

CORPORATION OF CATHOLIC ENTITIES  
PARTY TO THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT

.....  
CORPORATION DES ORGANISMES CATHOLIQUES

SIGNATAIRES DE L'ENTENTE SUR LE RÈGLEMENT DES PENSIONNATS INDIENS

17 October 2011

Honourable JOHN DUNCAN  
Minister  
Aboriginal Affairs and Northern Development  
Executive Offices  
10 Wellington Street,  
GATINEAU, K1A 0H4

cc.: Mr. Michael Warnick  
Deputy Minister  
Aboriginal Affairs and Northern Development

Re: The Indian Residential School Settlement -  
Costs of Implementation and Coordination of by CCEPIRSS (2007-2012)

Honourable Minister Duncan,

Since the conclusion of the IRS Settlement Agreement between Canada and other parties (2006), the Board of Directors of CCEPIRSS has met an average of more than 12 working days per year, not to mention numerous conference calls, in order to discuss ongoing issues and matters related to the implementation of the IRSSA.

A great number of activities had to be dealt with at and between Board meetings. CCEPIRSS employees and representatives have been required to participate very actively at all levels of implementation of the Settlement Agreement. This participation has included meetings and events related to:

- the Truth and Reconciliation Commission.  
This has entailed the two commissioners selection processes, All Parties meetings with TRC Commissioners, national and regional events, National Research Center forums, Archives forums, etc.
- the Government of Canada
- the Assembly of First Nations (AFN) and Inuit groups
- Returning to Spirit (RTS) - a flagship healing program between Natives and non-Natives
- In-Kind initiatives and projects throughout Canada,
- Moving Forward Together (MFT) - the Canada-wide fundraising campaign mandated by the IRSSA.  
This has entailed studies on a national and regional basis, incorporation, recruitment of Directors, hundreds of solicitations, regional committees, etc.

- the National Oversight Committee,
- the National Administration Committee (NAC),  
Preparation, attendance to meetings and ensuing duties.
- the Aboriginal Healing Foundation (AHF)
- Daily operations at and from the national office in Gatineau.

Moreover, after the conclusion of the IRSSA in 2006-7, numerous issues were raised by Canada and other parties, such as the issue of archives and then-Minister Prentice's decision to include the issue of missing children and unmarked graves (*these were not included in the IRSSA*), the planning and participation in local, provincial and national events, all required participation by representatives of the Catholic entities, etc.

### **The Catholic Entities Sub-Agreement (2007-2012)**

During negotiations in 2005 and 2006 between Canada and Catholic Entities representatives, there was a mutual understanding regarding the costs of coordination and implementation by CCEPIRSS of the IRS Settlement Agreement. During meetings in February and March of 2006, Canada took the position with CCEPIRSS representatives that investment interest on annual contributions made by Catholic Entities should cover the operational costs incurred in fulfilling its mandate under the Catholic Sub-Agreement. CCEPIRSS made the point that such investment income may not be sufficient to cover an unexpected level of costs in order to fulfill its obligations.

This matter was resolved by the proposal between Canada and CCEPIRSS that if such circumstances did occur, Canada would review the matter and would authorize the gross amount of Catholic Entities contributions to be subtracted by the amount of costs incurred by CCEPIRSS.

I might point out that, unlike the other Christian denominations party to IRSSA -- the United Church of Canada, the Presbyterian Church in Canada and the Anglican Church of Canada -- the 50+ Catholic entities are not centralized as one legal entity. Each and every Catholic Diocese, along with each and every Catholic religious order of men or women is fully autonomous, one from the other.

This individuality has created its own significant issues, calling for consultation, collaboration, dissemination of information and discussion with each of the Catholic entities. Each Catholic entity on its own has had to participate individually in the Indian Residential School Settlement, and devoting its financial and personnel resources nationally, provincially or locally.

The Settlement Agreement provided that the parties would actively support the agreement and work towards its coming into force and its implementation. The 50 + Catholic Entities have been fulfilling this commitment across the country, with all the

time and cost allocations associated with such undertakings. Much of this was unforeseen by representatives of either CCEPIRSS or the Government of Canada when the Settlement was being negotiated in 2005-6.

Moreover there have been unforeseen costs associated to the processes to be established in order to apply transparency to CCEPIRSS (the umbrella corporation) and its many member Entities. All of the individual entities were and still are represented by legal counsel, who act professionally in advising their clients with respect to the Agreement and the effects of its signing and its implementation since 2006-7.

