House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 020 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, February 22, 2005

Chair

Ms. Nancy Karetak-Lindell

Standing Committee on Aboriginal Affairs and Northern Development

Tuesday, February 22, 2005

● (1105)

[*English*]

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Good morning. I would like to start this morning's meeting of the Standing Committee on Aboriginal Affairs and Northern Development, meeting number 20, Tuesday, February 22, 2004, pursuant to Standing Order 108(2), study on the effectiveness of the government alternativedispute resolution process for resolution ofIndian residential schools claims.

This morning, for our first hour, we have before us the Honourable Anne McLellan, Minister of Public Safety and Emergency Preparedness. Since we're already cutting into our first hour, we'll get very quickly to your presentation this morning, Minister.

Welcome to our committee.

Hon. Anne McLellan (Minister of Public Safety and Emergency Preparedness): Thank you very much, Madam Chair. Merci beaucoup. I'm pleased to have the opportunity to be here today to outline the progress this government has made in addressing the range of issues that make up the legacy of the Indian residential school system.

Joining me are officials from the Department of Indian Residential Schools Resolution Canada: Monsieur Mario Dion, the deputy minister; and Mr. Shawn Tupper, the director general of operations.

Madam Chair, you and this committee have posed the question of whether the government's alternative dispute resolution process effectively deals with IRS claims. You have heard a number of witnesses say it does not. Today I will respond to some of these comments and discuss some of the concerns we too, as a government, acknowledge and recognize.

[*Translation*]

I also intend to discuss other steps the government has taken to deal with the legacy of the residential schools. Our alternative dispute resolution process is not the government's only response. We are doing much more.

Addressing the legacy of the Indian residential schools is a difficult and emotional process. It's also a story of some complexity and diversity which we had not heard about before the 1980s.

[*English*]

In 1996, Canadians were confronted by the realities of residential schools with the release of the report of the Royal Commission on Aboriginal Peoples. In particular, it clearly and poignantly addressed the sexual and physical abuse in Indian residential schools and the ongoing legacy left within the aboriginal community.

Previous governments largely ignored this issue. In response to the royal commission, however, the Government of Canada developed a specific and innovative strategy to address, in a comprehensive way, this troubled legacy. Our goals, then as now, included opening pathways to healing and reconciliation by apologizing, by compensating, and by making that process less difficult for those who have suffered. These values are reflected in the priorities this government has set for improving the lives and conditions of all aboriginal peoples. The round table hosted by the Prime Minister, the six sectoral round tables, and our ongoing work with each of the national aboriginal organizations clearly demonstrate this government's commitment to build a partnership with aboriginal people. Together, we will make steady progress toward improving the lives of aboriginal Canadians.

Let me take a moment to touch on what we have done specifically to address residential school issues. In 1998, the Liberal government began this process by issuing a statement of reconciliation, in which we said: "... we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures and outlawing spiritual practices." The government expressed "to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together."

Finally, we specifically addressed the impacts that the survivors of the residential school system have felt and the legacy of personal pain and distress that continue in aboriginal communities today. Most importantly, to those who were physically and sexually abused, we said: " ...we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry."

Further, the government took an unprecedented step when we granted $350 million to the Aboriginal Healing Foundation, not as a form of compensation for abuse, but to help survivors, their families, and communities to become healthy. People who have taken part in foundation programs have spoken of a stronger sense of self, of becoming more attentive to their families, of being committed to passing on cultural teachings and spending time with elders, and personal wellness. They feel less alone and more forgiving and have returned to school, in some cases, or have renewed their career paths.

As the work of the Aboriginal Healing Foundation began, we continued to listen, through a series of exploratory dialogues held in 1998-99. Survivors, their lawyers, healers, leaders, and senior officials within the government and the churches who participated in these dialogues helped to develop the partnership that would find answers and new choices for former students. In addition, we undertook a number of studies, which have assessed what others have done nationally and internationally to address institutional abuse. For example, we looked at 13 such institutions here in Canada, the work of the Law Commission of Canada on institutional abuse, and Mr. Justice Kaufman's study of the Nova Scotia government's response to abuse at the Shelburne School for Boys. Internationally, delegations from the Irish and Canadian governments have met several times to discuss our respective approaches to these issues.

One clear challenge was that the legacy of the 130 schools run by the federal government and the Catholic, Anglican, United, and Presbyterian churches had swamped the legal system with thousands of claims of abuse. The total number of claims for compensation has risen to 13,500. Although we have resolved 2,000 files through settlement or other means, we are still facing over 11,000 individual lawsuits filed by former students. It is estimated that if these proceeded solely through the courts rather than through settlement or an alternative process, it would take over 50 years to move the caseload through the system, at a cost of over $2.3 billion. That's if one used the traditional court process.

● (1110)

Clearly, the government and its partners were challenged with finding fast, safe, and effective options for former students to settle their claims. We needed an integrated and holistic approach that provided the flexibility, speed, and efficiency these kinds of claims require. The government, along with survivor groups and the churches, explored various dispute resolution models through a series of 10 pilot projects, in which 400 people across the country tried to find the best ways to settle their claims safety and effectively.

These pilot projects began in late 1998 and have seen a settlement success rate of over 75%. We learned through these projects that there is no single answer for adequately addressing the range of issues that sexual and physical abuse left through this school system. No single response, whether it's a healing program, a truth and reconciliation forum, or compensation, will resolve this bleak part of our history.

In June 2001, we created the new Department of Indian Residential Schools Resolution to focus the federal resources needed to resolve these issues and allow government to work with its partners to explore new and innovative approaches. Within a year of its establishment, this department launched a national resolution framework made up of a number of initiatives, which together set out policies to facilitate access to justice and ensure claimants are treated as humanely as possible.

The national resolution framework includes a litigation strategy, health supports, commemoration, and our settlement centrepiece, alternative dispute resolution. The framework was launched with the guidance of former students, their lawyers, and the churches, and allowed us to work out the details of how best to apply these innovative approaches to the majority of the claims facing the government.

One issue surrounding the ADR is that it requires proof of a claim. Former students have told us that they want the opportunity to tell their stories and to have them validated. In his review of the compensation process for abuses at Nova Scotia's Shelburne School for Boys, Mr. Justice Fred Kaufman was clear that claims must be validated, and he applauded the efforts of the federal government in doing so in the Indian residential schools cases.

In addition, all Canadians expect their government to be accountable. They want us to ensure that claims of abuse are validated before compensation is awarded. Survivors themselves have called for a credible process that will validate their stories and educate the public about what happened to them. These are complex cases, some going back over 50 years and involving many parties. It takes time and money to address these claims.

Our stakeholders have helped shape the framework in other ways. We delayed the launch of the dispute resolution process by several months in order to reconsider and ultimately change key aspects of the process as a result of their input. After addressing certain concerns, we launched the new ADR process in November 2003.

The seven-year plan we have designed is far-reaching and offers far more than many people recognize. Our ADR approach is groundbreaking, a culturally based humane and holistic way to provide additional choices for former students who are seeking compensation for sexual and physical abuses. ADR for Indian residential schools is a safer, faster way to settle claims outside of court, that provides the types of personal support that former students have said they need. This process can occur in communities, wherever participants may agree to hold hearings, and it can include a traditional ceremony if that is so desired. ADR is not antagonistic. There is no questioning or cross-examination by lawyers. Hearings are held in private, with health support service available.

The process is designed to be expeditious, and as you have heard from the Honourable Ted Hughes—albeit, I understand, briefly, which is too bad—it has the capacity to deliver decisions within 90 days of a file arriving in the adjudication secretariat. This is a far cry from the two or three years a similar case can take to make its way through the courts.

● (1115)

In addition, we allow all former residential school students, whether in court or in ADR, money for family members or elders to attend out-of-town hearings. We pay an additional 15% of the compensation awarded as a contribution toward a claimant's legal costs. We have an agreement with Health Canada for support services, and a 24-hour crisis hotline is in place. We also help to provide access to traditional healers if that is preferred.

In addition to these approaches we have a commemorative program. We heard from witnesses last week how important it is to honour and pay tribute to all former residential school students, whether they pursue a claim for compensation or not. You also heard of the need to educate all Canadians about this part of our shared history. We, with former students and the churches, laboured to build this element of the program in a way that advances individual and community healing, closure, and reconciliation so the former residential school students can move forward with a renewed sense of dignity.

Loss of language and culture is common theme when we speak with survivors, victims, their lawyers, and aboriginal leaders. You heard it here in your sessions. Ninety per cent of the thousands of claims charge us with the loss of language and culture. This issue is not a recognized legal cause of action in our country. As a government, we have listened to the debate regarding the loss of aboriginal languages and cultures and believe individual cash payments to claimants are not the best approach. In addition, many residential school survivors have said that financial compensation, no matter what the size of the award, will not adequately address this loss.

The government believes the creation of programs and services to respond to the loss of languages and cultures, guided by aboriginal people themselves, is the most appropriate response. To that end, the Minister of Canadian Heritage is leading an 11-year, $172 million initiative to preserve, revitalize, and promote aboriginal languages and cultures. In addition to this, the federal government invests some $30 million per year in other programs and initiatives that support aboriginal languages and cultures either directly or indirectly.

Let me turn now to where we stand today with the ADR process and the road ahead. Each week the government receives more applications for ADR, and the adjudication secretariat continues to conduct its hearings. We believe we are on track to resolve the majority of the claims through ADR. In little over a year over 1,200 people have chosen the ADR process as the means for resolving their claims. In fact, we send out over a hundred application packages every week. On average, Mario, we receive 15, 16, or 17 new applications for ADR from claimants every week.

What is most important to understand is that the program has really just completed its initial phase. We had to focus on consultations and program development before we could receive, let alone resolve, claims through ADR. The government is confident that as more claims are settled, trust in the ADR process will grow.

