

A Guide to the Indian Residential Schools Settlement



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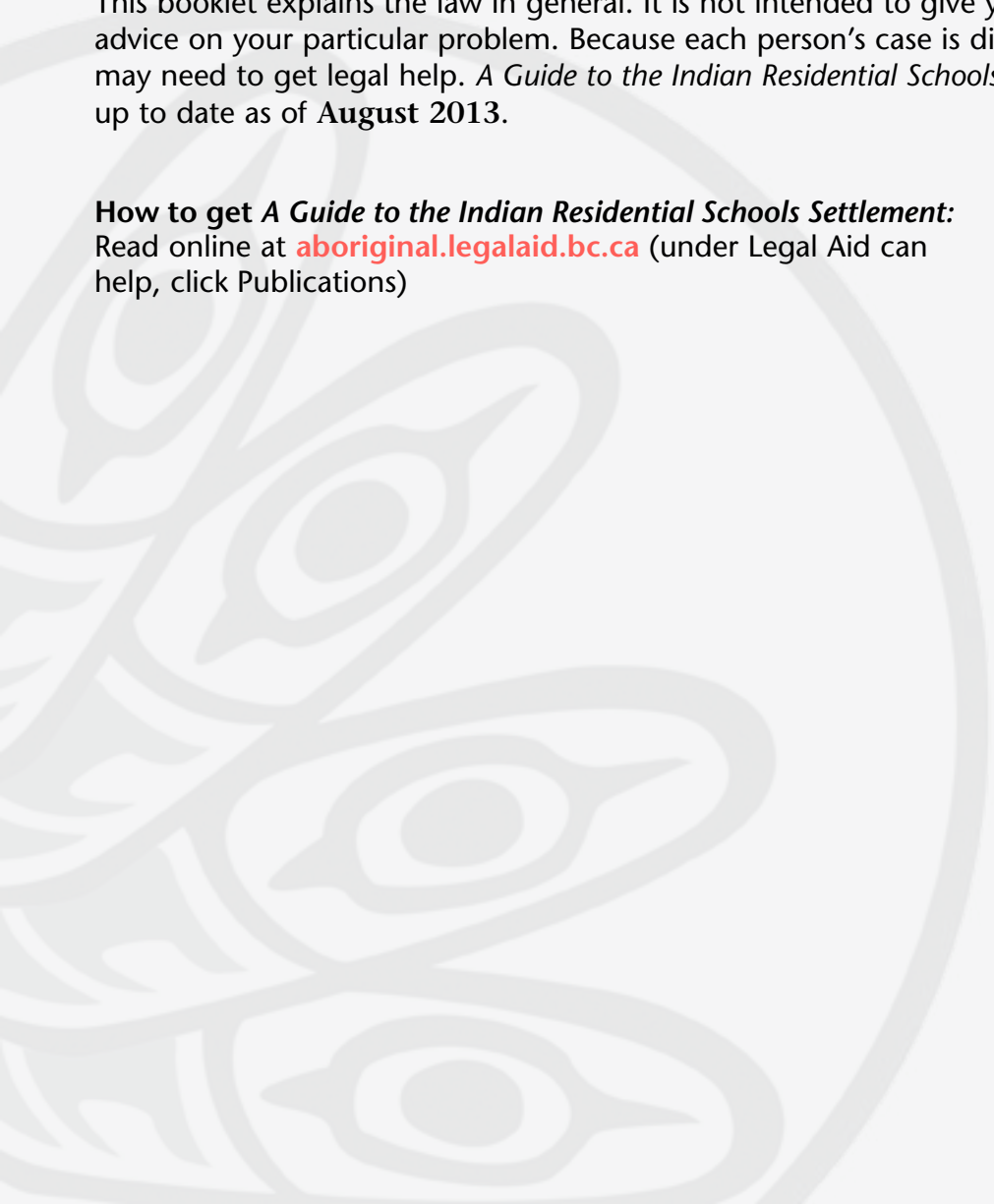
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This booklet explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. *A Guide to the Indian Residential Schools Settlement* is up to date as of **August 2013**.

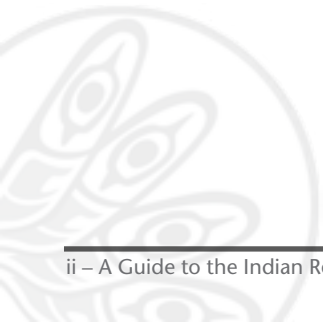
How to get *A Guide to the Indian Residential Schools Settlement*:
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Introduction

Who this booklet is for

This booklet is for Indian residential school survivors who want to know what their options are for taking legal action against the Government of Canada for abuse they experienced at an eligible residential school.

This booklet may also be helpful to:

- Aboriginal advocates,
- other members of the Aboriginal community who are helping Indian residential school survivors, and
- the legal community.

In this booklet, words that you might not know are **bold**. These words are defined or explained, usually within the same sentence or paragraph. Sometimes you'll be referred to a different page, where the word is explained in detail.

Indian residential schools

The first Indian residential school in Canada opened in the 1870s. The last school closed in 1996. During that time, over 130 Indian residential schools were located across Canada. More than 150,000 Aboriginal children attended Indian residential schools. About 80,000 Indian residential school survivors are alive today.

