

COMPENSATING CANADA'S 'STOLEN GENERATIONS'

by Linda Popic

After a lifetime of beatings, going hungry, standing in a corridor on one leg, and walking in the snow with no shoes for speaking Inuvialuktun, and having a heavy, stinging paste rubbed on my face, which they did to stop us from expressing our Eskimo custom of raising our eyebrows for 'yes' and wrinkling our noses for 'no', I soon lost the ability to speak my mother tongue. When a language dies, the world it was generated from is broken down too.¹

Often referred to as the 'boy scout' of the international community, Canada has a famously benevolent image. However, like Australia, its past attempts to forcibly assimilate Indigenous people have produced a legacy of harm which persists to the present day. In an effort to address one of its most egregious assimilation policies, Canada recently adopted the multi-billion dollar Indian Residential Schools Settlement Agreement (the 'Settlement Agreement'), a national compensation and truth-seeking scheme aimed at Indigenous people who were taken from their communities and put into boarding schools run by churches and the Government.

As Australian demands for a Commonwealth Government apology and national compensation scheme for the Stolen Generations gain momentum (and as Tasmania issues the first payments to its Stolen Generations members),² the response in Canada to the Settlement Agreement raises some important considerations about how to atone for the past.

INDIAN RESIDENTIAL SCHOOLS POLICIES IN CANADA

Beginning in 1874 and spanning over a century, the Canadian Federal Government and various Christian churches ran a system of 130 boarding schools for the country's Indigenous children. First Nations, Inuit and Métis children were typically placed in the highly-regimented institutions as young children, and were usually not released until their late teens. Attendance was voluntary at first, but by 1920 the Federal Government made it compulsory for every Indigenous child to attend, and children were forcibly removed from their homes by church and government officials.

The ostensible purpose was to provide the children with an education, but it is now accepted that the greater aim was to forcibly assimilate First Nations, Inuit and Métis into non-Indigenous Canadian society. Students were punished for speaking their native language and practising their customs, and were usually not allowed to have contact with their families while they lived in a school.

In addition to the psychological distress produced by isolation and the banning of their Indigenous customs, many residential school students suffered physical and sexual abuse. The Royal Commission on Aboriginal Peoples ('RCAP')³ reported in 1996 that

[c]hildren were frequently beaten severely with whips, rods and fists, chained and shackled, bound hand and foot and locked in closets, basements, and bathrooms, and had their heads shaved or hair closely cropped.⁴

Describing the punishment meted out at one school, a former student testified to having 'seen Indian children having their faces rubbed in human excrement.'⁵

Rape and sexual assault were endemic, with a ministerial adviser on sexual abuse remarking in 1990 that 'closer scrutiny of treatment of children at residential schools would show that all children in some schools were sexually abused.'⁶ Nutrition and sanitation were poor, and contagious diseases like tuberculosis ripped through schools causing thousands of deaths. The conditions drove some students to such despair that escape and suicide attempts were not uncommon. The RCAP reported that at the Muscowequan Residential School in 1981, 'five or six girls between the ages of eight and ten years had tied socks and towels together and tried to hang themselves'.⁷

While some former students have said that they benefited from attending the schools, most students emerged from them ill-adapted for life in non-Indigenous society, but also on the periphery of their native culture. Reared amongst dysfunction and with their identities maligned, schools survivors experience high rates of substance abuse, low self-esteem, suicide, and poor relationship and parenting skills. Many survivors report symptoms

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of post-traumatic stress, and research has found they are more likely to become perpetrators of physical and sexual abuse.⁸ Like the flow-on effects of assimilation policies in Australia, the legacy of residential schools policies in Canada has affected not only survivors, but also their families and communities.

THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT

Worth over \$3 billion (Canadian dollars),⁹ the Indian Residential Schools Settlement Agreement is the culmination of extensive negotiations between the Canadian Federal Government, the churches, and Aboriginal groups representing schools survivors. Entering into effect on 19 September 2007, it comprises \$1.9 billion earmarked for 'Common Experience' compensation payments; \$960 million for claims of serious physical or sexual abuse; \$60 million for a five-year truth and reconciliation commission, community events and research centre; \$20 million for memorials and commemorative events; \$125 million over five years for 'healing' programs; and a funding boost for existing Indigenous health services.¹⁰

Following decades of activism and public disclosures about sexual abuse, legal action by survivors is credited as a key factor which convinced the Canadian Government to come to a negotiated settlement with the estimated 86,000 school survivors. After the RCAP presented evidence of extensive abuse and knowing neglect on the part of the Government, a slew of claims (mostly civil actions) clogged up the court system and forced the state to initiate an alternative dispute resolution scheme. Commencing in 1999, this scheme came under heavy criticism for its effects on survivors, and proved unsuccessful in averting the large amount of litigation. By 2006, there were an estimated 12,000 individual claims lodged against the churches and the Government; a situation which the Settlement Agreement will largely resolve.¹¹ Only survivors who formally opted out of the Settlement Agreement before it came into operation retain their right to take independent legal action over their residential schools experience. All other survivors can now only pursue compensation within the parameters of the Settlement Agreement.¹² With only 340 people opting out by the 2007 deadline, the Settlement Agreement has effectively corralled residential schools claims into a standardised compensation process.¹³

Although not formally an aspect of the Settlement Agreement, there has been considerable pressure on the Government to formally apologise to residential school

survivors. According to Kathleen Mahoney, former chief negotiator for the Assembly of First Nations:

for many people, the apology and healing initiatives are most important. The money was not the number one consideration.¹⁴

After dragging its heels for months, the Harper Government finally committed to issuing an apology in 2008, when the Truth and Reconciliation Commission¹⁵ is also set to start work. Tasked to promote public awareness about the residential school system and its legacy, and to provide a forum where survivors can tell their stories, the Commission will operate for five years.

The financial compensation payments have so far been the focus of public debate about the settlement, due both to how many people have applied for the compensation – as of 15 December 2007, approximately 81,000 Common Experience Payment claims had been received, with 42,649 processed¹⁶ – and because the money flowing into communities is already having appreciable effects.

The Common Experience Payment, as the name suggests, is compensation given in recognition of the common or collective harms suffered by schools survivors, including loss of culture and loss of family life. Survivors do not need to prove harm and are eligible for \$10,000 for their first year spent at a residential school, and \$3,000 for each year thereafter. Press estimates suggest that the average Common Experience payout will be \$28,000.

Survivors who want to claim further compensation for 'sexual or serious physical abuse' have to go through the 'Independent Assessment Process'. Applicants fill out a 19-page application form listing any abuse (according to a chart which details examples of abuse) and detailing any resulting loss, including loss of income. Most of these claims are expected to be dealt with at hearing, with the maximum compensation amount capped at \$275,000, and an additional \$250,000 available for actual income loss.¹⁷

RESPONSES TO THE SETTLEMENT AGREEMENT

Perhaps inevitably, the reaction amongst survivors to receiving compensation has been mixed. Mary Moonias, 62, the first former residential school student to receive a Common Experience Payment told reporters upon receiving her cheque: 'This is the greatest day of my life.'¹⁸ Many survivors are planning to use their compensation to better their lives: one 71-year-old survivor planned to spend the money expanding her bakery business;¹⁹ while others intend to pay off mortgages or to invest for their children's education.

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There have also been reports of less positive responses to the Common Experience Payments. Some members of the Dene Tha' community in Alberta have reported jealousy among schools survivors, and allegations that some people 'cheated' in order to get a bigger payment. The community's Chief, however, said the money was extremely useful for the community: 'I don't think there's a downside to anybody receiving money. People have to pay bills.'²⁰

Communities are on alert for increases in drug and alcohol abuse, and domestic violence. An Aboriginal Healing Foundation study which interviewed more than 100 Indigenous recipients of compensation (only some of whom received compensation under the Settlement Agreement), found many beneficial consequences to receiving lump sum payments. However, the payments also 'often led to troublesome increases in problems such as drug and alcohol abuse, pressure from family for money, and encroachment by financial predators.'²¹

To combat the problem of financial mismanagement, government authorities and Aboriginal groups have been running workshops and seminars to advise school survivors about how to manage their money, and to give them advice about potential scams.