ADR, Madam Chair, may not be for everyone. We understand and respect that. However, we strongly believe this process to be a viable and fair option for claimants and an alternative to the courts. The approach provides a respectful, honourable, and more expedient process for former students and the church institutions involved. At the same time, we know our approach is not perfect.

As you know, the Assembly of First Nations has renewed its engagement in the issue of compensating former students. Indeed, we invited and financed its recent review of our ADR process, and I know you're going to hear from the grand chief later this morning. As you heard from survivors, there are many voices that advocate on behalf of former students, and the AFN is one of those voices. Its recently released report proposes some alternative ideas, which I know you will discuss with the grand chief. We are working with the AFN to determine the best methods to address our mutual concerns.

Of course, we have to consider the additional costs of the AFN proposal. There may be certain items my department can implement shortly. A few weeks ago I met with the grand chief and others from the AFN to talk about not only the recommendations in their report but how in fact we and the AFN may be able to work together and develop a work plan in terms of not only responding to their recommendations but finding how we can expedite this process even further. Many of the AFN's report recommendations will require the review and approval of government.

● (1120)

We also want to ensure that whatever changes we make are done within the context of the Government of Canada's broader dialogue with all aboriginal peoples. In the meantime, we cannot delay the resolution of claims through either litigation or the existing ADR process.

[*Translation*]

In closing, I hope that my comments today will have helped you to understand just how complex these issues are. There is no simple solution.

[*English*]

Everything you have heard from every witness argues in favour of approaches that are flexible and that demonstrate a willingness on the part of all parties to listen. In light of the magnitude and the gravity of this legacy, we must remain open-minded to new ideas and approaches for resolving these issues. Moving forward, we welcome the input of survivors, of stakeholders, and of parliamentarians such as yourselves.

With that in mind, Madam Chair, I look forward to hearing from members of the committee, and my officials and I are here to answer questions and entertain your suggestions, comments, and—dare I say—even criticisms.

Thank you.

The Chair: Thank you, Minister.

We'll start with Mr. Jim Prentice for the Conservatives.

Mr. Jim Prentice (Calgary Centre-North, CPC): Well, Deputy Prime Minister, thank you for coming here today.

If I might, I'll go directly to what you've described as the centrepiece of your program, which is the ADR process. I think it would be fair to say that what we have heard as a committee has, first, moved us, appalled us, and shamed us in terms of the insensitivity and the inhumanity of the process that is being followed in the way it is being applied to victims and the way it is revictimizing aboriginal Canadians; and secondly, appalled us by the bureaucratic expense and the waste of money this entails. I don't think I have ever seen or dreamt of bureaucratic incompetence on this kind of scale. If you feel this process is working, I would say, respectfully, that you are the only one who thinks the process is working.

The AFN describes it as biased, abusive, and unequal. They say it's going to take 53 years to resolve the claims and it's going to cost $2 billion in administrative costs. The Canadian Bar Association, which is a respected organization as well in this country, says that this process is failing the people who attended residential schools, it is failing the goal of reconciliation, and it is failing the people of Canada.

So if you feel that this process is working, I'd like to hear more about that, because it's certainly a solitary view.

Hon. Anne McLellan: First of all, let me clarify this, as I did in my comments.

I think it's completely irresponsible for people to throw around years and numbers without clarifying what they're talking about. In my comments I was absolutely clear that if you took these claims and put them through the normal litigation process—which you are very familiar with, Mr. Prentice—it would take some 53 years and would cost us over $2 billion. That was why in fact everybody—everybody, including the survivors, most particularly the survivors and their representatives—wanted an alternative process.

This alternative process was not devised by us. It was devised on the basis of exploratory discussions, pilot projects, and experience both in this country and globally in terms of what an alternative dispute resolution process would look like or could look like in contrast to a normal litigation process. In litigation you do revictimize, you do cross-examine, and people are forced to face their perpetrators if they are still alive. While some may choose to disagree with elements of ADR, I think it's fair to say that as an alternative dispute process, it is one that is much more humane and more expeditious than what is found in a normal litigation context.

● (1125)

Mr. Jim Prentice: If I might pursue that, the people who are saying it is inhumane are the aboriginal Canadians who are being dragged through that process. Based on the testimony we have heard, I have never seen people victimized in that way in a judicial process. This system is inhumane and it is not working.

You have described it as a holistic process—a fast, safe, and effective process. I think the point is that it is not working. We have spent close to $125 million on this process at this point. Based on Mr. Hughes' numbers, there have been 80 cases settled—80 cases out of the total pool of 86,000. That's not 10%, that's not 1%, that's not even 0.1% of the number of cases out there. It is minuscule. This process simply is not working.

You've indicated in your comments that this is because it has taken some time to ramp the process up. The problem I have with that is that I've looked at the performance report that was published a year ago by your bureaucrats. It says, “The NRF is now fully operational and able to provide an alternative to litigation”. So what is it? Is it ramping up or is it fully operational? It was supposed to have been fully operational a year ago. In the intervening time there have been something in the order of 50 cases settled, if we accept Mr. Hughes' numbers, at an extraordinary cost. And hardly any of the victims are using the process. No one is coming to this holistic process that you've designed.

Hon. Anne McLellan: Mr. Prentice, perhaps I could again clarify the numbers. We have some 13,396 claimants. We have settled 2,005 of those cases, and that is in all forms of settlement. Clearly, we have some 11,000 remaining. Last week we sent out something like 115 information packages to individuals, including applications to participate in the ADR process. We receive, on average, 18 new claimants every week who wish to participate in the ADR process.

The process has been out there for just over a year. I took up the challenge of working, as minister, with this department in July. I think that when you consider the fact that the ADR process itself has really only been up and running for a little over a year, what one is seeing is just as one would expect. As the process becomes better known—and certainly I would hope you're not calling into question the integrity of Mr. Justice Hughes—as his work becomes better known and as the adjudication secretariat led by the Honourable Mr. Hughes does its work, I think you're going to see a further ramp-up in terms of claimants who want to deal with the ADR process. Once a file reaches Mr. Justice Hughes' office, it can be resolved in 90 days.

Mr. Prentice, you and I both know, as lawyers, that is a heck of a lot faster than having these people participate in a normal civil litigation process in the courts of this country.

● (1130)

Mr. Jim Prentice: There are more people participating in the class action, by quite a distance, than there are approaching the government either for settlement or the ADR process.

Hon. Anne McLellan: There can be parallel processes.

Mr. Jim Prentice: Mr. Hughes' evidence was that 80 cases have been settled in the ADR process. The 2,000 cases—

Hon. Anne McLellan: Eighty, yes, but over 2,000 cases of our 13,000 have been settled.

Mr. Jim Prentice: And that includes cases that have been discontinued. Is that not correct?

Hon. Anne McLellan: Yes.

Mr. Jim Prentice: That includes people who have died. Is that not correct?

Hon. Anne McLellan: Yes.

Mr. Jim Prentice: So people who have died are included in your settlement numbers.

Hon. Anne McLellan: No, it does not include them. Sorry, Mr. Tupper is correcting me. It does not include people who have died.

Mr. Jim Prentice: On the application process itself, you talk about a process that's holistic and humane. Have you been through the application process?

Hon. Anne McLellan: I have seen the application process.

Mr. Jim Prentice: It's a 40-page application process.

Hon. Anne McLellan: Which is why in fact we have those from the aboriginal community, in many cases, who are available to help people fill out applications.

Mr. Jim Prentice: I invite you to sit with this committee and hear the evidence of aboriginal Canadians who are coming forward who feel victimized by this process.

Hon. Anne McLellan: I understand that.

Mr. Jim Prentice: It is not working. I don't know if you have reviewed the evidence of the people who testified—

Hon. Anne McLellan: Yes.

Mr. Jim Prentice: —before the committee in its last session. The system is not getting the job done. I'm interested in knowing what these people are going to do to fix it, to make it work.

Hon. Anne McLellan: What I would ask you, Mr. Prentice, is whether or not you believe that you want an alternative dispute resolution mechanism and whether you believe in validation of claims—or I look forward to hearing what you might suggest.

Mr. Jim Prentice: Let me offer you a comparison that the Canadian Bar Association has made—the situation with respect to Japanese Canadians. That process was opened and closed within five years. Within one year of that process starting, 65% of the claims had been settled and resolved. All 18,534 claims were resolved within five years. Judged against that standard, this process is an abysmal failure—80 cases resolved, $125 million, after 67 weeks.

Hon. Anne McLellan: We have a seven-year process, and as this process accelerates, we would certainly hope to see the vast majority of these claims dealt with within seven years.

Mr. Jim Prentice: The only thing that's accelerating at this point is not the rate of claimants coming into the process but the rate at which the bureaucracy is gobbling up the money. The AFN says the government is going to spend $2 billion on administrative costs. Even the costs we know of, the $125 million that have been expended, do not include the fact that you have an entire floor full of lawyers at the Department of Justice—70 lawyers, I'm told.

Hon. Anne McLellan: Okay, I'm going to ask the deputy minister to respond to some of the numbers.

Mr. Mario Dion (Deputy Minister, Office of Indian Residential Schools Resolution of Canada): And I will try to only use the key numbers.

As the minister pointed out, this all started several years ago, 13,000 claims. The rate of settlement has increased significantly, and I will table a copy of this draft with the clerk. As you can see, the first few years...and it's perfectly normal in the litigation process. It takes several years to research and advance the cases, but the rate has increased very significantly .

In terms of expenditures on the new ADR, I am at a complete loss as to where this $125 million number comes from. Essentially it was done in two phases. There were the pilots that the minister has talked about. The pilots involved 400 people, as the minister mentioned.