The Government of Canada funded the schools. Churches ran the schools. Aboriginal children were often sent to the schools against their parents' wishes. Many children were not allowed to speak their languages or practise their own culture.

Although Indian residential schools are now closed, generations of Aboriginal people in Canada are still affected by them.

The information in this booklet may bring back painful and traumatic memories. If you or someone you know becomes upset while reading this booklet, call the Indian Residential Schools 24-Hour Survivor's Support Line immediately at **1-866-925-4419** (no charge). The crisis line will give you counselling over the phone. And they'll refer you to other emotional support and crisis services.

You can also call the First Nations Health Authority at **1-877-477-0775** (no charge) for mental health support services.

The Indian Residential Schools Settlement Agreement

A number of Indian residential school survivors took the Government of Canada and the churches that ran the schools to court. The Assembly of First Nations and Inuit organizations supported the survivors. The survivors' court cases ultimately led to the Indian Residential Schools Settlement Agreement.

The settlement agreement is an effort to address the damage that Indian residential schools caused. Under the settlement agreement, the Common Experience Payment and the Independent Assessment Process give **compensation** (payment) to survivors. It also called for the establishment of the Truth and Reconciliation Commission of Canada.

The settlement agreement has five parts:

- the Common Experience Payment ([page 4](#)),
- the Independent Assessment Process ([page 8](#)),
- the Truth and Reconciliation Commission ([page 14](#)),
- Commemoration ([page 16](#)), and
- Healing ([page 16](#)).

The Indian Residential Schools Settlement — Official Court website has a copy of the settlement agreement at www.residentialschoolsettlement.ca/settlement.html.

Who's covered by the settlement agreement?

If you're an Indian residential school survivor and you didn't opt out of the class action by **August 19, 2007**, you're covered by the settlement agreement.

But the settlement agreement only applies to students who lived at an eligible school. The settlement agreement does *not* apply to:

- day school students unless they were abused on residential school property, or
- students who were boarded out.

You can see a list of eligible Indian residential schools on the Indian Residential Schools Settlement — Official Court website at www.residentialschoolsettlement.ca/schools.html.

What are my options under the settlement agreement?

All students who lived at an eligible Indian residential school could apply for compensation under the Common Experience Payment ([page 4](#)).

If you were sexually abused or seriously physically abused at an eligible school (and/or if you were the victim of other wrongful acts), you could also apply to the Independent Assessment Process ([page 8](#)).

What if I wasn't an Indian residential school student, but was assaulted or abused at an Indian residential school?

If you didn't live at the Indian residential school, but an adult assaulted or abused you on the school property, you could apply for compensation through the Independent Assessment Process ([page 8](#)) if:

- you were under the age of 21 at the time of the assault;
- an adult employee gave you permission to be on the school property so that you could take part in school activities;
- the **perpetrator** (the person who assaulted you) was:
 - a school employee of the government or church; or
 - if the perpetrator wasn't an employee, they were allowed to be on the school property; and
- the assault was a result of, or was connected to, the operation of the school.

What if I opted out of the settlement agreement?

If you opted out of the settlement agreement but you still want to take legal action against the person or people who assaulted or abused you at an Indian residential school, you have a couple of options:

- civil justice ([page 17](#)), or
- criminal justice ([page 18](#)).

You may also be able to get financial help through the Crime Victim Assistance Program ([page 18](#)).

Talk to a lawyer as soon as possible to find out what's best for you. See [page 24](#) for information on how to get a lawyer.

Talking about what happened to you in Indian residential school can be difficult. You may want to bring a support worker with you when you talk to your lawyer.

You may also find it helpful to get counselling to help you cope with the issues that come up as you deal with your Indian residential school claim. You can call the First Nations Health Authority at **1-877-477-0775** (no charge) for mental health support services. If you have difficulty with your hearing or speech, call **1-800-267-1245** (TTY, no charge).

Who can help? on [pages 20 – 25](#) also has a list of support services, including Aboriginal support services.

Common Experience Payment

The deadline to apply for the Common Experience Payment has passed. If you attended an eligible Indian residential school (including the Mistassini hostels), you may still have options. Talk to a lawyer to find out what your options are. You can find a lawyer through the settlement agreement list at www.residentialschoolsettlement.ca/lawyers.html. Or through the Lawyer Referral Service at cbabc.org/Advocacy/Initiatives/Lawyer-Referral-Service. Or call the Indian Residential School Survivor's Society at **1-800-721-0066** (no charge).

The Common Experience Payment (sometimes called the CEP) is a payment for anyone who lived at one or more eligible Indian residential schools. This payment is meant to recognize what it was like to live at an Indian residential school. And it's meant to compensate survivors for their experiences.

The compensation is meant to address the common experiences of all Indian residential school survivors, including:

- loss of language and culture,
- being strapped,
- being called names,
- being served bad food, and
- other poor treatment.

The Common Experience Payment was:

- \$10,000 for the first school year you lived at an Indian residential school, and
- \$3,000 for each additional school year.

If you get a Common Experience payment, you won't have to pay taxes on your payment. As well, the following payments won't be affected:

- your **social assistance** (welfare),
- disability benefits,
- Canada Pension Plan (sometimes called **CPP**),
- Old Age Security (sometimes called **OAS**),
- Employment Insurance (sometimes called **EI**), and/or
- GST credit.

