beyond the blanket compensation? Has anyone even contemplated numbers yet?

● (1215)

Chief Robert Joseph: I haven't contemplated numbers, but in discussions with survivors in a recent focus group in British Columbia, they suggested that we bring the message here and to government that an independent panel of experts should set the bar. It's the only feedback so far from British Columbia.

Other members on the panel may have figures.

Mr. Pat Martin: Perhaps I will answer briefly, before you go to the next speaker.

We had an independent panel look at what the compensation for aboriginal veterans should be. That figure was deemed to be between $150,000 and $420,000 per person. The federal government gave them $20,000 per person and made them sign a waiver that they wouldn't go after any more. I only caution that an independent panel's determination may be a far cry from the federal government's offer.

Mr. Michael A. Cachagee: Mr. Martin, that's been a question I've had a lot on when I've been doing my public information sessions.

When you go back and put a blanket coverage out, there is some consideration or suggestion that everything was equal because of the experience, but it was not equal, and history will show you that. The ones who attended the schools in the thirties and the forties were subjected to treatment far, far beyond what any of us want to get into here today.

In the forties I was a young boy, and I'll show you just one example. We had an ice house in the school in Chapleau, and there was a man cleaning a front quarter of beef, taking the maggots off of it and washing it with vinegar. We asked him what he was doing with it and he said, “That's what you guys are having for dinner”. The infrastructure in the schools was such. We were basically child forced labour in the thirties, the forties, and the early part of the fifties.

My president from our organization is here. I forgot to acknowledge her, Irene Barbeau. She is over there, but I always kid with her about a picture we have in one of our archives showing a bunch of residential school survivor students up in front of the A&W having hamburgers, and I say, “That didn't apply to us, we didn't see that”. So those are the levels.... We were eating tainted beef that had maggots picked off it, versus someone having access to the A&W. Some places in that continuum, you have to come up with a gradient. I think, really, there are enough thresholds out there that we could probably arrive at something that's equitable and that everyone could live with.

You know, I have a friend who lives up in Fort Severn. He's a grandfather now. He spent twelve and a half years in residential schools and came out with a grade five. He said, looking at the dominant society and as someone who had spent some amount of time working in a job, “I have nothing to leave my grandchildren, save an old skidoo or something like that, whereas my counterpart from the dominant society has all of the opportunities of privilege he can leave to his grandchildren”.

That's what it's like when you look back at the extremes of what we're talking about here.

● (1220)

Mr. Pat Martin: Is there time for Ted?

The Chair: I'm now going on to Mr. Cullen, please.

Hon. Roy Cullen (Etobicoke North): Thank you very much, Madam Chair, and thank you, witnesses, for all your presentations today.

First of all, Chief Joseph, I hear you and I am saddened that this happened in our history. We're having now to deal with it in the fairest and most efficient way. There has been much said, and I could say much, but there's little time, so I'll just limit it.

First of all, Mr. DeGagné, you commented that compensation and healing have to go hand in hand, a comment I probably share. The government is exploring options in which the healing process could be continued. I would say I'm a little puzzled with first the process by which the alternative dispute resolution mechanism was set up. There were pilot projects and there must have been first nations peoples involved. To find when it gets out in the field that, as you're saying, it doesn't work.... There must have been some first nations peoples working on these pilots and on some of the criteria. I'm surprised that it seemed to get off the tracks, according to what you're saying.

The other part I'd like you to comment on is this. When the government announced the ADR process, my understanding is that was about December 2002. At that time a lot of the program still had to be set up. There were mechanisms and criteria that needed to be done. It wasn't as though you could immediately start into the process of adjudicating or reviewing claims. You had to set up an infrastructure. You had to agree on the process. You had to agree on the criteria.

When we look at the amount for claims in relation to the administrative expenses, surely there's an element of ramping up the program. Once you get to a certain level where things are in place and moving along, then some of the administrative costs in relation to the settlement costs are going to diminish, it would seem to me.

The Assembly of First Nations has a very comprehensive report that the government is looking at. Within the process that has been established so far, there are probably some efficiencies that could be obtained. But you're proposing a more fundamental change that would say there should be compensation based just on the fact that someone was in a residential school. I don't know what the cost to the government would be. I don't know how Canadians generally would react with regard to the due diligence or the process of arriving at a lump sum just because someone was in a residential school. There might be some individuals—I don't know, you could correct me if I'm wrong—who were not impacted so negatively.