Hon. Anne McLellan: It involved 400 claimants.

Mr. Mario Dion: That's right, 400 claimants. The total cost of those pilots,excluding the amount, the dollars, paid out to the claimants, was $13 million, and $7 million was paid out to the 249 claimants with whom settlements have been arrived at. So that's the first set of numbers.

Those pilots were not only about resolving claims, but they were also about learning how to best resolve claims in an efficient, humane manner. They led to the development of what we now call the new DR, the dispute resolution process that was launched a year ago. Total expenditures on the new DR process to date do not exceed $8 million. This $8 million is not administrative costs only. In fact, there are significant elements of these expenditures that relate to the health support; to the provision of form fillers, as the minister has mentioned; to outreach, to make sure the people are aware of the existence of the ADR; and to the proper training of educators and paying the educators and doing the research.

The administration accounts for less than one-third of the $8 million spent to date, and to date the educators have awarded $2.5 million, so if we want to compare costs with awards, the correct figure is no more than $8 million. It's likely less than that with awards of $2.5 million, even at this very early stage of the new DR process.

Of course much of the work that has been done by way of outreach, research, and so on and so forth, and the attendant expenditures will result in further awards and further decisions that have yet to materialize.

I hope this assists the committee in properly assessing the costs to date—the fact that applications are coming in, they're being dealt with, and we have taken measures to very significantly increase the transmission of files from the department to the secretariat.

● (1135)

The Chair: Thank you, Mr. Dion.

We're now going to Mr. Cleary.

[*Translation*]

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

Minister, thank you for being here to answer our questions. This morning, I feel as though I'm a member of Parliament on another planet, where things are being discussed that are totally contrary to what we have talked about in recent sessions. A number of witnesses came forward in good faith to tell us their impressions of this program, and what they had to say was not very pleasant to hear.

Not one person, other than people representing the government, have told us that this program is working. I have had an opportunity to discuss this with many people, including members of the Assembly of First Nations, and it is clear that this program is not working.

But this morning you come before us to tell us this program is a panacea. I don't understand. After all that we've heard from people who came forward in good faith, I can't believe we are being told today that this program is the greatest thing since sliced bread. Nobody wants anything to do with it except you, and that's exactly what people told us when they appeared before the Committee. I don't know whether they told the truth, but what they did tell us, in answer to our questions, was that this program is not working and that at its current pace, the people who stand to benefit will all be dead before there can be any serious or worthwhile outcome for them. We were also told that for every dollar provided in compensation to victims, $35 has been spent as part of this process.

Minister, I would therefore like to know—and I believe everyone is just as interested—what you intend to do to totally revamp this program, and I don't mean making some minor reforms—you know what I mean—to please certain people, or asking the same people who designed this program to fix it up. They will never tell you that it's no good. We have to solicit other people's views. And we thought that was precisely what our role was, to try and find out who is unhappy with the program.

So, do tell us how you intend to make significant changes in the current program. Otherwise, just tell us that this great program of yours is not going to change, and we will act accordingly.

Hon. Anne McLellan: Thank you, Mr. Cleary.

[*English*]

First of all, let me say that nobody, God knows, is under any illusions here. This is an enormously painful process for the victims of physical and sexual abuse in residential schools. It doesn't matter what process you put in place, it is going to be painful, because people are in fact reliving things, whether it is through our healing programs, with elders in communities, that have nothing to do with individual compensation.... And what do the survivors tell us? The survivors tell us that they do in fact want their experiences validated. They want us to acknowledge what happened. Compensation is part of that, but only part. So it is a painful process for the victims, and that is a tragedy.

We have, I think, tried to develop a process where one has healing; where one has health supports, be they mental or otherwise; where one has culturally sensitive programs around language and culture; and where, for those who choose, they can claim individual compensation. By definition, any part of this does in fact, I think, lead to those who are survivors having to face the history of residential schools either as individuals or as collectivities. What we want to do is try to make the entire process, the integrated holistic approach, as beneficial as possible for those who suffered abuse.

As it relates to the compensation aspect, claims must be made. We must identify the individuals, and their claims do need to be validated, although I take the point that there can be discussion around the nature of validation. But validation is important. Mr. Justice Kaufman, who is probably one of the country's leading experts in this area and who had to deal with the mess coming out of the Shelburne situation because there was no validation, speaks eloquently about the importance of validation of claims.

In fact, if there are things we can do to streamline the compensation component of our approach, then I am happy to talk about those things. In fact, I indicated that I met with the grand chief a few weeks ago. His people and my people are looking at the recommendations in terms of how we might be able to move forward in relation to some of the recommendations made there.

I can assure you that there is nothing I would like more than to move these 13,000 claims through our compensation process as quickly and fairly as possible, but that does not mean not having an application process and a validation process. But we need that process to be fair and humane, we need it to be quick, and for those who wish to make individual claims for compensation, we need to compensate them as fairly and as quickly as possible. You get no disagreement from me on that, but there has to be a process. Otherwise, I'd be before another committee responding to an Auditor General's report.

● (1140)

The Chair: I'm sorry you weren't able to get in another question. I would advise that members may be able to try to get in another question if the responses are a little shorter.

Mr. Martin, please.

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

Minister, I don't want to use what little time I have arguing numbers with you, and I'm not going to. By even the most generous measurement you use, it's safe to say the overwhelming majority of the money set aside to compensate victims has been burnt up in administration and legal costs, trying to deny benefits to victims. The way I put it is that we're spending millions of dollars trying to paint victims as liars, when in fact there's a national consensus that we want this money used to help residential school victims rebuild their lives.

For three months you've had a very comprehensive report from the Assembly of First Nations, put together by leading authorities on the issue. A very impressive list of people put this report together. Their argument—and I agree with their argument—is that eligibility for compensation should be based on proof you were there; if you were a resident of an Indian residential school, the compensation should be universal and blanket.

I want to know, first of all, what the slowdown has been for your government to give a formal response to this report and the recommendations therein. Wouldn't you agree the money set aside for compensation would be better used if we granted universal blanket compensation along the lines of the report?

Could you also comment on the second element of the report, which I think is equally important? That's the call for a comprehensive truth and reconciliation process, so both sides to this shameful legacy can begin to heal—not just the victims of abuse, but the rest of us, who are also traumatized by this most shameful aspect of our history. Could you comment on what the delay is in a formal reaction to this report? Second, would you agree universal blanket compensation makes more sense than burning it up in legal expenses to deny claims?

● (1145)

Hon. Anne McLellan: First of all, as I indicated, a few weeks ago I did have the opportunity to meet with the grand chief, from whom you will hear in a little while, with his officials . My officials have been working with the AFN. Mario, you may want to share with Mr. Martin the nature of that work.

I want to reassure you we will be responding to this, but what we want to do, and what is responsible, is to take those recommendations, cost them, and ensure we understand the exact nature of the recommendations—the implications.

Mr. Pat Martin: You've had three months to figure out the exact nature of the recommendations. I've had it three months. It's not that complicated. On a formula that we agree on, grant everybody something based on their tenure—the length of time they were there—and then, when there can be demonstrated extreme sexual and physical abuse, grant additional compensation accordingly. That's not tough.

That would stop the hemorrhaging of money, as it is, to date. In engineering terms, we talk about line loss when you're delivering electricity. Somehow, we're hemorrhaging off.... The line loss is unbelievable here, and virtually nothing is getting to the end recipient. You flick on the light switch—nothing got through, because it all got siphoned off along the way.

That's not what Canadians expected. They thought there was a widespread national consensus that we wanted this chapter in our history closed, with compensation and apologies and the other work you talked about, but that's not happening. If anything, the inverse is happening; victims are being revictimized by having to make this application.

Here's the application form for your ADR process. Granted, it might be simpler than your court process, but it's pretty spooky to an 88-year-old who, we heard here, was a victim in the 1920s.

And, by the way, it was $20,000 to hear a case where the award was $1,500—and your government appealed. You know the case, the Flora Merrick case; it's going to cost another $20,000 to appeal the lousy $1,500 that poor woman received. It's almost unbelievable. By what convoluted logic can you possibly think that's okay? It's not okay. God help us.

The Chair: Mr. Martin, I think you should give her an opportunity to respond.

Hon. Anne McLellan: I know it's hard to understand, Mr. Martin, and I'm not going to defend that particular situation—

Hon. Anne McLellan: —but as we've seen, the program was established, and there are parameters around the program. You can choose to disagree with them. That's your right.

Mr. Pat Martin: Somebody has to.

Mr. Pat Martin: They're barriers.

Hon. Anne McLellan: But in fact if awards are awarded outside those parameters, then clearly the government has to consider—let me put it this way—whether or not we would choose to have clarified the nature of the parameters as we move forward.

You can disagree with that or not. I certainly respect your own personal decision in relation to that. Let me say again in relation to the report, we will respond to the report. We are working with the AFN.

Mario, do you want to say more about that?

Mr. Mario Dion: Yes, we have created a joint working group. The focus has been primarily on recommendation number one, which is about collectively based compensation, because any such collectively based compensation carries a very important price tag and there are very difficult policy issues as well associated with—

Mr. Pat Martin: Would you agree that it would carry a smaller price tag than the process you're using now? I believe there's a very good business case to be made for blanket universal compensation.

Hon. Anne McLellan: That business case has not been made, and what we want to do—and this is part of the work, as I understand it, that's going on with the AFN—is in fact to do that business case.

● (1150)

Mr. Pat Martin: Well, the CBA has made it work. Maybe if you can hear—

Hon. Anne McLellan: No, but that's why we're working with the AFN.