But if you owe child or spousal support payments, they may be taken out of your Common Experience Payment.

You were still eligible for the Common Experience Payment even if you didn't live at the Indian residential school for the full school year.

How do I apply for the Common Experience Payment?

The deadline to apply for the Common Experience Payment has passed. But you may still have options (see previous page).

If you applied for the Common Experience Payment but were turned down for compensation, you can apply for reconsideration (below).

For more information about the Common Experience Payment, call **1-866-565-4526** (no charge). If you have difficulty with your hearing or speech, call **1-800-926-9105** (TTY, no charge). Or visit Service Canada's website at www.servicecanada.gc.ca/eng/goc/cep/index.shtml.

The list of eligible Indian residential schools is on the Indian Residential Schools Settlement — Official Court website at www.residentialschoolsettlement.ca/schools.html. It was also on the back of the Common Experience Payment (CEP) application form.

Can I apply on someone else's behalf?

You need to fill out the Common Experience Payment Application for Personal Representative or Estate form if you're acting legally on behalf of an Indian residential school survivor who's:

- a minor,
- mentally incompetent, or
- deceased.

For more information, call **1-866-699-1742** (no charge). If you have trouble with your hearing or speech, call **1-800-926-9105** (TTY, no charge). Or visit Service Canada's website at www.servicecanada.gc.ca/eng/goc/cep/forms.shtml.

Indian residential school survivors 65 or older

If you're an Indian residential school survivor and you were 65 or older as of **December 31, 2006**, you were entitled to an early initial payment of \$8,000. If you've received this payment, you still need to apply for the **balance** (any remaining amount) of your Common Experience Payment.

If your Common Experience Payment claim is denied

Applying for reconsideration

If the government **denies** (turns down) your Common Experience Payment claim, it will send you a letter that tells you why. If you don't agree with those reasons, you can ask the government to **reconsider** its decision. This means that you can resubmit your application, usually with more information about your time at the Indian residential school or schools.

If you apply for reconsideration, it's very important to get legal help (page 24).

When you apply for reconsideration, try to include information that you think will address the reasons the government gave you when it denied your application.

For example, you may want to give more information that can help the government confirm that you lived at the school or schools listed on your application. This information could include:

- photographs;
- documents that show you went to the school, such as school records;
- an **affidavit** (see below) from:
 - other students,
 - school employees,
 - Aboriginal leaders, or
 - other people who know about your time at the school; and/or
- your own affidavit that confirms you lived at the school. Your affidavit can refer to documents that prove you attended the school, such as school records. You can also describe events that occurred at the school or in the surrounding community while you lived at the school. For example:
 - renovations to the school,
 - buildings that were built or demolished in the area,
 - major weather events such as a flood or storm, etc.

An affidavit is a document that contains facts that you swear under oath or confirm to be true. A lawyer, notary public, or commissioner of oaths must witness your signature or sign your affidavit.

If you don't apply for reconsideration, you won't be able to appeal the government's decision any further.

For more information, go to the Aboriginal Affairs and Northern Development Canada website at www.aadnc-aandc.gc.ca/eng/1100100015619/1100100015620.

Appealing to the National Administration Committee

If the government denies your application for reconsideration, you can **appeal** the decision to the National Administration Committee (sometimes called the NAC). This means that you can ask the government to change its decision.

When the government denies your application for reconsideration, it will send you a letter that tells you how to appeal the decision. The government will also send you an appeal application form.

When you apply to have your decision appealed, you need to give the National Administration Committee more information. Include information that you think may help to prove that you lived in an Indian residential school at the times you've put in your application.

Personal credits

If you got a Common Experience Payment, you're eligible for **personal credits** of up to \$3000. Personal credits have no cash value. Instead, you can **redeem** them (cash them in) for a variety of educational purposes.

You can use personal credits for courses at approved universities, colleges, or trade schools. They can also be used for approved programs or workshops related to Aboriginal history, cultures, or languages. They can be for learning online or in person.

You can use personal credits for your personal education. Or you can combine them with other people's credits for group education. You may also be able to transfer some of your credits to certain family members.

How do I use my personal credits?

You must submit your Personal Credits Acknowledgement Form. This form was sent to anyone who got a Common Experience Payment.

Once your Personal Credits Acknowledgement Form is processed, you will get a Personal Credits Redemption Form. You must submit this form to the school or group providing the course you're taking.

You must submit your Personal Credits Acknowledgement Form by March 7, 2015. Your Personal Credits Redemption Form must be post marked no later than June 7, 2015.

Get more information

For more information, to request a form, or for help with filling out your forms, call **1-866-343-1858** (no charge). Or, if you're hard of hearing, call **1-877-627-7027** (no charge, TTY). Or see the Indian Residential Schools Settlement — Official Court Website at www.classactionservices.ca/irs/Personal_Credits/PCA-Home.htm.

Independent Assessment Process

The deadline to apply to the Independent Assessment Process has passed. If you were sexually abused or seriously physically abused at an eligible Indian residential school (including the Mistassini hostels), you may still have options. Talk to a lawyer to find out what your options are. You can find a lawyer through the settlement agreement list at www.residentialschoolsettlement.ca/lawyers.html. Or through the Lawyer Referral Service at cbabc.org/Advocacy/Initiatives/Lawyer-Referral-Service. Or call the Indian Residential School Survivor's Society at **1-800-721-0066** (no charge).