The ADR process, as you know, is a voluntary process and the idea of limiting it to physical abuse, sexual abuse, and confinement is to try to expedite that process. Once you get into cultural and linguistic issues, it does complicate it from both a legal and a settlement point of view.

In any case, I'm looking forward to the remaining days of testimony. If any of you would like to comment on the ramping up.... Are you saying that we'll never get to a point where the costs of administering the program are reasonable in relation to the cost of settlement? Or are you saying that we have to have a total revisitation of this whole program?

● (1225)

The Chair: Who would like to answer that?

Mr. Cachagee.

Mr. Michael A. Cachagee: I'll reply to that. It's what I've heard again out on the ground. To the knowledge of most of the survivors, and this is what I've run across, this has never occurred anywhere in Canada before, where you've had an alternative dispute resolution system to correct criminal wrongs and criminal acts. The people I talk with are offended by that, because, as I mentioned earlier, when they do something criminal, they're hauled into a court to answer to a judge. When they identify these three elements as being of a criminal nature and a criminal design—physical abuse, sexual abuse, and forcible confinement—they want to know why all of a sudden there's an alternative to that, as opposed to what they're exposed to. It seems as if there's a double tier of justice again. That's one of the first questions they ask—why are they coming to us with this form of redress? I put that in the form of both a statement and a question.

Hon. Roy Cullen: Go ahead.

Chief Robert Joseph: When they announced the program, they were still trying to fine-tune many of the technical features of the program itself. So from the time they made the announcement in November, to August and September, they had received roughly 800 to 900 applications to the ADR. As of last week, I think there were 1,200 applications.

There was an extended period of time in which you could not even begin to respond to those initial applications, because the IRSRC wasn't ready, didn't have the capacity to begin to screen the applications, send them to the adjudicators, and have all the adjudicators in place to start making decisions. So because of that, there's a high administrative cost because of the low number of applications resulting in hearings. It may go down, but as we speak, it's far too high. It's almost up to four times as much, I think—the administrative costs to the awards that have been made.

It might improve a little, but it seems to me awfully expensive.

Hon. Roy Cullen: The people in the programs...is it just inefficiency, or is it the fact that they've been wrestling, maybe not very well, in your judgment, with the criteria and how the program could be implemented?

I'd just like to come back to Mr. Cachagee's point. I think part of the problem with the criminal charges is just the length of time. It becomes a practical matter of trying to wait and settle things quickly and expeditiously.

Chief Joseph, are the program people just inefficient?

Chief Robert Joseph: First of all, they didn't have the capacity in the first instance. They weren't ready. They're still trying to catch up and put themselves in a state of readiness.

We can't speak for their effectiveness yet, because there hasn't been a period of time in which to determine whether or not, once they have everything in place, they can accommodate many applications and hearings. We don't know that.

I think by the next few months we should be able to determine where that will stand.

Hon. Roy Cullen: So part of the process is that they have to create guidelines; they have to hire people; they have to train people.

The Chair: Mr. Cullen, I'm sorry, we're at the end of our time limit. I do apologize.

I've given an extra half hour for this presentation and panel. I would like to take this time to thank all of you for your wonderful presentations. We do have another group of people who will be speaking to us for what was going to be an hour, but I don't think we will do the whole hour. Again, I thank you very much for your presentations.Thank you for coming here and sharing with us your stories.

I'll suspend for just a minute or so to get ready for the other presentations.

● (1230)

(Pause)

● (1235)

The Chair: I'd like to call the meeting back to order for the next set of presenters.

I would very much like to thank you for your patience this morning. As you know, these presentations sometimes are very difficult, and we do like to give opportunity for people who come from a long distance to have time to give their stories to committee members, because that's about the only time that we're going to see them. So we try to be very flexible, time permitting. So, again, thank you for your patience.

I see this morning we have three witnesses: From the National Consortium of Residential School Survivors' Counsel, Mr. Craig Brown; from the David Paterson Law Corporation, Mr. Paterson; and from Cohen Highley LLP, Mr. Russell Raikes.

Mr. Paterson, please go ahead.

Mr. David Paterson (Lawyer, David Paterson Law Corporation): Thank you, Madam Chair and honourable members.