It remains to be seen whether the support and advice services will have successfully safeguarded compensation cheques from ill-conceived spending. Retailers have been quick to sniff out the opportunities which stem from a sudden supply of cash. Spokesman for Alberta's Blood Tribe, Rick Tailfeathers, said the number of businesses that have applied over the past year to trade on the Blood Tribe's reserve has almost doubled.²² Another large retailer with stores on many remote reserves has reportedly moved expensive items like snowmobiles, televisions and furniture to its northern shops.²³

While many are deciding how to spend their compensation cheques, some survivors have chosen to avoid the application process altogether because their memories are too painful to revive.²⁴ Some feel they are 'putting a price on their childhood'. Bud Whiteye, a former student of the Mohawk Institute spoke about the discord generated by equating his abuse to compensation money:

I figured, for no apparent reason, that 53 rapes and assaults would equal \$528 per attack, if, as in my case, \$28,000 is the going rate... and what about the long, long years of isolation and confinement? Can I cost that out somehow? Maybe turn in an invoice?²⁵

Apart from the large numbers claiming the Common Experience Payment, about 15,000 survivors are expected to claim additional compensation through the Independent Assessment Process. Even before it has produced any results, the process has come under harsh criticism for its 'points system' approach to determining compensation. Applicants are presented with a list of abuse categories, down to the specifics of how sexual abuse was perpetrated (for example, sexual penetration with or without an implement). The different categories of abuse are allocated a certain number of points, as are different categories of consequential harm. The applicant has to tally all the points so that the total can be equated to a certain dollar amount of compensation. One commentator has condemned the process as a 'diabolical board game',²⁶ while the scheme has apparently also been the source of many concerns raised to the National Residential Schools Survivor Society.²⁷

THOUGHTS FOR AUSTRALIA

It is clear from the Canadian experience that there is no one answer to the question of how to address the harm caused to Indigenous people by assimilation policies. Some survivors will not be satisfied without financial compensation, while others find the idea of receiving money for physical and sexual abuse to be tainted with negative connotations. Others are too traumatised to want to think about the past at all. Canada's approach suggests that support should be offered to those who do receive money, particularly among groups who may not have high levels of financial literacy.

The link between compensation and past trauma has to be sensitively presented if meaningful reparations are to be achieved. Survivors who received money for sexual abuse in a compensation settlement last decade 'looked at it as dirty money because of the connotation that it was just for sexual abuse... They couldn't seem to get rid of it as quick.'²⁸ Obviously, there is little practical point to compensation if it serves to exacerbate suffering. It may be the case as one school survivor put it: 'If you don't start healing, the money will kill you.'²⁹

One reason why symbolic measures like an apology and commemorative measures may be a vital component of any reparations scheme is because they aim to create an atmosphere of dignity and respect that cannot be achieved through simply doling out compensation dollars. Compensation without an apology may always be an inadequate recognition of harm, while an apology without compensation may be seen as political manoeuvring

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without real commitment to redress. Public education campaigns, the airing of stories through truth-seeking measures and the creation of memorials may all be important aspects of a multi-faceted strategy for addressing the past and for promoting healing, particularly for Indigenous people who were raised and schooled to deny their cultures.

Linda Popic is a journalist and legal researcher. She wishes to thank staff at the International Center for Transitional Justice for their input into the paper.