You can apply to the Independent Assessment Process (sometimes called the IAP) if during your time at an eligible Indian residential school:

- you were sexually abused or seriously physically abused by:
 - priests and/or nuns,
 - staff members, and/or
 - other students, and/or
- you've suffered serious psychological harm as a result of **other wrongful acts** (or OWA) committed by adult employees of the government or church. Other wrongful acts include actions such as repeatedly singling you out for bullying or excessive or damaging physical abuse.

If your application to the Independent Assessment Process is successful, you'll get a payment in addition to the Common Experience Payment.

How do I apply to the Independent Assessment Process?

The deadline to apply to the Independent Assessment Process has passed. But you may still have options (see above). You could apply for compensation through the Independent Assessment Process if:

- you were a student at the school when the abuse happened;
- you weren't a student but you were under 21 and you were invited to the school for an authorized school activity when the abuse happened;
- you experienced any of the kinds of abuse listed in Schedule D of the settlement agreement ([page 23](#));
- you hadn't already received settlement money for your abuse claims; and
- your abuse claim wasn't already dismissed at a trial.

For more information, call the Independent Assessment Process Information Line at **1-877-635-2648** (no charge). Or contact a lawyer ([page 24](#)). Or go to the Independent Assessment Process website at www.iap-pei.ca.

Applying to the Independent Assessment Process is complex. It's a good idea to get legal help (below). If you've started a claim on your own (you're **self-represented**), you can still hire a lawyer to help you.

How do I apply to the Independent Assessment Process on behalf of someone who's deceased?

You could apply to the Independent Assessment Process on behalf of a deceased Indian residential school survivor if they:

- lived at an eligible school prior to **December 31, 1997**,
- were alive on **May 30, 2005**, and
- didn't opt out of the settlement agreement.

Claims on behalf of someone who's deceased can be very difficult. It's important to get legal help (below).

Get legal help

Applying to the Independent Assessment Process is complex and can be difficult. Getting a lawyer to help you with your claim is highly recommended ([page 24](#)).

The Government of Canada will pay any reasonable expenses your lawyer takes on when they handle your claim. If your claim is successful, the government will pay for your legal fees (up to 15 percent of your compensation amount).

But some lawyers may charge you fees that are *in addition* to the 15 percent paid for by the government. These additional charges will come out of the compensation you get. Before you hire a lawyer, ask what percentage they charge, and what fees (if any) they'll charge if you don't get a payment.

If you feel that your lawyer's fees aren't reasonable, you can have a fee review done through the Independent Assessment Process. Ask your claim's adjudicator to conduct a **legal fee review**.

How does the Independent Assessment Process work?

Once you've submitted your Independent Assessment Process application, the Indian Residential Schools Adjudication Secretariat (sometimes called the IRSAS) will review your application. They'll decide if your claim is eligible for the Independent Assessment Process.

If your application is eligible, it will be given a priority based on your health and age. Depending on how complex your case is, it will be assigned to the **standard track** (below) or **complex track** (next page). Once all the necessary documents are collected, your case will then go to a hearing.

The government may approach you about settling your case without going to a hearing. If this happens, talk to your lawyer about what's best for you.

The Independent Assessment Process is **non-adversarial**. This means that everyone involved participates in a spirit of cooperation. You'll all work together to reach a resolution that works for everyone.

The **adjudicator** will ask you questions to establish the facts of your story. (The adjudicator is the person who oversees your hearing and makes the decision about your case. Schedule D of the Settlement Agreement sets out their responsibilities.) The hearing is *not* held in a courtroom.

During the hearing, you won't have to come face-to-face with the person who abused you.

Once you've gone through the hearing process and proven your claims, the adjudicator will decide how much compensation you'll get. The compensation is based on a number of factors. The amount ranges from \$5,000 to \$275,000.

For more information, call the Independent Assessment Process Information Line at 1-877-635-2648 (no charge). Or contact a lawyer (page 24). Or go to the Independent Assessment Process website at www.iap-pei.ca. For more information on compensation, go to www.iap-pei.ca/former-ancien/how-comment-eng.php.

If you and other survivors have come together to support each other, your group can take part in a **Group Independent Assessment Process** (next page).

Standard track

Most Independent Assessment Process claims are heard under the standard track. The standard track uses an **inquisitorial model**. This means that the adjudicator will work with you to establish the facts of your case.

The **standard of proof** for standard track claims is a **balance of probabilities**. This means that, for your claim to succeed, you must prove to the adjudicator:

- the abuse is more likely to have happened than not,
- you were harmed by the abuse, and
- the harm you experienced is likely linked to the proven abuse.

Complex track

The complex track also uses an inquisitorial model. The complex track is used if:

- You have an other wrongful act claim.
- You ask for an assessment of compensation for **proven actual income losses** resulting from the abuse you experienced. This means that, if you haven't been able to work or have had a lot of difficulty working steadily because of how the abuse affected you, you can ask to be compensated for the income you've lost.

The standard of proof for the complex track is also a balance of probabilities. You must prove that the proven abuse caused:

- the harm you experienced,
- opportunity losses, and/or
- actual income losses.