Mr. Pat Martin: The Canadian Bar Association has in fact costed out the business case, and we'll hear from them as the next witnesses, but that may be useful to you. But all of this talk is small comfort to me when you say that we're going to begin to analyze the possibility of reviewing, then maybe changing—

Hon. Anne McLellan: We have begun. We're working with AFN officials. Sorry. You want us to ignore that?

Mr. Pat Martin: Your anchor is dragging, Minister. That's all there is to it. It's not that complex for us laypeople around this table, but somebody has made it so complex that people shy away from using the process that's made available to them.

Hon. Anne McLellan: Again, I'm not sure why you say "shy away", because in fact we are receiving applications every week. We're sending out hundreds, hundreds, and indeed that's why we want an expeditious process that is not a court-based process.

The Chair: Thank you.

We now go to Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Madam Chair, and I will have a question. As much as I respect Mr. Prentice across the floor, for him to suggest on behalf of the survivors or victims that this validation process, this ADR process, is in any way commensurate to a fragile victim in a court of law being cross-examined aggressively and antagonistically by a lawyer or a team of lawyers...this process is, by any gauge, by any barometer, a far more honourable and humane process. I just want to say that.

With respect to the report by the Assembly of First Nations, Deputy Minister, I think Mr. Martin was about to ask you whether or not you are now able to comment on the assembly's report and what steps, if any, are being made towards perhaps partial, or indeed the full, implementation of the report.

Hon. Anne McLellan: Some of the recommendations—and we talked just a little bit about this when the grand chief and I, and our officials, met—actually, we can take up fairly quickly. But clearly recommendation number one is a major recommendation with significant implications for government policy and for the fisc. I think therefore, in relation to that recommendation, that's why we're working. That's why we're working, Mario, with representatives from the AFN, to determine what the business case would be and what the implications are for everybody involved in this process, most particularly the survivors.

Mr. Mario Dion: We received from the AFN last week the first document setting out their views about the business case for recommendation one, and we're looking at it.

Hon. Anne McLellan: And we will be working with them and responding.

Mr. Lloyd St. Amand: I understand as well, Deputy Minister, that as a matter of fairness, as a matter of honour, as a matter of ethics, this government has seen fit to bypass or waive defences that would be imminently available to them if in fact the court process were to continue.

Hon. Anne McLellan: That is right.

Mr. Lloyd St. Amand: And as I understand it, in Ontario at least, the limitation period for advancing a claim for physical abuse is four years.

Hon. Anne McLellan: We waive the limitation periods that could be invoked in every province.

Mr. Lloyd St. Amand: Again, as a matter of fairness to the survivors, as a matter of fairness to the victims, I presume.

Hon. Anne McLellan: Yes, absolutely. We want to settle these claims as quickly as possible, but the settlement has to be fair, has to be accountable, and it has to be transparent. Clearly, we want to settle these as quickly as possible.

But not all claimants are the same either, as Mr. Martin alluded to. In fact, some survivors would tell you—and I don't know whether you've heard from them here—there are aggravated circumstances and aggravating circumstances. You cannot treat everybody the same, because everybody's experience was not the same. I think you do violence to those who suffered aggravating circumstances if anyone is suggesting that somehow they should all be lumped together.

Mr. Lloyd St. Amand: My remaining time I would like to defer to my colleague Mr. Valley, Madam Chair.

● (1155)

Mr. Roger Valley (Kenora, Lib.): Thank you, Mr. St. Amand, and thank you, Minister, for coming today.

You noted that one of the problems we've had is that we did not have time to listen to Mr. Hughes and we did not have time to ask him questions. I think a lot of things could have been cleared up.

Hon. Anne McLellan: You should have Mr. Hughes come back, if you have time.

Mr. Roger Valley: He's offered to do that, but the difficulty has been that we've been listening to testimony on experiences when we're to be studying the ADR process itself. So that's been a challenge.

We've had everyone saying that the system is not getting the job done, and you've clarified that. There have been successes.

To Mr. Dion, don't be confused by the numbers that are being thrown out. There are three groups over there and they change numbers constantly, so we're not sure ourselves.

My question is this, and you've clarified some of it already, Minister. The ADR is a developing process, and it will change as conditions change. You have the AFN report right now, which has some very good work done in it, but there will be other groups coming forward with other suggestions as this policy develops and continues to solve these issues. I want to make sure that you can clarify that there will be other groups, and the AFN's and everybody's considerations will be taken into account.

Hon. Anne McLellan: Indeed, throughout the exploratory dialogues the AFN was only one of a number of organizations and survivors groups that were consulted in 1998-99 during those exploratory dialogues. Then the pilot projects were put in place again to learn, to help us develop a system that we felt was culturally sensitive, and fair, and humane to claimants. There are many voices. The AFN is clearly one of the most articulate. In fact, as my comments said, we actually provided the funding for the AFN to do the report that you are now talking about.

We have nothing to hide here. We're not in a defensive position here. We in fact provided the funding for the AFN, as I understand it.

A voice: Yes, we did.

Hon. Anne McLellan: It was provided by this unit. So we're not averse to hearing as many voices as possible in terms of either the existing process and how it's working, and the possibility of changes to that process. The dialogue here has been significant with survivors groups, with their lawyers, with individual survivors, and with organizations like the AFN.

But is it fair to say, Mario, that the AFN, of the national aboriginal organizations, is the one that has clearly been the most involved?

Mr. Mario Dion: By far, and the first nation claimants represent 87% of the claims. We have invited other NAOs, national aboriginal organizations, to review the AFN report to let us know their views, and they have yet to do that.

The Chair: Thank you.

This brings us to 12 o'clock, so I think I'm going to have time just for the one round of questioning for the minister, because we have another group of people appearing before us from 12 o'clock to 1 o'clock.

So could you give us your closing remarks.

Hon. Anne McLellan: Madam Chair, let me just say, look, my goal, since inheriting this portfolio in July, is to try, expeditiously and fairly, to deal with these 13,000-and-some claimants, 2,000 of which have been settled. There are undoubtedly ways we can expedite the ADR process and try to deal with groups of claimants perhaps in ways that would expedite this process. I am open to the recommendations of this committee in that regard. But there has to be a process, and there has to be a validation of claims. I look forward to what this committee may say about validation.

These are not easy issues for anyone. We have tried to learn from the experiences of other jurisdictions, other residential situations, involving non-aboriginal students. We have tried to learn from international experiences. There's no question this is a bleak part of this country's history. It is a part we need to acknowledge and compensate for financially, and in other ways. We hope to work with survivors to move forward. That is our goal.

But there does have to be a process. I just hope people within that context understand we are trying to work with survivors, their lawyers, and others, in an open and transparent way. As I say, we have nothing to hide. Why would we? And we are trying to work with the churches.

This has been a complex and difficult process for everybody; I think you have discovered that in your own hearings, in what you've heard from witnesses on many sides of this horrible part of our history. I am certainly very interested in hearing what the committee has to say. Certainly you will find us open to reviewing recommendations and determining whether they can help us all deal with the survivors and their claims and get this tragic part of our history behind us, acknowledging that for survivors it's not possible, in some very real and profound ways, to suggest this will be behind them. That is why we have tried to acknowledge it through an integrated strategy—compensation being only one part of that strategy, and healing being another important component of that strategy.

● (1200)

The Chair: Thank you very much.

We thank you for coming this morning and accepting our invitation to appear.

I ask the committee to approve a budget for the rest of the hearings before I suspend for the next group of witnesses.

With travel now being known, and witnesses coming from British Columbia, Saskatchewan, and Manitoba, we have found the numbers we had given for travel, at only $1,200 per person, are not enough for this committee to take care of the witnesses' expenses. We are asking—and I'm passing it around now—for an extra budget for $68,500 to finish off the hearings on the residential school issue.

Mr. Martin.

Mr. Pat Martin: I'd like to make a motion that we do it off the budget for the continuation of this study.

The Chair: It is moved by Mr. Martin to approve the budget before you.

Hon. Sue Barnes (London West, Lib.): Can I please have clarification? Are these for the witnesses we've already had? So this is absolutely necessary to make payment?

The Chair: Yes.

(Motion agreed to)

The Chair: Thank you very much.

We are now into our second hour of witnesses. We have the Canadian Bar Association and the Assembly of First Nations, with National Chief Fontaine.

We'll have all the witnesses take their places at the table. We'll hear first from the Canadian Bar Association, and then we'll go straight to the Assembly of First Nations. Committee members can then ask questions of both groups of witnesses.

Mr. Martin.

Mr. Pat Martin: Madam Chair, I didn't quite understand what you've planned as the order. Did you recommend that we hear the Canadian Bar Association and the national chief, and then do a round of questioning?

The Chair: In the interests of time, I find it would be easier if we heard both the witnesses and then questions could be asked. I'm not sure where the national chief just went, so what we could do is start with the Canadian Bar Association, and hopefully he'll be ready to give his presentation by the time we have heard this one.

I'd like to welcome you to the committee today. I'm not sure which person is going to speak on behalf of the Canadian Bar Association.

Okay, Ms. Joan Bercovitch, senior director. Go ahead.

Ms. Joan Bercovitch (Senior Director, Legal and Government Affairs, Canadian Bar Association): Thank you very much for the opportunity to appear before the committee today. The Canadian Bar Association is an organization that has over 38,000 lawyer members from across the country.

[*Translation*]

The Association's primary objectives include improvement in the law and in the administration of justice.

[*English*]

The submission we'll present to you today will be offered by Jeff Harris and Christopher Devlin, who are, respectively, the chair and vice-chair of the CBA's national aboriginal law section. Mr. Harris practises aboriginal law in Winnipeg. Mr. Devlin practises aboriginal law in Victoria.