I want to start off with two very brief points. The first is I have in my hand the weekly report from Indian Residential Schools Resolutions Canada as of last Monday, which indicates that there have been to date over 65 weeks some 50 decisions of that dispute resolution process. Between today, when these hearings begin, and next Tuesday, when these hearings come to a close, 50 residential school survivors will have died. I think it's important to bear in mind the urgency of this process and the degree to which it is unresponsive to the crisis that's occurring before us.

The second point I want to make is that what we are seeking here and before the courts is a form of universal compensation, judicially supervised.

Honourable members, we are counsel from various parts of the country. I myself have been involved in representing claimants in residential school claims since 1994 in British Columbia. Mr. Raikes is counsel in the Cloud class action from the Mohawk school, and Mr. Brown is counsel in the Baxter class action. All of us are involved in the Baxter process itself and in the national consortium, which is involved there and which itself established a national litigation strategy that encompasses various proceedings, including the ones we are all involved in. I'm counsel in the Blackwater action, which began in 1996 and is presently awaiting a hearing before the Supreme Court of Canada this May.

The process of addressing residential school claims in this country was first brought to the fore by the plaintiffs who came forward and commenced the Blackwater proceeding. While there had been a public conversation about residential school matters, it never became an issue that hit the national agenda until a bunch of very courageous young people—well, not so young any more, actually—came forward and commenced lawsuits, and all of a sudden it became a matter of interest.

At all times since the commencement of the Blackwater case, the trial for which lasted three years, survivors who have brought their claims before the courts have been the driving force behind every government initiative to address the issues, from the initial government apology in 1997 to the establishment of the healing foundation in 1998, the exploratory dialogues in 1998 and 1999, the pilot projects commencing in 1999, and the federal claims process established in 2003. The claimants before the courts remain today the driving force behind the evolution of government policy.

All of the federal initiatives referred to above have had as their objective isolating those survivors who took to the courts, creating half measures to address what was seen as a critical mass of potential claimants, and reducing possible government exposure to court-ordered compensation. It has been government policy, and remains so today, to provide minimal redress to those whose claims they consider would almost certainly succeed in the courts and to provide virtually nothing to the rest.

To date, between 12,000 and 13,000 survivors have filed their claims before the courts. Several thousand more have retained counsel to represent them in the context of class proceedings and do not appear on government counts of litigants, which are published from time to time by the ministry. An additional 800 have filed with the federal claims process. The government report actually indicates 1,200, but 445 of those are duplicates of persons who are also involved in the litigation process.

We anticipate that the government will shortly seek to impose a new unilateral revision to its claims process. In preparing these revisions, the government has expressly refused several requests by ourselves and the Assembly of First Nations to meet with counsel for the thousands who have determined that a court-ordered judgment or a settlement reached in the context of litigation offers the surest route to a fair and forcible resolution of their claims.

● (1240)

We believe that no fair resolution of this issue is possible, which leaves thousands of claimants on the sidelines and does not engage their participation. We share their view that only a settlement that has independent approval and is enforceable by the courts offers any real security for a meaningful settlement of the matters that these survivors have brought to the fore. It would be fundamentally wrong to leave them on the sidelines.

Mr. Russell Raikes (Lawyer, Litigation Department, Cohen Highley LLP): First of all, thank you for the opportunity to be here to discuss the issues.

As David mentioned, I'm counsel for the students and the families of students who attended the Mohawk Institute Residential School in Brantford, Ontario. That case is known as Cloud. It was recently unanimously certified as a class action by a panel of three judges of the Ontario Court of Appeal. It is the first and most advanced class action involving residential schools in Canada.

I know the focus of our deliberations today is on the ADR program, so I thought I would read to you what the Court of Appeal had to say about the ADR program:

> I do not agree that this ADR system displaces the conclusion that the class action is the preferable procedure. It is a system unilaterally created by one of the [defendants] in this action and could be unilaterally dismantled without the consent of the [former students]. It deals only with physical and sexual abuse. It caps the amount of possible recovery and, most importantly in these circumstances, compared to the class action it shares the access to justice deficiencies of individual actions. It does not compare favourably with a common trial.

That was Mr. Justice Goudge speaking on behalf of himself, of course, Justice Moldaver, and Justice Catzman for the Ontario Court of Appeal.