This is a stricter test than the test used in standard track cases.

If you have a complex track case, it's very important to get help from a lawyer (page 24).

Court process

Some claims may be too complex to be addressed by the Independent Assessment Process. You can ask to have your case heard through a court process instead if:

- your actual income loss or loss of opportunity is more than the maximum amount set by the Independent Assessment Process,
- you suffered catastrophic physical harm, or
- your other wrongful act claim has extensive and complex evidence.

The Chief Adjudicator will decide whether your case should be heard in a court. Talk to your lawyer about what's best for you.

Group Independent Assessment Process

Indian residential school survivors who have come together to support each other can go through the process as a group through the Group Independent Assessment Process.

To do so, each group member must apply individually to the Independent Assessment Process. Once the group members' applications are admitted, the group must submit a **Resolution Plan** to continue through the process as a group. A Resolution Plan must include:

- the group members' names,
- a statement that explains how the group makes its decisions,
- details about the kinds of support activities the group wants to take part in, and
- a budget that outlines how much the support activities will cost.

Each group needs to choose a representative to manage the Group Independent Assessment Process initiative. Ask your lawyer for more details on how to designate a representative.

Funding of up to \$3,500 per group member is available to manage group initiatives. The group can use the funding to help pay for:

- support activities,
- accommodations,
- meals,
- transportation costs, and
- administrative wages.

If you don't agree with the adjudicator's decision — Requesting a review

If you don't agree with the adjudicator's decision, you may be able to ask for a review. You can ask for a review if:

- The adjudicator's decision is based on a misunderstanding of your evidence. In this case, the review would be done by a second adjudicator.
- The adjudicator's decision doesn't follow the rules of the Independent Assessment Process. For example, the adjudicator may have a clear understanding of your evidence, but didn't correctly classify the type or severity of the abuse you experienced according to the Independent Assessment Process rules.

If you want to request a review, you or your lawyer must write to the Chief Adjudicator's office *within 30 days* of receiving your decision. Include a written statement that outlines why you object to the decision. This statement must be *1500 words or less* (unless the Chief Adjudicator has told you otherwise). Send your request to:

Chief Adjudicator
Indian Residential Schools Adjudication Secretariat
100 – 1975 Scarth Street
Regina, SK S4P 2H1

Once the Chief Adjudicator's office gets your request, they'll send a copy to the Government of Canada and any church that participated in your hearing. The government and the church will have 30 days to respond. You'll get a copy of their response.

If you want to make another submission after you've seen the government and/or church's response, you'll have to ask the Chief Adjudicator. Once the Chief Adjudicator has all of the submissions, the reviewing adjudicator will usually make a decision within 30 days. If you're going to get compensation as a result of your application for review, you won't receive any until the review is complete.

For more information, see the Independent Assessment Process website at www.iap-pe.ca/information/fact-sheet/decision-reviews-eng.php.

If you're named as a person of interest in another survivor's claim

You may get a notice that you've been named as a **person of interest** (sometimes called a **POI**) in another Indian residential school survivor's claim. This means that the **claimant** believes that you witnessed the events they experienced. Or that they believe that you participated in abusing them. (The claimant is the person who filed the Independent Assessment Process claim.)

If you're named a person of interest:

- You have the right to get legal advice ([page 24](#)). This may help you to decide on how you want to proceed.
- You can choose to not participate in the Independent Assessment Process. In this case, you won't have to make a statement.
- You can't attend the claimant's hearing.
- You can get resources, support, or counselling through the Indian Residential School Survivor's Society ([page 20](#)).
- You'll be given the option of whether you want to be contacted again as a person of interest in another Independent Assessment Process claim.

Depending on your role in the claimant's abuse, you may be charged with a crime. If you're charged with a crime, **get legal help right away**. Contact Legal Aid immediately to find out if you qualify for a free lawyer ([page 24](#)). Any criminal charges against you will be part of a legal process separate from the Independent Assessment Process.

A Native courtworker can also support you throughout the legal process ([page 20](#)).

Truth and Reconciliation Commission

In addition to compensating Indian residential school survivors for their experiences, the Indian Residential Schools Settlement Agreement called for the creation of the Truth and Reconciliation Commission of Canada (often called the TRC).

The TRC works on finding out the truth about what happened in Indian residential schools. It shares this knowledge with all Canadians so that they can better understand what Indian residential school survivors went through. By doing so, the TRC hopes to guide a process of healing and **reconciliation** (coming to a peaceful resolution).

The TRC must:

- hold community national events,
- create a national research centre,
- publish at least one report,
- collect survivors' statements, and
- educate the public.

For more information, see the TRC's website at www.trc.ca. Or see Schedule N of the settlement agreement ([page 24](#)).

Statement gathering

The TRC was included in the settlement agreement to give Indian residential school survivors a voice. And to acknowledge the tragic events of their past. The TRC hopes that by giving survivors a chance to tell their stories, they can begin to heal from their traumatic experiences at Indian residential schools.

The TRC gathers information from Indian residential school survivors and their children. They also gather information from former Indian residential school employees and religious leaders. By including all participants, the TRC feels that it can create a complete and balanced history of Indian residential schools. This history will be entered into a public historical record.