They will be presenting our submission, which is quite a long research paper that you do not have before you. You do have a bilingual executive summary of that paper. I have some copies of the broader paper with me today for committee members who would be interested in having it. We will make sure you have access to it later on this week. We'll send them to your offices. We couldn't distribute them today, because we hadn't had the opportunity to translate them in enough time.

Mr. Harris and Mr. Devlin will be happy to present and to respond to your questions.

● (1205)

Mr. Jeffrey Harris (Chair, National Aboriginal Law Section, Canadian Bar Association): Thank you, Madam Chair and committee members, for inviting us here today.

We'll break down our presentation into two parts. I will address some of the concerns that we have with the current ADR process, Mr. Devlin will present some of the recommendations that we have for fixing the process.

At the outset, Madam Chair, I want to say that when the ADR process was first announced by the government in the fall of 2003, we corresponded with Minister Goodale, in charge of the program at that time, advising that we supported an ADR process for the resolution of these outstanding claims. We agree that there needs to be a process outside the regular litigation process in order to bring a fair resolution.

Having said that, we believe there are some fundamental flaws with the current process, and I intend to outline some of our concerns. As Ms. Bercovitch indicated, our full report will be available shortly and will give you more details about our concerns.

The ADR process is designed as an alternative to civil litigation, but unfortunately the model that's used is based upon corrective justice; that is, a tort model of justice, which imports elements of blame, fault, harm, and wrongdoing. The residential school reality calls for a restorative justice approach. It calls out for reconciliation. The residential school system was a system that was designed to eradicate culture. It was designed to do that by isolating children from their families, where it would destroy the culture and ensure their assimilation. It is like no other experience that Canadians have lived through. Fundamentally it calls for restorative justice. Corrective justice is not equipped to respond to the intangible harms at issue in the residential school cases.

Another problem with the program, Madam Chair, is that it does not address the full range of harms experienced by the students. The schools were established to stamp out aboriginal culture. This was to be achieved by denying the right to speak one's language, by ridiculing culture, by separating children from their families. The program does not recognize the damage caused by loss of language and culture.

The current scheme addresses only firmly established and narrow grounds for tort claims; that is, it deals only with sexual abuse and physical abuse and, in some cases, confinement, as defined. In dealing with the punishment, it applies the standard of the day test, which says that if the punishment was appropriate to the standard of the day, you're not entitled to compensation. Well, that deals with issues of Crown liability, but it undermines, in our respectful view, the credibility of a program that is designed to resolve the legacy.

It does not recognize that the standard of the day for aboriginal children, with their families and in their homes, did not include physical punishment. It does not recognize that the repetition of an acceptable punishment is compensable; that is, repeated strapping, for example, is not compensable despite the fact that clearly that would not be, in our respectful view, acceptable. And it does not respond to the unique punishments, such as forcing children to kneel in a public place with their arms outstretched for hours, hair cutting and shaving, lengthy confinement in dark closets, being fed bread and water. It doesn't recognize those types of losses.

It doesn't recognize the conditions in which the children lived. In one report in 1908, as we've indicated in our report, an inspector called the conditions in an Alberta school “deplorable”. The program does not recognize the poor quality of education in that children have spent more time on unpaid maintenance and housekeeping than they did on learning. And it doesn't recognize intergenerational impacts. We now have generations of children who are parents but who've never learned how to be parents.

The ADR program, in our respectful view, Madam Chair, may be causing additional harm. We've seen the application form, some 40 pages, that causes applicants to relive in detail the agonies of their existence in the residential schools. For many of those people, they are unable to fill out those applications on their own. We submit that the application process in itself is revictimizing the survivors.

● (1210)

And the process takes too long; it isn't speedy. I'll be addressing that again later on in my presentation.

The process, in our respectful view, is not working. Numbers have been thrown around here today. Let me give you the numbers we have. This is based upon the program's website as of December 6, 2004. According to that website, only nine claims had been resolved through the ADR process.

We've heard from the Deputy Prime Minister that 1,200 people applied to the program. That's out of 13,000 people who have filed claims in the court. Only 1,200 have decided to avail themselves of this process. There's a reason for that. We submit that the problems we've identified earlier are the reason for it.

We have a total of only 1,809 claims that are resolved. The Deputy Prime Minister referred to 2,000 claims. In clarity, those include all ways of resolving claims, including through the court process.

If we were to do a closer analysis we'd find that only 7% have chosen the ADR process, and as we have it, 0.005% have been resolved through the ADR process. That, in our respectful view, is not satisfactory. There is a fundamental problem with the system, and it needs to be fixed.

Again, we've heard from members of the committee the amount of money that's being spent in administration. The number of lawyers being hired by the Department of Justice is absolutely mind-boggling. In Winnipeg alone we have 15 lawyers who are hired specifically to deal with residential schools claims, and in Saskatoon my understanding is that there are 25 lawyers. That's just in two small centres. It doesn't account for other centres across the country. There's a growing industry of Department of Justice lawyers specifically to deal with these particular claims.

In our respectful view, Madam Chair, the process needs to be fixed if it's to be credible and if it's to offer resolution of these long-outstanding grievances.

Thank you.

Mr. Christopher Devlin (Vice-Chair, National Aboriginal Law Section, Canadian Bar Association): The Canadian Bar Association recommends a different model. Currently it's a corrective justice model; we're recommending a restorative justice model in our paper and in the executive summary we've handed out to the committee.

There are three pillars to this restorative justice model. The first and the central pillar is a reconciliation payment, a blanket payment not just to the 1,200 applicants or the 13,000 claimants in court, but to all residential school survivors as of January 1998, when the government apologized and in our view admitted liability for the residential school disaster.

This reconciliation payment is very important. We think it fundamentally adjusts the loss of culture and language, which was the raison d'être of the residential school program. It would go a long way to acknowledging and resolving the current class actions and also potential future class actions. Many of these people.... The average age of the survivors is 57, and we note from Stats Canada that the life expectancy of aboriginal people in Canada is 61 years, so time is of the essence to have an efficient resolution of these claims.

We feel that an *ex gratia* reconciliation payment acknowledging that loss of culture and language is fundamentally important to a restorative justice model. It would have to be a simple and straightforward process. The application would be a one-pager. In the paper we will be providing to you we actually have a sample application form of one page: name, school attended, how many years—that sort of thing. The government has the bulk of the school records and will be able to verify that data.

We refer to the compensation levels proposed by the Assembly of First Nations in their paper: $10,000 for simply having attended, and then $3,000 a year for every year of attendance at a residential school. Frankly we think that's a bit low, but that's what the AFN has recommended, and it would be a workable solution.

There should be a review committee. The review committee would have any final decisions. It would involve different panellists from different constituencies that are involved in this area, particularly where it would be difficult to verify, if the school records have been lost, to ensure that people who actually were residents at the residential schools receive the reconciliation payment.

As I said before, it would be payable to all survivors as of January 7, 1998. We also believe there should be free legal advice provided to the survivors, to the tune of about $500, so that they can understand that by accepting the payment they would be signing a release that would waive any actions for similar harms that they could claim down the road. We also believe that much like the case with the hepatitis C settlement, there should be settlement negotiations with the lawyers of the survivors who have initiated class action claims, for those outstanding legal fees.

A lot of what's driven the ADR process has been these people who have decided to go to court and relive these actions, and their counsel who have taken these matters forward on their behalf. The reconciliation payment should not be reduced by the legal fees they may or may not owe their counsel at this point. We think it should be a fast process—within five years—much like the Japanese Canadian model, and that the government should be liable for 100%.

The second pillar is that we have a few key reforms we think should be made to the ADR process: streamline the 40-page application form to only essential information; legal aid should be provided to the applicants rather than to the government-paid form-filler helpers; the application should proceed very quickly to the adjudication office and shouldn't sit in the department's office for very long. I think that's one of the causes of the delay.

● (1215)

Finally, there should be a truth and reconciliation process that goes beyond the national plan the minister laid out. There should be a reconciliation fund, and there really needs to be a public process that educates and opens the shutters on this horrible part of our history, so that Canadians actually understand what the residential schools were intended for and actually understand what the results of that caused. Part of the ongoing systemic problems in aboriginal communities is the direct result of this government policy that eradicated culture and family institutions and has left so many communities in the situation they are in today.

Thank you.

The Chair: Thank you very much.

We will now go to National Chief Phil Fontaine.

Welcome to the committee.

Chief Phil Fontaine (National Chief, Assembly of First Nations): Thank you, Madam Chair, committee members.

I will watch the clock very carefully. I might go over a few seconds, but I'll try to limit my opening statement to the ten minutes we've been allotted.

I'm the national chief for the Assembly of First Nations. I am saddened to be here again finding myself pleading with the Canadian government to fulfill its legal and moral obligations to first nations people. Why is this necessary, when we all know that so many lives were irreparably broken from this terrible travesty called the residential schools legacy?

My grandmother entered a residential industrial school in 1878, my father in 1909, my mother in 1919, my brothers and sisters starting in 1938. This is not a new issue for me or my family, and certainly not for the people I represent. My very strong message to all of you here, and I convey this in the most respectful manner possible, is that this matter must be resolved now—fairly, honourably, and with finality.

I have been given a mandate from the chiefs of the first nations of Canada to resolve the residential schools tragedy. I speak for first nations; I speak for all of the first nations students who ever attended a residential school. I will not rest until I have accomplished that goal. There is nothing more important for the relationship between our people and Canada than the resolution of this problem.

Many of the former residential school students have died over the years without justice and reconciliation—20,000 since 1991. The rest of us are still waiting—waiting for the Government of Canada to come to grips with the worst human rights violation in this country's history; waiting for it to do the honourable thing, the right thing, the decent thing; waiting for Canada to clean up its shameful past and begin to travel down the long road towards reconciliation with the first peoples; waiting for Canada to stop hiding behind phony arguments, denials, and unconscionable delays, allowing more and more people to die empty-handed, without the redress and healing they deserve and are owed.