- 1 Mary Carpenter, 'Recollections and Comments: No More Denials Please', (1991) 74 *Inuktitut* 56-61.
- 2 See Office of the Stolen Generations Assessor, Tasmania, <<http://www.dpac.tas.gov.au/stolengeneration/>> at 18 January 2008.
- 3 Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (1996), <http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html> at 18 January 2008.
- 4 *Ibid* Chapter 10.3.
- 5 *Ibid*.
- 6 *Ibid*.
- 7 *Ibid*.
- 8 Aboriginal Healing Foundation, *Aboriginal People, Resilience and the Residential Schools Legacy* (2003), 32-33.
- 9 The total amount of \$CAN3.165bn (\$AUD3.651bn) is the sum of the amounts allocated for the different aspects for the Settlement Agreement, including \$100 million pledged by the churches for healing initiatives. See Government of Canada, 'Highlights: Indian Residential Schools Settlement Agreement' (2006), <http://www.irsr-rqpi.gc.ca/english/pdf/IRS_SA_Highlights.pdf> at 22 January 2008.
- 10 Government of Canada, 'Highlights: Indian Residential Schools Settlement Agreement' (2006), <http://www.irsr-rqpi.gc.ca/english/pdf/IRS_SA_Highlights.pdf> at 22 January 2008.
- 11 Personal communication between Kathleen Mahoney, former chief negotiator for Assembly of First Nations (during brokering of Settlement Agreement) and Linda Popic, 16 December 2007.
- 12 See <http://www.residentialschoolsettlement.ca/summary_notice.pdf>.
- 13 Indian Residential Schools Resolution Canada, *Indian Residential Schools Settlement Agreement Presentation* (2007) 2, <http://www.irsr-rqpi.gc.ca/english/pdf/IRS%20Settlement%20Agreement%20Presentation_Oct_EN.pdf> at January 21 2008.
- 14 *Ibid*.
- 15 See <http://www.irsr-rqpi.gc.ca/english/truth_reconciliation_commission.html>.
- 16 Lee Greenberg, 'Big money brings big problems to Alberta community; Bitterness and envy are by-products of \$1.9B residential schools windfall', *Ottawa Citizen* (Ottawa, Canada), 15 December 2007, 1.
- 17 Indian Residential Schools Resolution Canada, *Indian Residential Schools Settlement Agreement Presentation* (2007) 9, <[http://www.irsr-rqpi.gc.ca/english/documents/June%202007%20IRSSA%20Deck%20\(July%2024th%20Version\)-2.pdf](http://www.irsr-rqpi.gc.ca/english/documents/June%202007%20IRSSA%20Deck%20(July%2024th%20Version)-2.pdf)> at 18 January 2008.
- 18 'Native leader downplays report that says substance abuse problematic with payouts', *Associated Press* (New York, USA), 5 October 2007.
- 19 Tamara King, 'Residential school cash out this week; money fulfils dreams, causes headaches', *The Canadian Press* (Ontario, Canada) 15 September 2007.
- 20 Lee Greenberg, above n 16.
- 21 Aboriginal Healing Foundation, *Lump Sum Compensation Payments Research Project: The Circle Rechecks Itself* (2007) xii.
- 22 Paula Beauchamp, 'First Nations targeted by markets; Retailers see windfall in residential school payouts', *Ottawa Citizen* (Ottawa, Canada), 27 October 2007, 2.
- 23 Joe Friesen and Katherine O'Neill, 'Businesses take aim at natives' settlement money', *The Globe and Mail* (Toronto, Ontario, Canada), 6 December 2007.
- 24 Wency Leung, 'Canada tries to heal scars of racist past; Payouts offered to aboriginal children, but not all are willing to forgive brutal schools', *South China Morning Post* (Hong Kong, China), 7 October 2007, 16.
- 25 Bud Whiteye quoted in Osprey Media newspapers, extracted in Mark Cherrington, 'Oh, Canada!', (2007) 31.3 *Cultural Survival Quarterly*, 20.
- 26 Mark Cherrington, 'Oh, Canada!', (2007) 31.3 *Cultural Survival Quarterly*, 18-19.