The TRC gathers this information at:

- conferences,
- healing sessions,
- themed events,
- talking circles, and
- through one-on-one interviews.

These events are accompanied by Aboriginal art and dance.

Participation in these events is voluntary. You can choose whether and how you want to share your story.

The TRC is creating a national research centre, where all the statements and documents it gathers will be preserved. This information will be available to anyone who wants to learn more about the Indian residential school legacy.

The TRC held its first national event in Winnipeg in June 2010. National events have since taken place in Inuvik, Halifax, Saskatoon, Montréal, and Vancouver. There was an event in Edmonton in **March 2014**. The TRC uses these events to hear from as many survivors as it possibly can.

If you're interested in learning more about these events, go to the TRC's website at www.trc.ca. (On the left-hand navigation menu, click National Events.)

If you want to share your story

It's your choice whether you share your story with the TRC. If you want to tell your story and share how Indian residential schools have affected you and your family, you can write your story down in the language of your choice. The TRC also gives survivors opportunities to tell their stories through:

- art,
- creative writing,
- music,
- theatre, or
- out loud in a one-on-one interview or in a group at a community event.

For more information, go to the TRC's website:

- To learn about how to give a statement (out loud in a one-on-one interview or in writing), go to www.trc.ca/websites/trcinstitution/index.php?p=102.
- To learn about how to share your story out loud at a community event, go to www.trc.ca/websites/trcinstitution/index.php?p=103.
- To learn about how to submit your art, creative writing, music, or theatrical piece, go to www.trc.ca/websites/trcinstitution/index.php?p=194.

Commemoration and Healing

Commemoration

This part of the settlement agreement is about honouring, remembering, and paying tribute to Indian residential school survivors, their families, and communities. Commemoration can include:

- building a memorial or a commemorative structure,
- improving an existing memorial or commemorative structure, and/or
- ceremonies or other projects.

These initiatives can take place locally or nationally.

Indian residential school survivors, their families, communities, and groups and organizations acting on behalf of survivors can submit proposals for commemorative projects. The Truth and Reconciliation Commission will evaluate the proposals and make recommendations to Aboriginal Affairs and Northern Development Canada.

For more information, see Schedule J of the settlement agreement ([page 22](#)).

Healing

Under this part of the settlement agreement, the Government of Canada gave the Aboriginal Healing Foundation additional funding. The foundation allocated the funding to a number of Aboriginal organizations that provide healing, treatment, or recovery to Indian residential school survivors and their families.

The government also funded mental health and emotional support services for survivors and their families, as well as government programs through Health Canada.

In BC, the Inter Tribal Health Authority and Tsow Tun Le Lum Society have funding until **March 2014**. For more information on these programs and how they can help you, see [pages 20 – 22](#).

Other options — If you opted out of the settlement agreement

If you opted out of the settlement agreement before the deadline on **August 20, 2007**, you have several options if you still want to seek justice for your experiences in Indian residential school:

- civil justice (below),
- criminal justice (next page), and
- the Crime Victim Assistance Program (next page).

Civil justice

The people who ran the Indian residential schools were legally responsible for making sure that their students were reasonably well cared for. And for making sure they weren't neglected or abused. This is called **duty of care**.

If you were physically, emotionally, or sexually abused in an Indian residential school, you may be able to **sue** (have your case heard in the civil justice system):

- the person or people who abused you,
- the church that ran the school, and
- the Government of Canada.

You may be able to get compensation (usually money) from the person or people who abused you, if you're able to prove:

- they're responsible for the abuse, and
- the harm that resulted from the abuse.

There's no time limit on when you can begin the court process if you were a minor (under 19) and you were:

- sexually assaulted,
- physically assaulted, and/or
- the victim of **sexual misconduct**. (Sexual misconduct is when someone in a position of authority enters into a sexual relationship with someone under 19.)

Talk to a lawyer right away to find out what your options are (see "Getting legal help" below).

Getting legal help

Indian residential school abuse claims fall under the general area of law called **personal injury**. There are many lawyers who practice personal injury law. They may be willing to take on your case on a **contingency fee basis**. This means that you won't have to pay the lawyer unless and until you get money in a settlement. The money you get in a settlement can be either by agreement or court order.

Some law firms specialize in Indian residential school abuse claims. For the names of these firms, contact the Lawyer Referral Service ([page 24](#)).

Criminal justice

If you've been physically or sexually assaulted, you can file a criminal complaint with the police. If there's enough evidence, the **attorney general** will prosecute the **offender** in criminal court. (The attorney general is the main legal advisor to the government. The offender is the person who committed the crime.)

Criminal court gives victims the chance to tell their story. The offender may be sent to jail as a result of the trial. Sending an offender to jail is a form of punishment for the offence. And it's a way of making sure that they can't hurt anyone else.

The criminal justice system is **adversarial**. This means that your lawyer and the offender's lawyer will both be trying to prove that the other side is wrong. You'll likely be **cross-examined** by the offender's lawyer. This means that they'll ask you questions in court to try to show that your story isn't true.

The standard of proof is very high in criminal court. Your lawyer must prove to the court **beyond a reasonable doubt** that the offender is guilty. This means that if the court has doubts about your side of the story, the offender won't be found guilty.