The ADR model that you have before you and that you're considering is something that was designed by bureaucrats for bureaucrats. As the Court of Appeal has said, it's unilateral, it's limited in scope, it caps damages, and it has access to justice deficiencies.

I end with this one observation. This case is about children, but it's become about grandparents. The people who come to my office do so because of what happened to them as children. They are now grandparents, and they are dying.

Mr. Craig Brown (National Consortium of Residential School Survivors' Counsel): Thank you, again, Madam Chair, for the opportunity to come and speak to you on behalf of the national consortium and on behalf of the clients we represent.

The consortium is a group of 20 law firms across Canada who have been representing residential school survivors for over 10 years. We have over 6,500 litigating survivors who are taking part in the effort to seek redress for the broad range of harms that they sustained in the residential schools.

The consortium has developed a national litigation strategy, which Mr. Paterson referred to, that incorporates the major legal initiatives in each province into one coordinated effort supported by the entire group. The focus of that strategy is the Baxter national class action. In that class are all 85,000 surviving victims of the residential school system, and that action is currently moving toward certification in Ontario. The path to certification has been created and made much easier by Mr. Raikes' Cloud class action, and we expect that the Baxter class action will be certified in a reasonably short period of time.

The litigation strategy brings together in common cause the thousands of survivors who have had the courage to take action in court to seek redress for the harms done to them. These survivors are in the forefront of the battle for justice. These survivors are the ones who have taken the risks and experienced the pain that necessarily accompanies litigation in the public forum. These survivors' claims have been largely ignored by the government's DR program.

Our clients reject, collectively, the half measures of the DR and seek full compensation for all of the harms they suffered in their residential school experience. Our clients condemn the government's strategy of delay and frustration in its defence of residential school litigation across Canada.

The consortium proposes, as an alternative, a comprehensive compensation scheme, which is set out in the Baxter litigation plan, the class action litigation plan that's part of the public record. It was published in July 2003.

Our plan has—and it's no coincidence, because it's a common sense plan—much in common with the AFN proposals published late last year. We support those proposals. We have much in common with the AFN. Those proposals would provide universal compensation to all victims of the residential school system for the broad range of harms they suffered at residential school.

However, the consortium would take these proposals, the AFN proposals, one step further to a court-approved and judicially supervised compensation program that would not be subject to unilateral amendment or withdrawal by any party. Such a court-approved settlement on the model that we've seen in the hepatitis C class action settlement would finally resolve all claims past, present, and, most importantly, future and would bring peace to all the parties to this national tragedy.

The consortium recommends that the focus of settlement effort in this matter be turned to negotiating a comprehensive binding resolution of all residential school claims under the auspices of the Ontario Superior Court of Justice in the Baxter national class action. We've set these recommendations out in the written material that I hope has been provided to the members of the committee, and that is our first recommendation, or our suggestion to you.

Our second recommendation is that any comprehensive resolution be implemented under court supervision and with court approval throughout the process.

Finally, addressing the issue of the squandering of resources that ultimately should and must go to the victims of the residential school tragedy, we are recommending that the government spending on residential claims administration, and in particular the DR, be subject to an immediate audit by the Office of the Auditor General of Canada.

Thank you.

● (1245)

The Chair: Thank you very much for your presentation.

We'll start with Mr. Harrison from the Conservative Party.

Mr. Jeremy Harrison: Thank you, Madam Chair.

First, I'd like to thank our witnesses for being here today and offering us insight into what is actually going on with this ADR process.

The first thing I'd like to do, though, Madam Chair, is take issue with the parliamentary secretary, Mr. Cullen, who claimed that this $125 million spent thus far, $1 million of which has gone to actually settling claims, is somehow a normal ramp-up cost. This is utterly ridiculous: $1 million out of $125 million, and the rest going to administration? If this is a ramp-up cost, this must be one hell of a ramp, I'm telling you. For less than 1% of the program costs thus far to go to actually settling these claims is absolutely unacceptable.

The first question I'd like to ask maybe David is the practical story of how this ADR process actually works. Could you maybe expand on that, and as well on whether you have any insight as to why only $1 million out of $125 million thus far spent has actually gone to settling claims?

● (1250)

Mr. David Paterson: Thank you.