For ten years I lived through the residential school experience. I know well what my brothers and sisters, our mother and father, my aunts and uncles, my cousins and friends lived through. I know what over 150,000 of the people I represent lived through, and I resent the need for us to tell our heart-wrenching stories over and over again in order to convince you of their truth. I resent being told that Canada can't afford to pay the survivors the compensation we are owed.

As national chief, I represent the people who have occupied this land from time immemorial. These are the same people who were targeted by Canada's residential school policy. The policy was designed to solve the Indian problem by removing us from our homes and families to prevent us from learning about our culture, our languages, and our fundamental connection to the land. Canada set out to destroy our connection to the past so that we could have no future.

Over the past week you have heard many testimonies. You heard from Flora Merrick, Alfred Beaver, Ted Quewezance, Bobby Joseph, and others. These courageous, beautiful people told you their stories, stories that are not easy to listen to, stories about awful things, about unspeakable humiliations and cruelties endured in residential schools. They were sent to these schools in the name of Canada and Canadians. There was no choice; the Indian Act told their parents they would go to jail if they refused to send their children to these schools.

The witnesses also told you about their attempts to seek redress from Canada for the wrongs that were done to them through the ADR process. You heard that this ADR process is not only failing to compensate them fairly but is also victimizing them once again by its insulting assumptions, its inequalities.

● (1220)

We aren't the only ones who have said that the ADR process will never achieve fair and just compensation and that it is failing the residential school students. The Ontario Court of Appeal, in its unanimous decision to certify Cloud, said the very same thing as we've been saying for months and months—that it will never achieve fair and just compensation; it will never achieve reconciliation for our people. And that, in itself, is tragic.

We are presenting another alternative. It is a workable, practical, and fair alternative, whose goal is reconciliation. You should all have a copy of this report. If you don't have a copy, please let us know, and we will see you get one.

You will see in our report that we are in agreement with Canada that an alternative must be found to fighting in the courts. Former students want and deserve a real alternative to litigation, an alternative that will treat them justly and fairly and promote reconciliation and healing. You cannot achieve reconciliation and healing through fights in the courts.

We held a national conference at the University of Calgary last year to consult with former students, government, churches, and independent experts on the topic of whether the government's ADR plan could achieve reconciliation. The overwhelming conclusion of the conference was that the ADR, as it is, will never achieve reconciliation. We all agreed, around the table, that the process available to the former students is deeply flawed; it is broken.

So when I went to the government, the most senior representatives, and offered them our help in fixing what was broken, they accepted this offer. That is why we ended up as we did, in working through this process to determine a better alternative. That was the understanding we had reached in Calgary—that the Assembly of First Nations would come forward with an alternative to the current system, something better, fairer, and more just. It wasn't out of some charitable gesture on the part of the government; the government representatives present at the conference understood this process was too deeply flawed.

I would like to provide you with a brief overview—and I'm checking the time here—of the current ADR process, to show you what some of the problems are, and how our approach would correct them.

First, under the government ADR, no compensation is awarded for loss of language and culture, or for the loss of family life. We believe it is essential that compensation be awarded for those losses in the form of a lump-sum payment to all of those who attended these schools. After all, the very reason the schools were set up in the first place was to destroy our languages, culture, and family ties. This caused the most anguish and hurt us all. It is what caused us to impose this hurt on our children and our grandchildren. Failure to compensate for these wrongs would effectively condone them. This is intolerable to us, and it should be to you as well.

Second, under the government ADR, claimants are treated unequally. If their abuse occurred in a Catholic school, they get only 70% of the compensation due them. In addition to this unequal treatment, there's another inequality based on geography. Awards are higher if the abuse occurred in British Columbia, the Yukon, or Ontario. In these provinces, the awards are 25% higher than those in any of the other provinces. So if you combine both these inequities and take the example of the student who is at the top of the scale for the worst possible abuse, and that student was abused by an Anglican in British Columbia, the Yukon, or Ontario, he or she would get more than a student who endured exactly the same abuse inflicted by a Catholic abuser in Manitoba. In our plan, we insist everyone be treated equally; everyone would receive 100% of what is coming to them, and there would be no difference in compensation.

Third, the government's ADR plan shortchanges the victims of sexual abuse, when you compare their awards against what they could get if they went to court. Court awards for sexual abuse, on average, are $30,000 more than what the ADR plan awards for the same, or similar, abuse. Why? Because under the ADR plan, the abusive act is weighed three times more heavily than the consequences of the abuse. Under our plan we weigh the lifelong consequences much more heavily than the act of abuse, and in so doing, the awards reach court levels.

● (1225)

Fourth, under the ADR plan there's no provision to expedite compensation payment for the sick and elderly. Some elderly and sick claimants are waiting up to 18 months or more to receive compensation. Under our plan we would require that the elderly and sick get their compensation quickly.

Fifth, the ADR process at its current rate will take anywhere from 30 years to 53 years to complete. Former students are now dying at the rate of at least four a day. In our plan we have set a five-year time limit for the payment of all claims. In addition, we would require lump sum payments to be made to the immediate families of the deceased, thereby removing any incentive or reward for further delay.

Sixth, the ADR plan arbitrarily denies compensation based on the occupation of the abuser or the place where the abuse took place. What this means simply is that if a person was on the premises of the residential school for reasons other than contact with children—a gardener, for example, or as we used to call him, the “farmer”—and this person abused a child, the government denies liability because they say the gardener's or farmer's purpose for being there had nothing to do with children. What difference does it make if the abuse took place in the tool shed or in the dormitory? For the victim of abuse in these cases—helpless, defenceless children with no place to hide—the pain is the same. A fist in the face is a fist in the face. A rape is a rape.

For the government to hide behind technical arguments to defeat a former student's claim is shameful. These kinds of distinctions are meaningless in a reconciliation framework. They only are meaningful in an adversarial one. The government must choose.

Seventh, the ADR plan only compensates for physical punishment that exceeded the standards of the day. When Flora Merrick ran away from school because she was denied the right to attend her own mother's funeral, she was beaten on her body and arms until she was black and blue and was then locked in a small dark room for two weeks. The government lawyers would deny her even a penny of compensation for this abuse. They say in the appeal of her measly $1,200 award that the punishment she received did not exceed the standards of the day. They also deny her any compensation for extreme emotional suffering when she was forbidden to attend her mother's funeral, because the ADR plan does not compensate for that kind of harm.

Let me ask you, then, quite simply, whose standards are the standards of the day, compared to what? The low standards of the residential school authorities were never our standards or our parents' standards. The hypocrisy of this aspect of the ADR is breathtaking. The government is acting as a judge and jury.

In our plan, we would compensate all those who were abused as a result of their attendance at residential school, including severe emotional abuse. The standards of today would be the appropriate standard upon which the behaviour would be judged.

I have a few more, but what I'm going to do since I believe you all have a copy of my presentation.... I could make that available. I want to conclude my remarks so that we can get on with the questions.

As you can see, I'm having a very difficult time presenting to you here. I'm usually a lot clearer and hopefully a little more articulate than I've managed to be this morning. I apologize to all of you that I am in the state that I am in.

I didn't come here to try to embarrass anyone, to be disrespectful to a single person. I'm here because I believe that we, all of us working together, can achieve justice and fairness, healing and reconciliation for all of those who suffered harm at these schools. That's why we're here. We're not here to punish anyone. We're not here to inflict harm on anyone. We are here because we believe that Canada will do what is right for our people.

We are not talking about 13,000 claimants, as was continuously hammered to this committee. We are talking about those who are alive today: 87,000. At one point, we had 150,000 students. That's how many attended these schools. Today there are 87,000 left. We are not only talking about 13,000 claimants; we are talking about a much higher number.

● (1230)

When we talk about fair and just compensation, when we talk about healing and reconciliation—this paradigm shift that must occur between this rigid tort approach, this insurance claim approach, to one of reconciliation—we are talking about healing and reconciliation for all of those people.

I will conclude here. Our model will prove to be the one in which Canada and Canadians can be proud. It will enhance Canada's reputation as a world leader of human rights, while at the same time increase the stature and respect for first peoples at home and abroad. It would also set an international standard and methodology for dealing with mass violations of human rights. Finally, it will put behind us, in an honourable way, the most disgraceful, harmful, racist experiment ever conducted in our history.

Thank you.

The Chair: Thank you very much, National Chief. I don't think there's any reason to apologize. I know this is a very difficult report for you to give to the committee.

I shall start with Mr. Harrison for the Conservatives for this round of questioning.

Thank you.

Mr. Jeremy Harrison (Desnethé—Missinippi—Churchill River, CPC): I'd like to very much thank CBA, the AFN, and particularly you, Chief Fontaine, for coming. I truly can't imagine how difficult, first of all, it would be for survivors to tell their stories in a venue like this, and I truly can't imagine how horrible it would have been to be ripped away, stolen from your family, and put in a government institution for your formative years. I couldn't imagine, I really couldn't. Thank you for being here and telling us.

First, I would like to take issue with a couple of the points the Deputy Prime Minister made in her presentation. She said there were 2,000 cases that had been resolved. We had Justice Hughes in here last week saying there were 80 that had been settled, and out of that 80, not even all of those individuals have received any payment yet. Somebody is getting their message mixed here; somebody's getting their wires crossed, because 80 and 2000 is not the same number.

We had the Deputy Prime Minister and the deputy minister saying, well no, on this program so far we've only spent $8 million. Every shred of evidence that we have received at this committee is contrary to that. Over the course of the seven years budgeted, even generously putting it, that would be about $100 million. The program budgeted for $1.7 billion. What's happening to the rest of the money? Where is it? We've only spent $8 million so far. Not explained.