#### **Actual State of CCEPIRSS Finances and Accrued Costs (2006-2012)**

Based on the operational costs incurred since 2006, we have been informed by our external auditors that CCEPIRSS will not have sufficient funds both to pay for all operational costs and to send more than \$2.5 million to AHF as the last year's contribution. Please note that CCEPIRSS has already forwarded \$12 million to AHF over the past years under the terms of the Agreement.

---

#### **Official Request by CCEPIRSS to CANADA under the IRS Settlement Agreement**

Further to CCEPIRSS last Board of directors meeting, given the above mentioned circumstances, it is my duty as Chair of the Board of Directors of CCEPIRSS and on behalf of all Catholic Entities, under the terms of the Settlement Agreement, to ask the Federal Government as co-signing party to the Sub-Agreement with the Catholic Entities, to authorize the application of the sum of \$2 million to the accrued costs of operating CCEPIRSS, including the year 2011-2012.

We would appreciate to meet with you at your earliest convenience to provide you with more information on the fulfillment of our commitments under the Agreement. We would also willingly share with you the constructive results deriving from the Catholic Entities projects, services and initiatives during years 2007-2011 that are benefitting former students, their families and communities impacted by the legacy of IRS, as well as the up to date results of the Catholic Entities ongoing national campaign Moving Forward Together.

Corporation of the Catholic Entities Party to the Indian Residential School Settlement  
(CCEPIRSS)

By :

(Most Rev) Gerard Pettipas, C.Ss.R.  
Chair of the Board of Directors of CCEPIRSS

Cc CCEPIRSS Directors





Affaires autochtones et  
Développement du Nord Canada

Sous-ministre adjoint

Ottawa, Canada  
K1A 0H4

Aboriginal Affairs  
Northern Development

Assistant Deputy Minister

Most Reverend Gerard Pettipas  
Chair of the Board of Directors  
Corporation of Catholic Entities  
Party to the Indian Residential Schools Settlement  
109 Wright Street  
GATINEAU QC J8X 2G7

Dear Reverend Pettipas:

**Re: The Indian Residential Schools Settlement  
Coordination by the Corporation of Catholic Entities  
Indian Residential Schools Settlement (2007-2012)**

Thank you for your letter to The Honorable John D. ...  
and Northern Development Canada dated October ...  
December 9. The meeting was helpful in clarifying ...  
asked to respond to your request on the Minister's behalf.

We understand your letter to be an official request for ...  
Schedule O-3 to the Indian Residential Schools Settlement ...  
authorize the application of the sum of \$2 million ...  
CCEPIRSS. In the course of the meeting it was indicated ...  
\$1 million than \$2 million. As you explained, this is ...  
administrative costs have exceeded the ...  
funds paid to CCEPIRSS on an annual basis by ...  
financial obligations as per article 3.3 of the ...  
administrative costs of CCEPIRSS to be over \$3 ...  
amounts to approximately \$650,000.00. You provided ...  
amounts paid to the AHF and Returning to Spirit to ...  
the AHF in Year 5 of the implementation of the IRSS.

As part of our due diligence, the CCEPIRSS ...  
documentation are being reviewed by AANDC's finance ...  
that the numbers and breakdown referred to in the ...  
that our finance officers have any questions for you ...  
conduct their review, we trust that we will have ...  
discussions that may be required.

Canada



Affaires autochtones et  
Développement du Nord Canada

Aboriginal Affairs and  
Northern Development Canada

Sous-ministre adjoint

Assistant Deputy Minister

Ottawa, Canada  
K1A 0H4

JAN 25 2012

Most Reverend Gerard Pettipas  
Chair of the Board of Directors  
Corporation of Catholic Entities  
Party to the Indian Residential Schools Settlement  
109 Wright Street  
GATINEAU QC J8X 2G7

Dear Reverend Pettipas:

**Re: The Indian Residential Schools Settlement – Costs of Implementation and Coordination by the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement (2007-2012)**

Thank you for your letter to The Honorable John Duncan, Minister of Aboriginal Affairs and Northern Development Canada dated October 17, 2011, and for meeting with us on December 9. The meeting was helpful in clarifying several points for us. I have been asked to respond to your request on the Minister's behalf.