If the offender is found guilty, they'll be **sentenced** (punished) for their crime. Unlike a civil justice case, you won't get any compensation.

Depending on the type of assault you experienced, there may be time limits on when you can take legal action against the person who assaulted you. There are no time limits on sexual offences. Talk to a lawyer right away to find out what your options are (page 24).

Crime Victim Assistance Program

The Crime Victim Assistance Program compensates victims of violent or personal crimes that occurred in BC. The program offers financial assistance to help victims, their families, and witnesses with some of the costs and services that are part of recovering from a crime.

Some of the benefits offered by the program include:

- medical, dental, and prescription drugs;
- counselling;
- protective measures;
- replacement eyeglasses, clothing, and/or disability aids;
- income support for **lost earning capacity** (income losses that have resulted from the problems you've experienced as a result of the crime); and/or
- funeral expenses.

These and other benefits are available to you even if the person who hurt you isn't charged with a crime and your case doesn't go through the criminal justice system.

In order to be eligible for the program, your case must meet the following criteria:

- The crime must have taken place in BC after **July 1, 1972**.

If the crime took place outside of BC, contact victim services in the area the crime took place to see what benefits and services are available to you.

- In most cases, you must submit your application **within one year** of when the crime took place. However, there are exceptions to this rule (below).
- If the crime was a sexual assault or sexual misconduct against you when you were under 19, there's no time limit on when you can apply.

Late applications may be allowed for exceptional circumstances. An adjudicator will look at the evidence and make a decision about your application.

If you get benefits through the Crime Victim Assistance Program, you can still take your case through the civil justice system. But if you get any compensation as a result of the civil case, you would have to use it to pay back any compensation you got through the Crime Victim Assistance Program.

For more information, visit the Ministry of Justice website at www.pssg.gov.bc.ca/victimservices/financial/index.htm.

How to apply to the Crime Victim Assistance Program

Victims of a crime, their family members, and witnesses to a crime can apply for benefits through the Crime Victim Assistance Program.

To apply, you need to fill out a Crime Victim Assistance Program Victim Application form. The form is available on the Ministry of Justice website at www.pssg.gov.bc.ca/victimservices/publications/docs/cvap-victim-application.pdf.

If you have any questions, call the Crime Victim Assistance Program at **604-660-3888** (Greater Vancouver) or **1-866-660-3888** (no charge outside Greater Vancouver). Or you can email cvap@gov.bc.ca.

Who can help? Resources and information

Community Resources

Native Courtworker and Counselling Association of BC

The Native Courtworker and Counselling Association of BC (NCCABC) provides culturally appropriate services to Aboriginal people and their communities. Native courtworkers help to make sure that Aboriginal people involved in the criminal justice system have access to justice. The association helps connect Aboriginal clients to counselling and gives referrals to abuse and detox support services.

Website: www.nccabc.ca

Healing and support

First Nations Health Authority

The health authority can connect you with mental health services.

Phone: 1-877-477-0775 (call no charge)

Indian Residential School Survivor's Society

The society supports Indian residential school survivors. It has support workers to whom you can talk to find out what your options are for healing and justice.

Survivor support workers are trained crisis counsellors who understand about Indian residential school experiences. They can listen when you need to talk. They can also refer you to other services, including traditional healers, for long-term help. Support workers can also support you during your hearing or court process.

Phone: Greater Vancouver: 604-985-4464 or 1-800-721-0066 (call no charge)

Kamloops: 250-376-1252 or 1-877-778-5356 (call no charge)

Terrace: 250-635-4499 or 1-877-335-4499 (call no charge)

Williams Lake: 250-392-4466 or 1-877-563-4472 (call no charge)

For emotional assistance: 1-800-925-4419 (call no charge, 24 hours a day)

Website: www.irsss.ca

Indian Residential Schools Resolution Health Support Program

This program provides mental health and emotional support services to Indian residential school survivors and their families before, during, and after settlement agreement processes. These services are available to all survivors who attended an eligible residential school and to their families.

Phone: 1-877-477-0775 (call no charge, 24 hours a day)

Website: www.hc-sc.gc.ca/fniah-spnia/services/indiresident/irs-pi-eng.php

Inter Tribal Health Authority

The Inter Tribal Health Authority provides wellness and mental health services to Indian residential school survivors.

Phone: 250-753-3990 (in Nanaimo)

1-877-777-4842 (call no charge outside Nanaimo)

Website: www.itha.ca/insidepages/programs_services/wellness_mental_health.html

The programs offered through the Inter Tribal Health Authority's First Nations House of Healing end as of October 30, 2013.

Surviving the past — Options for dealing with abuse

This website has basic information about legal options for people who suffered abuse in Indian residential schools.

Website: www.survivingthepast.ca/aboriginal.html

Tsow-Tun Le Lum Society

Tsow-Tun Le Lum Society has programs that address addictions and substance abuse, and support the survivors of trauma and Indian residential schools.

Phone: 250-390-3123 (Nanaimo)

Website: www.tsowtunlelum.org

Website (Qul-aun Survivors of Trauma Treatment program):
www.tsowtunlelum.org/index.php?p=1_4_Qul-aun-Program

The Qul-aun program ends in March 2014.