The Deputy Prime Minister talked about what an incredibly great program this was, but admitted there were some minor technical glitches that could be fixed. What I would like to ask the witnesses is, in your experience, is this a great program as the Deputy Prime Minister asserts it is? Is there buy-in from the aboriginal community? Is it holistic, as the deputy minister says it is? We see cases where the government as in Flora Merrick's case appeals a $1,500 award. How could this possibly be a holistic experience for people to go through? I'd like to get the comments of our panellists on that.

Thank you.

● (1235)

Mr. Jeffrey Harris: Thank you, Chief.

In our respectful view, there is not a buy-in from the aboriginal community into this program. I think whatever numbers you want to look at, they speak loud and clear in terms of the number of people who are turning to the program. Those who are turning to the program are those who, I suspect, see no viable alternative.

It is not a holistic program. It is based upon a tort model of compensation, a tort model of proof, and it does not deal with the fundamental issues surrounding residential schools; that is, again, the deliberate plan by the government of the day to stomp out aboriginal culture and language by removing children from their homes, isolating them from their families, and destroying that connection. The program doesn't look at that at all. The program looks at very limited, legal principles of compensation.

What we need to do now is not look at the law but to look at justice. And justice says, deal with all of these claimants for what happened to them, because we designed it, and it occurred.

The Chair: Do you want to add to that, National Chief?

Chief Phil Fontaine: Yes, I do. The point I wish to make here is to address the suggestion that has been made that the Assembly of First Nations does not in fact speak for the former students.

When the first ministers meeting on health was convened, we were there representing first nations. When the apology was being negotiated, before it was rendered in 1998, the Assembly of First Nations was the organization that negotiated the apology. The Assembly of First Nations was also the national organization that negotiated the creation of the Aboriginal Healing Foundation, and the sectoral process that results from the April 19 summit obviously, from the government side, sees the Assembly of First Nations as the legitimate political voice for first nations. What we've had before us is an entirely politically negotiated arrangement. It's been entirely a political process, and so any suggestion that somehow we are not the legitimate representative body for first nations' students who attended these schools is completely unfair—though we recognize that not everyone will buy into whatever we negotiate, but that must remain their choice.

● (1240)

The Chair: Mr. Harrison.

Mr. Jeremy Harrison: Thank you very much.

I forgot to mention it in my first round of comments, but I'd like to thank both the CBA and AFN for their reports on this subject. I have gone through both. A lot of work went into them, obviously. You did a great job.

What I would like to ask next is whether there is satisfaction on the part of the national chief of the AFN with the direction or with the current state of the program and with what will be happening in the future on this program, and whether there will be changes made, and what changes—I've read in the report what the AFN would like to see happen—and whether you're optimistic that those will be happening, and whether the government is buying in or stone-walling.

Chief Phil Fontaine: We have to consider your question in context. This issue has been around many, many years.

When I first spoke publicly about the sexual and physical abuse that I personally experienced in two schools, but more particularly in one school, it was 1991. So we're looking at now 14 years. If you consider how long it will take to resolve this with any finality, we're looking at some point in the future—anywhere from 30 to 53 years. That's too long.

The Assembly of First Nations, in the analysis we undertook—this review we did on behalf of the Assembly of First Nations, the students we represent, and on behalf of the government—have concluded that there is a better approach, and the better alternative is ours, because quite clearly what is before us will not achieve fair and just settlement of all of these claims. Neither will it achieve healing and reconciliation. I made the point earlier that we are not the only organization that has expressed this view. The Court of Appeal, in a unanimous decision in the Cloud case, said the very same thing.

So we are working, we want to achieve what we deserve, and I trust that the government will join us in bringing about fair and just compensation, and more importantly for many of us, healing and reconciliation. That's what we're about, and we've committed ourselves to that. I trust that the government will see this issue in the same way. We are not interested in an adversarial process; we are interested in reconciliation. That's what we're committed to.

The Chair: Thank you.

You have a little bit of time, very little.

Mr. Gary Lunn (Saanich—Gulf Islands, CPC): Thank you very much, Madam Chair.

I too want to thank you, Chief, for coming. I only have a minute or so.

All I can say is that in seven years as a member of Parliament, there's probably not a witness I have heard who has been as moving as Flora Merrick or who has been as credible. I think everyone around the table can agree to that.

Clearly the process is not working. It's not working, and we need to focus on a solution. I think you provided some very constructive alternatives. All I can say is that as a committee we need to move quickly; we need to write a report to ensure that something is done.

I have grave concerns about whether the government seems to want to tinker with the ADR, or whether we'll actually see some kind of solution. I think we need to really look at this in the most expeditious manner possible to bring closure to it and ensure that justice is done.

Other than that, I don't have anything else to add, Madam Chair.

● (1245)

The Chair: Thank you.

We will now move on to the Bloc. I think both of you want to ask questions, so you might want to share the time.

Mr. Cleary.

[*Translation*]

Mr. Bernard Cleary: Thank you, Madam Chair.

I want to thank Grand Chief Fontaine for being with us today and helping to clarify some points that, in my opinion, clearly needed clarification. I also want to thank Mr. Harris, whose testimony regarding the legal aspects of this whole issue is extremely important.

I realize the Minister may be very busy, but I do think that she would have benefited a great deal from hearing what I have just been hearing in this second hour of our sitting. She might have understood that on this side of the table, we had understood the witnesses' testimony correctly, and that we hadn't lied. The proof of that are the presentations made by Mr. Fontaine, with respect to the First Nations' side of things, and by Mr. Harris, with respect to the legal side of things, which clearly demonstrate that we need to re-think the whole process.

The Assembly of First Nations has tabled a report which is the result of a major analysis. Someone of good faith doesn't need an eternity to read the report and draw the necessary conclusions, particularly since all the work was already done when the Commission did its analysis.

Our report should take much of its inspiration from the two pieces of testimony we have just heard: they perfectly summarize what was stated here in this Committee—unfortunately, too quickly.

I have no questions; I have nothing but thanks. It was a pleasure to hear from you. Thank you very much, Mr. Fontaine and Mr. Harris.

[*English*]

The Chair: Thank you.

Mr. Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Madam Chair. Thank you, Mr. Fontaine. I also want to thank Mr. Devlin and Mr. Harris for their reports. I regret that the minister did not have more time for us. She mentioned at one point that lawyers understand one another. I certainly have no desire to be a lawyer, and I would actually like to see a quota placed on the number of lawyers in this government: relationships would be more human.

I recall that back in the 60s, there were Indian or what we called Aboriginal orphanages in our area. Entire families would be taken there. Parents would take some of their children there; children would take their big sisters and big brothers there, and it was painful to watch, even though I had seen for myself the problems in orphanages. The atmosphere there was extremely ominous when I had to take families back.

I did not have an opportunity to read about the Assembly of First Nations' proposal. I only read the overview we were given this morning. I don't know whether it suggested dealing with the problems at the national level or the group level, and whether it made recommendations to government regarding all of the claims to be settled in the communities.

One of my constituents has asked me to raise a specific question. I would have liked to put the question to the minister, but since we have legal advisors here, I will take advantage of that. She is wondering why this process is not moving forward in Quebec. They went to the trouble of bringing Justice Jean-Luc Dutil out of retirement to deal with these claims, but nothing seems to be happening. Does Justice Dutil have a real mandate or doesn't he? That is my first question.

The second one is this: Has consideration been given to the possibility of dealing with issues in the communities using resource persons? I believe this is something you suggested in your paper. I am not a regular member of this Committee, unfortunately, but I am very pleased to have heard your comments this morning.

Thank you, Madam Chair.

● (1250)

[*English*]

The Chair: Who would like to respond to this question?

National Chief.

Chief Phil Fontaine: What we've proposed in our report, sir, is that we address that particular issue through the establishment of a truth and reconciliation commission, so that all affected parties, all parties of interest, will have an opportunity to engage in truth-telling to tell their stories. This addresses the individual community and indeed every interest, as I said, that's been affected by this process.

I want to make two additional points very quickly.

We've offered the government a process in our report, so we don't have any objection to a process. We want a process. We also have no objection—and neither have we ever been opposed—to validation. We have no quarrel with that; we never have had. But it has to be a process that provides some dignity to the students.

For example, I can't understand why the government is prepared to spend up to $5 million to hire private investigators to search for persons of interest. Most of these persons of interest are dead. Keeping in mind that the average age of students is 57, I don't think that's a wise use of taxpayers' money. I don't think it is. In our view it's designed to discredit the students. It really is not designed to reaffirm the commitment to this paradigm shift to healing and reconciliation; it's entirely adversarial. That's one point.

The other is that what we've offered the government speaks to the issue very clearly about certainty. We want certainty, as we all do—right? We want finality. We've offered a proposal that will bring this to a close by 2010. And we want something that's enforceable, whether it's a judicial process, or a judicial stamp of approval or seal of approval from the courts.... We would welcome that, but I think what is more important at this stage is to figure out the terms of the agreement and the process that will ensue.

And we believe that this must be universal. It can't be as it is now, because it's too unfair and has too many inequities.

The Chair: Thank you very much.

Mr. Martin.

Mr. Pat Martin: Thank you, Madam Chair and witnesses.

It strikes me that we're willing to spend millions of dollars to make sure not one penny falls into the wrong hands, as it were—in other words, people who can't meet these impossible tests for eligibility. It illustrates, for me, what is so fundamentally wrong with this adversarial approach.

I want to focus what little time I have on the second aspect of your brief. Just for your information, I've moved, as a motion to this committee, the recommendations of this AFN report. I will be making that motion later in this committee meeting.