We understand your letter to be an official request, pursuant to Section 3.12.1 of Schedule O-3 to the Indian Residential Schools Settlement Agreement ("IRSSA"), to authorize the application of the sum of \$2 million to the accrued costs of operating CCEPIRSS. In the course of the meeting it was indicated that the amount was closer to \$1 million than \$2 million. As you explained, this is due to the fact that CCEPIRSS's administrative costs have exceeded the amount of interest on the funds paid to CCEPIRSS on an annual basis by the Catholic entities to fulfill their financial obligations as per article 3.3 of the IRSSA. You estimate the total administrative costs of CCEPIRSS to be over \$3 million whereas the total interest amounts to approximately \$650,000.00. You provided us with a breakdown of the amounts paid to the AHF and Returning to Spirit to date and a proposal for payments to the AHF in Year 5 of the implementation of the IRSSA.

As part of our due diligence, the CCEPIRSS Financial Statements and other documentation are being reviewed by AANDC's finance officers so that we can ensure that the numbers and breakdown referred to in the meeting are accurate. In the event that our finance officers have any questions for your accountant, M. Nolet, while they conduct their review, we trust that we will have your cooperation in facilitating any discussions that may be required.

Canada



Canada must also be satisfied that the costs associated with your request are aligned with the spirit and intent of the Settlement Agreement. For example, in your letter to Minister Duncan and in our meeting, you laid out several reasons for the insufficiency of interest to fulfill financial obligations per the Agreement. They include the number and types of activities requiring participation of CCEPIRSS employees and representatives, the consultation, collaboration, discussion and dissemination of information required between the separate Catholic Entities, and the costs associated with establishing transparency between CCEPIRSS and its member entities. Included in these activities are the costs of legal representation for the Entities. With respect to the number and types of activities, you have highlighted a number of specific cost items, in particular, the costs associated with the additional selection process for the TRC, All-Parties meetings with TRC Commissioners, national and regional events, National Research forums, NAC and Oversight Committee meetings. Various provisions of the Settlement Agreement (ie articles 3.1, 13.11, 13.14 and section 14 of Schedule N) provide that certain activities are substantive in nature and the costs of certain other activities shall be borne by the Entities. It would appear that CCEPIRSS considers that all of its activities are administrative in nature. However, our initial review of CCEPIRSS's financial statements indicates that some of these expenses would be considered substantive costs to be borne by the Entities rather than as administrative expenses. Once we have completed our financial review we will provide you with a determination of CCEPIRSS's administrative costs that can be accommodated under Section 3.12.1 of Schedule O-3 of the Settlement Agreement.

In addition, we would like to meet with you before March 31, 2012, to discuss strategies to renew and reinvigorate the Moving Forward Together campaign. It is unfortunate that the campaign has encountered difficulty in attracting donations to date but, in our view, there is ample time to consider new approaches and this would be consistent with "best efforts".

We appreciate that, to date, out of the \$16.5 million owing to AHF, \$14 million has been paid. This leaves \$2.5 million outstanding. We understand that Returning to Spirit has received \$2.5 million of the \$4.1 million to be paid towards other projects. This leaves \$1.6 million outstanding. By adding the total amount paid to both organizations to date, a further \$4.1 million has yet to be paid in order to reach the total owed of \$20.6 million.

While AHF is planning to remain open until September 2014, this projection is based on all funds committed to the AHF being honoured. We strongly recommend that CCEPIRSS pay the remaining \$2.5 million to AHF by March 31, 2012 and we would like written confirmation of when this payment will be made.

We will be in touch with you with any questions we may have arising out of the financial documentation you have provided to date. We also look forward to hearing from you regarding a meeting to discuss the future of the fundraising campaign.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Elisabeth Châtillon'.

Élisabeth Châtillon  
Assistant Deputy Minister

cc.: Susan MacGowan, Chief Financial Officer, Aboriginal Affairs and Northern Development Canada  
Steven Hobbs, Director Policy and Regional Affairs, Office of the Honorable John Duncan,  
Minister Aboriginal Affairs and Northern Development Canada



CORPORATION OF CATHOLIC ENTITIES  
PARTY TO THE INDIAN RESIDENTIAL SCHOOLS SETTLEMENT

.....  
CORPORATION DES ORGANISMES CATHOLIQUES

SIGNATAIRES DE L'ENTENTE SUR LE RÈGLEMENT DES PENSIONNATS INDIENS

17 September 2012

Madame Élizabeth Châtillon  
Aboriginal Affairs Portfolio  
90 Sparks Street, 3<sup>rd</sup> Floor  
Ottawa ON K1A 0H4

BY EMAIL

Dear Madame Châtillon,

We acknowledged receipt of your letter dated September 4, 2012.

Unfortunately it does not reflect an appropriate reply to our request for mediation to solve our mutual disagreement on clause 3.12 of the IRS SA and does not address CANADA duty to participate at a mediation process based on IRS SA and which process was imposed by CANADA on the Catholic Entities and CCEPIRSS during the final negotiations leading to the signature of IRS SA in 2006.