VictimLink

VictimLink provides free and confidential counselling, referrals, and information. VictimLink provides service in over 110 languages, including 17 Aboriginal languages.

Phone: 1-800-563-0808 (call no charge 24 hours a day)

604-875-0885 (TTY)

Text: 604-836-6381

Email: VictimLinkBC@bc211.ca

Website: www.victimlinkbc.ca

Victims Info

An online resource for victims and witnesses of crime in BC.

Website: www.victimsinfo.ca

Indian Residential Schools Settlement — Information and resources

The Aboriginal Healing Foundation

This website has:

- links to the Aboriginal Healing Foundation's funded projects,
- publications, and
- Frequently Asked Questions (FAQ) about healing programs.

Website: www.ahf.ca

Assembly of First Nations

In addition to other information, the Assembly of First Nations' website has information about Indian residential schools.

Website: www.afn.ca/index.php/en/policy-areas/indian-residential-schools

Commemoration Policy

Schedule J of the settlement agreement has information about the commemoration policy.

Website: www.residentialschoolsettlement.ca/Schedule_J-CommemorationPolicyDirective.PDF

Aboriginal Affairs and Northern Development Canada

The Aboriginal Affairs and Northern Development Canada website has information on:

- the settlement agreement (fact sheet),
- Common Experience Payment reconsideration,
- Common Experience Payments,
- the Independent Assessment Process,
- commemoration,
- health and healing,
- the Truth and Reconciliation Commission,
- the Advocacy Public Information Program,
- Indian residential schools — Key milestones,
- Remembering the Past: A Window to the Future,
- the statement of apology, and
- statistics on the implementation of the settlement agreement.

Phone: 1-866-879-4913 (call no charge)

Website: www.aadnc-aandc.gc.ca/eng/1100100015576/1100100015577

Indian Residential Schools — The Independent Assessment Process

This website has information on all aspects of the Independent Assessment Process.

Website: www.iap-pei.ca

Schedule D

Schedule D of the settlement agreement is the Independent Assessment Process model and sets out the rules that adjudicators must follow.

Website: www.residentialschoolsettlement.ca/Schedule_D-IAP.PDF

Indian Residential Schools Class Action Settlement — Official Court website

This website has:

- links to court notices,
- the settlement agreement and all its schedules,
- the list of eligible Indian residential schools,
- the list of lawyers who specialize in Indian residential school claims, and
- updates on the residential schools settlement.

Website: www.residentialschoolsettlement.ca

Service Canada — Common Experience Payment

This website has:

- information on the Common Experience Payment, and
- application deadline information.

Phone: 1-866-699-1742 (call no charge) or 1-800-926-9105 (TTY)

Website: www.servicecanada.gc.ca/eng/goc/cep/index.shtml

Truth and Reconciliation Commission of Canada

This website has information on the Truth and Reconciliation Commission and its mandate.

Website: www.trc.ca

Schedule N

Schedule N of the settlement agreement also has information about the Truth and Reconciliation Commission.

Website: www.residentialschoolsettlement.ca/SCHEDULE_N.pdf

Legal help

Lawyer Referral Service

The Lawyer Referral Service will give you the name and phone number of a local lawyer who practises the area of law that applies to your case. Some lawyers specialize in Indian residential school cases. You'll have to phone the lawyer to set up an appointment. You can meet with the lawyer for half an hour to see whether you have a case. The meeting costs \$25 (plus taxes).

Phone: 604-687-3221 (in Greater Vancouver)

1-800-663-1919 (elsewhere in BC, call no charge)

Website: cbabc.org/For-the-Public/Lawyer-Referral-Service

Legal Services Society (Legal Aid)

The Legal Services Society provides legal aid in BC. Legal aid includes a range of services, including information, advice, and **representation** (a lawyer to take your case).

If you've been charged with a crime, contact Legal Aid immediately to find out if you qualify for a free lawyer.

Phone: 604-408-2172 (Greater Vancouver)

1-866-577-2525 (call no charge, elsewhere in BC)

Website: www.legalaid.bc.ca

Website (Aboriginal): aboriginal.legalaid.bc.ca

Legal Services Society (Legal Aid) — Aboriginal community legal workers

Aboriginal community legal workers are legal aid staff who can give you legal information and limited advice on Indian residential school issues.

Aboriginal community legal workers can also:

- help you with other issues such as family law, child protection, housing, and wills and estates;
- help you fill out forms and prepare letters;
- attend court with you;
- refer you to other services; and
- talk on your behalf to a legal aid lawyer, duty counsel, or your band.

Aboriginal community legal workers are available in Duncan and Nanaimo.

Website: www.legalaid.bc.ca/legal_aid/aboriginalCommunityLegalWorker.php

Duncan

Community Options

Phone: 250-748-1160

1-800-578-8511

(call no charge)

Nanaimo

Justice Access Centre

Phone: 250-741-5529

1-800-578-8511

(call no charge)

Tillicum Haus Health Centre

Phone: 250-753-6578

1-800-578-8511

(call no charge)

Additional information

You or your lawyer or advocate may find the following statutes and regulations and case citation helpful as you go through your settlement agreement process.

Statutes and regulations

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50

Limitation Act, S.B.C. 2012, c. 13

Case citation

Blackwater v. Plint, 2005 SCC 58; [2005] 3 S.C.R.3