The monetary side is one thing—the universal compensation. I'd like you to talk, if you can, a little more about the truth and reconciliation component, because I see it as integral for both sides' healing in this whole sordid mess. I'll say only that what little testimony we heard, as members of Parliament—and these were category B cases, not even seen as very severe—was life-changing for some of us, and I think the general public would feel the same way, if the truth were told in a safe environment, in a safe setting. I would ask anyone to use what little time we have to speak to the mechanics of the truth and reconciliation component to the Assembly of First Nations' brief.

Chief Phil Fontaine: One of the challenges we face as a country is to know our history better—to understand our history, and to have a better appreciation of how Canada came to be as we know it today. There are too many missing chapters in the true history of this country. One of those missing chapters is this tragic story of the residential school experience and its legacy.

We believe that before true healing and reconciliation can occur, there must be an opportunity for people to tell their stories. The people affected by this are not just the students, but the people who ran these schools, some of them innocent victims, as we were; the government that designed this policy, which was really all about the eradication of any sense of Indianness in Canada, and was really an attempt to mould us into something we could never be, with tragic consequences. We must be afforded an opportunity to engage in truth-telling, so the world can see for itself what transpired—what was done to our peoples, and why there are such tragic consequences in our history. It's really an attempt on our part to close the circle, to make us whole, to give Canada an opportunity to right this historic wrong—not that we want to dwell on history, but history is such an important way of ensuring we know where we are going, and that we will reach a point soon where this issue is put to rest forever.

● (1255)

Mr. Pat Martin: We take great pride in how multicultural we are. It's such a terrible irony that for 150 years it was government policy to beat children for speaking their own language. In a country that takes pride in being multicultural, those contradictions are there.

If anything, we need help. When I say “we”, I mean the general population needs help to understand the intergenerational impact. I represent an inner-city riding in downtown Winnipeg, where all the predictable consequences of chronic long-term poverty have an Indian face on them. The social tragedy is overwhelming as it manifests itself. We need help understanding how this happened and why aboriginal people are always at the bottom of every index, in terms of social progress, from health to education to representation in the criminal justice system. With all of those indicators, it's been a great mystery, it seems, as we try to grasp that.

Maybe the answers lie within this incredible, as you call it, social experiment, the tragedy of the residential schools.

Mr. Christopher Devlin: Just to follow on the national chief's comments, I think that what's critical—and the Bar Association supports the Assembly of First Nation's call for a truth and reconciliation process—is that it's a public process, but also on a national scale.

Part of the national healing program that the government has tends to focus on regional and local issues, which are also important—not to take away from that—but as you say, I think the bridge between very recent history and very present systemic problems is widely misunderstood. I know in my practice I'm always faced with the question of why, why is this the situation? After spending millions and millions of dollars in program funding every year, why is the situation not improving? I think so much of it results from ignorance about recent history, ignorance about government policy and how it has resulted in the disintegration and the destruction of small rural communities of native people. I think that kind of truth telling at the national level and at the public level is necessary, as the national chief says, to close the circle of healing and move forward. I know that in our paper we've looked at other countries, whether it's South Africa, Rwanda, Bosnia, whatever, and those sorts of national processes are very beneficial.

The Chair: Thank you.

I shall now move on to possibly the last questioner in this hour, Ms. Barnes.

Hon. Sue Barnes: Thank you. And I'm conscious that we're over time right now, so I'll make it short.

First of all, Mr. Harris, Mr. Devlin, Mr. Fontaine, thank you for your testimony here today, and thank you to all of the people at the witness table and those who have supported you in your work.

I've read all of the reports. I was not here last week, but I made sure that I read the testimony of the people who came before the committee. I think if we could individually as Canadians apologize for the past, I'm sure we'd be willing to do so. I know that I would personally. But we have to face reality, and there has to be some movement on this file to make a better outcome for those most affected.

We heard the minister early this morning again say that she is considering your report. She very clearly said that. She said that she is meeting with you. I just need to be reassured, National Chief, that you feel you have a working engagement with the government at this current time to try to move this file in the direction that most assists the people whom you represent.

I know you made a statement in response to Mr. Harrison's question and I know that 2010 was put out as a date, but we all wish we could wave that magic wand and have it fixed today. I think the most important thing is whether you think that your engagement with this report is moving in the right direction at the current time.

● (1300)

Chief Phil Fontaine: First of all, we believe that what we've offered the government is a far better alternative. It's more economical, would be universal, would have certainty, would have finality—2010—would be enforceable, and it would apply to all. It wouldn't be as we have it now that you receive a certain amount in B.C. and less in Manitoba for the same kind of abusive action.

We're absolutely committed to making sure that we can achieve what the students deserve, which is peace and a real assurance that there's going to be healing and reconciliation. We've offered an alternative and we have our figures. We've done some number crunching, and ours is a lot more economical. Even if you compare from both extremes, in either case ours is better and more affordable. It takes us a lot further in terms of healing and reconciliation than what is currently available.

I would make this one point that I made earlier. At this conference at the University of Calgary, we had survivors, chiefs, government officials, judges, religious people, and we all came to the conclusion, including the people from the government, that what we have is flawed. It needed to be fixed, so we offered to fix it. That's how our report came to be. This is an opportunity, I believe, to do what is right. In terms of the government's interest, which is ensuring that the interests of the taxpayer are a serious consideration, this certainly speaks to that issue very clearly. But it is also about healing and reconciliation. It's also about fair and just compensation for the students.

For example, if you asked me whether I would be prepared to accept what is contained in the AFN report, which is a $10,000 lump sum payment plus $3,000 for every year that I attended school, and I attended for 10 years—we're looking at $40,000—compared to going through a process where I would have to tell my story in all of its sordid details, I would dismiss this and accept this report because it is fair and just, and it's really about healing and reconciliation. It's about balance. I seek balance in my life every day. This clearly offers the balance that is needed.

Hon. Sue Barnes: I see that this is an important component. The government obviously has to look at the other side, to the aspect of there being potentially more class actions out there that could draw more people. Even though this is a very reasonable proposal you're laying on the table, there is no way that any one person—you, I, or anybody—could guarantee that all the individuals who are looking at being members of personal litigation or even a member in an existing class action or a potential future class action, would want to participate. In fact, there's no way that anybody could do that. I could not tell somebody who is involved in litigation to come in and be involved in the proposal that's put on the table.

I know I've had discussions with Ms. Mahoney on this point. I need to put down for the record that what the government has to look at and I know what the many ministers of the government have to deal in is reality. There is a complexity here, and even though I may personally feel very strongly one way, there is the reality we have to face that there is more than one situation that's very real before this government right now.

● (1305)

Professor Kathleen Mahoney (Professor, Faculty of Law, University of Calgary): I'll just respond quickly to that. We're in total agreement that you wouldn't want to force people into any process. The fact of the matter is there hasn't been a viable choice for people, so we do have thousands of people, potentially the entire class, falling into a class action. We've seen from the statistics that very few people are opting into the present ADR, so we feel that a measure of success of this proposal would be the number of people drawn to it.

Frankly, we feel very confident that if the lump sum were available to people, as well as the other compensation for people who were seriously sexually, physically, and emotionally abused, this combination would appeal to most people. Sure, there may be a few people who still want to do their court action. But given the information we're getting from survivors and the rate at which they are passing on, they need something different from litigation, and that's the very strong message that we've heard. Until there's an alternative, they're not choosing the ADR at the present time.

Hon. Sue Barnes: Just to follow up that point again, more for the record's sake, do you think an alternate or a change in our current situation would have one of the more beneficial outcomes of attracting more numbers into the program than currently under the ADR?

Prof. Kathleen Mahoney: Yes, we're very confident of that. We base that confidence not just on our own conversations, but also on the Irish experience, on which our model, especially the process, is very closely patterned.

Hon. Sue Barnes: Ms. Mahoney, many people don't understand when you talk about the Irish experience. Again, for the record, could you please explain?

Prof. Kathleen Mahoney: I'd be happy to.

In Ireland, there was a very similar set-up of industrial schools, where children were taken by force and put into these schools—of course, not on the basis of race, but more on the basis of class—and similar abuses took place as took place in Canada in residential schools. The Irish government decided that they would deal with reconciliation and healing and, indeed, have adopted a compensation approach that is very similar to the one we are proposing.

Well over 90% of the industrial school claimants have gone into this process. There are a few people litigating, but very small numbers. In fact, most people have not even had a hearing. They've been happy with an administrative negotiated settlement—75%. This is why the Irish costs are 10¢ on the dollar as compared to ours, which are, as you've heard today, incredible. The streamlined procedure, which is satisfying claimants, is coming out at that cost, according to their 2003 annual report.

Hon. Sue Barnes: We heard today, through the evidence of the minister, that some of the other organizations and first nations are being consulted on your report currently and that there is a working group going on between Minister McLellan's office and the AFN on this report. Can you confirm that for me?

Prof. Kathleen Mahoney: Yes, I can confirm that.

Hon. Sue Barnes: Okay, so there is active engagement right now on your report.

That will be all my questions.

The Chair: I want to thank all of you.

My apologies to the elder for not recognizing you. I'm sorry, we didn't have you on the witness list. Mr. Elmer Courchene, welcome to our committee and being here for Mr. Fontaine.

Chief Phil Fontaine: I actually owe our elder here an apology. When I began my presentation, I should have acknowledged Mr. Courchene.

Elmer Courchene is, as I am, a former residential school student—10 years as well, in two schools, as I experienced.

Mr. Lloyd St. Amand: Was it at same time?

Chief Phil Fontaine: Well, one was the same school, and then he went to Saskatchewan. I ended up in Winnipeg.

He's a valued member of our organization, and I apologize to him for not giving him due recognition.

● (1310)

The Chair: Thank you very much to all of you for this session.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