We also take note that CANADA acknowledges ~\$1,450,000. as reasonable costs incurred by CCEPIRSS up to September 2012. We still have a dispute related to the application of such amount and with another remaining outstanding amount of costs over \$600,000. which amounts to more than \$2 million.

As to the immediate remaining application of Schedule 0-3, an amount equivalent to the following is being sent today to AHF ( $\$20,655,425.40 - \$2,000,000 \times .80 - \$14,000,000 = \$924,340.32$ ) by our treasurer.

Therefore we are asking CANADA to confirm with diligence that it intends to apply with diligence the mediation clause provided for by the terms of IRS SA related to disputes between CANADA and CCEPIRSS and designate its representative. As already stated in our last correspondence of 21 July 2012, we have informed

CANADA that Mr. Pierre-L. Baribeau is our representative for the mediation process and we would appreciate that CANADA's representative contact our representative without any further delay in order to proceed to solve the remaining issues with the assistance of a mutually agreed professional mediator.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard Pettipas". The signature is fluid and cursive, with a small cross-like mark at the beginning.

Most Rev. Gerard Pettipas, C.Ss.R.  
Chair of the Board of Directors, CCEPIRSS/COCSERPI



Affaires autochtones et  
Développement du Nord Canada

Sous-ministre adjoint

Ottawa, Canada  
K1A 0H4

Aboriginal Affairs and  
Northern Development Canada

Assistant Deputy Minister

JAN 25 2012

Most Reverend Gerard Pettipas  
Chair of the Board of Directors  
Corporation of Catholic Entities  
Party to the Indian Residential Schools Settlement  
109 Wright Street  
GATINEAU QC J8X 2G7

Dear Reverend Pettipas:

**Re: The Indian Residential Schools Settlement – Costs of Implementation and Coordination by the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement (2007-2012)**

Thank you for your letter to The Honorable John Duncan, Minister of Aboriginal Affairs and Northern Development Canada dated October 17, 2011, and for meeting with us on December 9. The meeting was helpful in clarifying several points for us. I have been asked to respond to your request on the Minister's behalf.

We understand your letter to be an official request, pursuant to Section 3.12.1 of Schedule O-3 to the Indian Residential Schools Settlement Agreement ("IRSSA"), to authorize the application of the sum of \$2 million to the accrued costs of operating CCEPIRSS. In the course of the meeting it was indicated that the amount was closer to \$1 million than \$2 million. As you explained, this is due to the fact that CCEPIRSS's administrative costs have exceeded the amount of interest on the funds paid to CCEPIRSS on an annual basis by the Catholic entities to fulfill their financial obligations as per article 3.3 of the IRSSA. You estimate the total administrative costs of CCEPIRSS to be over \$3 million whereas the total interest amounts to approximately \$650,000.00. You provided us with a breakdown of the amounts paid to the AHF and Returning to Spirit to date and a proposal for payments to the AHF in Year 5 of the implementation of the IRSSA.

As part of our due diligence, the CCEPIRSS Financial Statements and other documentation are being reviewed by AANDC's finance officers so that we can ensure that the numbers and breakdown referred to in the meeting are accurate. In the event that our finance officers have any questions for your accountant, M. Nolet, while they conduct their review, we trust that we will have your cooperation in facilitating any discussions that may be required.

Canada



Canada must also be satisfied that the costs associated with your request are aligned with the spirit and intent of the Settlement Agreement. For example, in your letter to Minister Duncan and in our meeting, you laid out several reasons for the insufficiency of interest to fulfill financial obligations per the Agreement. They include the number and types of activities requiring participation of CCEPIRSS employees and representatives, the consultation, collaboration, discussion and dissemination of information required between the separate Catholic Entities, and the costs associated with establishing transparency between CCEPIRSS and its member entities. Included in these activities are the costs of legal representation for the Entities. With respect to the number and types of activities, you have highlighted a number of specific cost items, in particular, the costs associated with the additional selection process for the TRC, All-Parties meetings with TRC Commissioners, national and regional events, National Research forums, NAC and Oversight Committee meetings. Various provisions of the Settlement Agreement (ie articles 3.1, 13.11, 13.14 and section 14 of Schedule N) provide that certain activities are substantive in nature and the costs of certain other activities shall be borne by the Entities. It would appear that CCEPIRSS considers that all of its activities are administrative in nature. However, our initial review of CCEPIRSS's financial statements indicates that some of these expenses would be considered substantive costs to be borne by the Entities rather than as administrative expenses. Once we have completed our financial review we will provide you with a determination of CCEPIRSS's administrative costs that can be accommodated under Section 3.12.1 of Schedule O-3 of the Settlement Agreement.