There are no doubt start-up costs, but the extraordinary inefficiencies are in fact built into the system. I want to describe two hearings I recently had that illustrate these. These were both hearings of B claims, that is, claims whose maximum recovery is capped at $3,500. They were both brought by people over 70, so they were expedited claims, and they proceeded much more quickly to resolution than is generally the case.

In both cases hearings had to be held. That's a feature of the system. The hearings were held in Duncan, British Columbia. In each case, three binders of documents were produced by the government, constituting its research on the residential schools and on whatever documents could be derived in relation to each of the three individuals. Hearings were held at a hotel in Duncan, the facilities of which had to be rented for two days. The two hearings were scheduled on separate days, back to back, and there were separate adjudicators brought for each of the hearings. One was flown for one day from Vancouver, and the other was flown for one day from Ottawa. There was as well a federal claims adjudicator who was a counsel brought over from Vancouver. There was a counsellor brought over from Vancouver from the process. I came over from Surrey. My travel costs ultimately will also be borne by the taxpayer.

The upshot of this process is that one of the persons was awarded a settlement of $1,400, the other person $3,500. They come from schools operated by the Roman Catholic Church, which has not entered into a cost-sharing agreement with the Crown, and they attended school before 1969, so those figures will be reduced by 30%, to roughly $980 and about $2,700 respectively.

We estimate that the process costs of those claims were roughly $20,000 a piece and anticipate that would be the case for all such B claims. They constitute roughly 40% of the 1,200 cases that have been filed so far.

So those cost inefficiencies are not start-up costs; in fact, those are built into the process. It seems we've constructed an extraordinarily expensive process for resolving what are effectively very minor settlements.

Mr. Jeremy Harrison: So I'm correct in understanding then that at minimum it can be at least $20,000 per claim when the maximum payout for a class B claim is $3,500? We've seen at least one case already of the government appealing a $1,500 award made to an elderly 88-year-old lady.

Maybe you could comment on that, because I find that just outrageous.

Mr. David Paterson: The problem here is that we've set up a process that is aimed at picking and poking into the details of each individual's process. We've set up an extremely complicated process for deciding who is entitled to compensation. And rather than a dispute resolution process, which it keeps getting called—dispute resolution or ADR or whatever—what we have is a kind of insurance process; the process is more akin to claims adjustment than dispute resolution.

It has to be said that when I file a claim, I don't file it to the dispute resolution process; I send it in to the government, which then vets the claim and decides that they consider it qualifies or not under their rather Byzantine system. If they decide not to send it forward for resolution, that's the end of the matter. It doesn't go any further. On that kind of basis, the government recently decided that it would disqualify all claims from the Yukon Baptist school. They reclassified it as not being a residential school and simply rejected them.

You don't put your claim into an adjudication process; you put in a claim to the government.

In this particular case, there was a question that in fact the adjudicator, by exercising some independent judgment, had exceeded his jurisdiction and had breached the jurisdictional tweaking of the government program. Basically, the position the government has taken is that if they haven't expressly set out this particular form of abuse or this particular character of sexual abuse or whatever, the adjudicator has no discretion to consider it analogous to something else. It simply falls outside the program.

So that's the kind of process we're dealing with. And the notion of appealing a $1,500 decision with lawyers on all sides and everything else is, quite frankly, amazing.

● (1255)

The Chair: You have about 30 seconds.

Mr. Jeremy Harrison: That's....

The Chair: You'd like to pass? Okay.

Mr. Cleary, I'm sure, can use the extra 30 seconds.

[*Translation*]

Mr. Bernard Cleary: In the 30 seconds allotted to me, I'd like to ask a quick question. I hope you can answer it for me.

You appear to be somewhat skeptical about the committee's ability to wade through this file. Has the group suggested to the government any kind of general negotiations where all parties sit down at one table in an effort to resolve matters? Have you evaluated this approach and have you suggested it?

[*English*]

Mr. Russell Raikes: The short answer is over and over and over again. And the answer has been "We're not interested in talking to you unless you want to talk on our terms, which is we are prepared to look at only very narrow grounds and a very limited scope for resolving claims".

Did you want to add to that?

Mr. Craig Brown: I think, just to add to that, it is the obvious, logical, and humane solution to the problem to bring all of the interested parties together, particularly now that the studies and reports have been done, the ADR program has been launched and failed, and we have the decision of the Ontario Court of Appeal—the Cloud decision—saying that this problem is amenable to class action litigation. It is logical for all the parties to get together and try to negotiate a humane, comprehensive settlement.

We have been asking the government to do that and our requests have fallen, so far, on deaf ears. Any assistance that anyone can bring to this problem would be welcome.

[*Translation*]

Mr. Bernard Cleary: I have no further questions. All I can hope for is that matters are resolved in the manner described.

[*English*]

The Chair: Mr. Martin.

Mr. Pat Martin: Thank you.

Thank you for this opportunity and thank you for your brief. I'm sorry we have to be so rushed, because we're down to some real nitty gritty here that I would love to explore with you.

Under the category "Offensive Financial Mismanagement" in your brief, you point out that 27% of the Department of Justice's civil litigation department is devoted to defending residential school claims. Do you know roughly how many individual lawyers that would be?

Mr. Craig Brown: We believe over 200.

Mr. Pat Martin: Over 200?

Mr. Craig Brown: That's spread out across the country. That makes it probably the largest boutique law firm specializing in one problem in the country, by far.

Mr. Pat Martin: I can tell you nothing should strike fear in the hearts of taxpayers more than having more than 200 lawyers with their meters running, fighting justice for old people who were sexually abused at school. It's staggering to get your mind around it. What an abuse of resources.

In my earlier questions I may have created a misunderstanding when I was questioning the other witnesses. It's not $350 million. That figure is the Aboriginal Healing Foundation money. The money that the Minister of Finance has earmarked or set aside for residential school claims is more like $1.4 billion, is it not?

Mr. Craig Brown: We understood, when the program was announced, that it was $1.7 billion, and that about 40% of that would be spent on administration costs. That was their prediction at the beginning.

Mr. Pat Martin: So they were willing to lose what we call "line loss" when you're talking about electricity. They're willing to lose 40%; it was their plan. If you took a current projection of the experience to date, what would you anticipate the line loss would be if we continued on this route?

Mr. Craig Brown: We understand it to be significantly less than 25% of the money that's being spent on claims as opposed to administration on a long-term basis. That's our projection. It's very difficult to get the figures. Obviously this isn't something the department of government that has been set up to deal with this is terribly forthcoming with, but that's our best prediction.

● (1300)

Mr. Pat Martin: So even on the four-to-one figure you start with here, that for every $4 on administration, $1 goes to compensation, that's looking in the long term, after all the dust settles, after start-up costs are contemplated. The figure of four to one is still staggeringly bad, but the experience to date is ten times worse than that, with less than $1 million for $100 million paid out.

Mr. Craig Brown: One of the problems is that people aren't coming to the system. Of the 12,000, 13,000, 14,000 who have lawsuits outstanding, they're simply not coming to the system. Sixty-five weeks have passed, and only 1,200 claims have been brought forward. So they build a house and nobody is coming.

Mr. Pat Martin: Yes. At a certain time you cut bait.

Mr. Russell Raikes: That's because the program is fundamentally flawed. It's unilateral, it's limited in scope, it's too difficult. Have you seen the application form they're asked to fill out? It's unbelievable.

Mr. Pat Martin: No, I haven't, but I've heard about it.

Thank you.

The Chair: Thank you, Mr. Martin.

We have Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Madam Chair.

I understand that the Ontario Court of Appeal decision has been appealed. This is a technical question. What are the heads of damage in the class action lawsuit? That's what's being appealed, am I correct?

Mr. Russell Raikes: No. Let's be clear: what's happening in the Cloud action is that the Crown waited until three days before the expiry of the 60-day appeal period and it has now filed an application for leave to appeal. So they have to get leave to appeal before they can actually appeal. That process will take another six to eight months of further delay. They're only appealing whether or not it should be certified as a class action.

Mr. Lloyd St. Amand: Fair enough. Then go back to my original question. What are the heads of damage in the class action lawsuit?

Mr. Russell Raikes: They're general damages for pain and suffering related to physical and sexual abuse, the loss of language and culture, to being mistreated and not properly cared for while they were there, including psychological effects and long-term future care costs.

Mr. Lloyd St. Amand: So it's physical abuse, sexual abuse, emotional abuse, and then language and culture, loss of same. Is that correct?

Mr. Russell Raikes: That's all part and parcel of it, yes.

Mr. Lloyd St. Amand: Is language and culture loss a novel head of damage in Canadian jurisprudence?

Mr. Russell Raikes: I think that the—

Mr. Lloyd St. Amand: With respect, it probably lends itself to a yes or no answer.

Mr. Russell Raikes: Well, thanks very much, but I know how to cross-examine too.

The short answer is that it is novel in this sense. It's novel in the sense that nobody has taken it forward as a breach of aboriginal right claim, but there are cases where damages have been awarded, where loss of culture and standing have been taken into account. There are decided cases, and in fact I've seen a crown brief that reflects those cases.

Mr. Lloyd St. Amand: A crown brief. You mean a criminal matter?

Mr. Russell Raikes: No.

Mr. Lloyd St. Amand: Okay, but you mean a crown lawsuit?

Mr. Russell Raikes: Yes.

Mr. Lloyd St. Amand: You've mentioned half measures, and some of your language, intentionally or otherwise, is inflammatory.

It's my impression, just playing the devil's advocate for a moment, that certain obvious defences available to the federal government have been eschewed by it and a conscious decision has been made to try the cases on their merits. Is that fair to say or not?

Mr. Russell Raikes: That's not been my experience.

Mr. Lloyd St. Amand: How then was the four-year limitation period for physical assaults possibly gotten around by the various plaintiffs?

Mr. Russell Raikes: I can only speak of our case, where the Crown hasn't filed a statement of defence yet. I know they argued on the certification motion that the action should be dismissed because of the limitation period and the passage of time. I know that in David's case, they actually argued that the damages should be reduced because the school was so horrendous and the experience so bad, but those claims are barred by limitation periods, so you should get less for your sexual abuse.

I think David could probably speak to that better than I.

● (1305)

Mr. Craig Brown: Our own experience is that the Crown has never given up any defences, never eschewed any opportunity to appeal, never given up the opportunity to pursue a religious organization or someone who might be co-culpable with them. In fact, in the Baxter class action, they've issued third-party claims against 81 churches and religious organizations across the country in an effort, we believe, to slow the process down.

Mr. Lloyd St. Amand: So you're saying that the Crown has in fact defended lawsuits on the basis of limitation periods?

Mr. David Paterson: Limitations and Crown immunity prior to 1953, yes.

Mr. Lloyd St. Amand: With respect to the churches who I understand ran these various schools, what are they doing about compensating victims? Or can you comment on that?

Mr. David Paterson: The churches have generally filed and pursued similar defences in the courts. There hasn't been a distinction in the courts between defences filed by the churches and the Crown.

Mr. Lloyd St. Amand: Are the churches involved in the ADR component of this matter?

Mr. David Paterson: Some are and some aren't. There have been agreements between the Anglican and Presbyterian churches to fund some of the cases, a condition of which is that they oppose claims for language and culture. The United Church has not entered into a formal agreement of that sort, in part because they didn't like the rider. The Catholic Church, to the best of my knowledge, hasn't entered into agreements, with the exception of certain cases from the Lejac Residential School in northern British Columbia.

One point I'd like to make is simply that the entire focus, whether it's in cases before the courts or in the dispute resolution process, has been one of trying to narrow down the basis of liability from focusing on the entirety of the residential school experience to a rather forced attempt to isolate the component that corresponds to physical abuse or sexual abuse, and so on, which is a process that my clients, many of whom have actually gone through trial and this process, have found unbelievably difficult. In fact, the process, be it DR or litigation, has not wanted to hear of their overall residential school experience. What they want to hear are the details about who touched you where and for how long and how many times.

This has been an extraordinarily difficult process, and it seems that the design of the system is such that we are prepared to spend hundreds of millions of dollars to make sure we don't compensate the wrong person, rather than directing the expenditure of those funds towards compensating the people who went to the residential schools. It may well be that there might be a very small number of people who would say "This was a wonderful system, and in a perfect world I would go through the residential school system again"—but I haven't met them. I don't know anybody who believes that. And it seems to me that the money might be much more efficiently, expeditiously, and well spent by identifying people who went to the schools and organizing compensation right off the bat.

As I stated, they're dying at a rate of 50 a week. It's well past time to move on this.

The Chair: Thank you very much.

I thank all of you for being here this morning. For the presenters in the second half, we did quite well in a summarized version, so I thank you for that.

Because it is now a little after one o'clock, we will adjourn until Thursday.

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