In addition, we would like to meet with you before March 31, 2012, to discuss strategies to renew and reinvigorate the Moving Forward Together campaign. It is unfortunate that the campaign has encountered difficulty in attracting donations to date but, in our view, there is ample time to consider new approaches and this would be consistent with "best efforts".

We appreciate that, to date, out of the \$16.5 million owing to AHF, \$14 million has been paid. This leaves \$2.5 million outstanding. We understand that Returning to Spirit has received \$2.5 million of the \$4.1 million to be paid towards other projects. This leaves \$1.6 million outstanding. By adding the total amount paid to both organizations to date, a further \$4.1 million has yet to be paid in order to reach the total owed of \$20.6 million.

While AHF is planning to remain open until September 2014, this projection is based on all funds committed to the AHF being honoured. We strongly recommend that CCEPIRSS pay the remaining \$2.5 million to AHF by March 31, 2012 and we would like written confirmation of when this payment will be made.

We will be in touch with you with any questions we may have arising out of the financial documentation you have provided to date. We also look forward to hearing from you regarding a meeting to discuss the future of the fundraising campaign.



Yours truly,

*Élisabeth Châtillon*

Élisabeth Châtillon  
Assistant Deputy Minister

cc.: Susan MacGowan, Chief Financial Officer, Aboriginal Affairs and Northern Development Canada  
Steven Hobbs, Director Policy and Regional Affairs, Office of the Honorable John Duncan,  
Minister Aboriginal Affairs and Northern Development Canada



Affaires indiennes  
et du Nord Canada

Indian and Northern  
Affairs Canada

Sous-ministre adjoint

Assistant Deputy Minister

Ottawa, Canada  
K1A 0H4

*Copied*

RECEIVED

APR 12 2012

MAR 29 2012

Most Reverend Gerard Pettipas  
Chair of the Board of Directors  
Corporation of Catholic Entities Party to the  
Indian Residential Schools Settlement  
109 Wright Street  
GATINEAU, QC J8X 2G7

Dear Reverend Pettipas:

**RE: The Indian Residential Schools Settlement – Costs of Implementation  
and Coordination by the Corporation of Catholic Entities Party to the Indian  
Residential Schools Settlement (2007-2012)**

This is further to my letter of January 25, 2012, responding to your letter of October 17, 2011 to the Honourable John Duncan, Minister of Aboriginal Affairs and Northern Development Canada, in which you request authorization to apply \$2 million to the costs of operating the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement (CCEPIRSS) due to administration costs exceeding accrued interest. We have completed our analysis of the financial information provided by Me Baribeau and M. Nolet, including information they provided in a February 23, 2012 meeting with my staff.

Noted in our analysis are a number of expenses that do not fall under administration costs. Additionally, there are other areas of concern in relation to the loan made to the Moving Forward Together (MTF) fundraising campaign, the amount of interest earned and payment of what is owed to the Aboriginal Healing Foundation (AHF).

Administrative Expenses and the Aboriginal Healing Foundation

We have evaluated administrative expenses and concur with M. Nolet's description of administrative expenses as including board expenses, audit fees, office expenses and salaries.

Expenses related to legal fees or participation in substantive matters under the Indian Residential School Settlement Agreement (IRSSA) are not considered administrative expenses and will not be allowed.

.../2

Canada

In particular, you have included the cost of CCEPIRSS' participation in various initiatives including the appointment of TRC Commissioners, meetings of the National Oversight Committee, the National Administration Committee, the AHF and All Parties to the IRSSA. As per section 14 of Schedule N of the IRSSA, Parties must bear the costs of participation and attendance in TRC events (Annex A). Further, Article 13.14 and 13.11 of the IRSSA indicates that neither the Churches' nor Canada's representatives on the National Oversight Committee and the National Administration Committee will be compensated under the Settlement Agreement (Annex B). We consider this to be a clear indication that the defendants must not draw from funds to the disadvantage of the beneficiaries under the IRSSA. Consequently, we cannot consent to reducing the principal amount owing from CCEPIRSS to the AHF by the cost of participating in these IRSSA implementation activities.

#### Legal Fees

With respect to the \$2,716,494 in CCEPIRSS legal fees (Annex C) - whether they be in the context of court-related proceedings or for implementation activities - we indicated in an October 9, 2009 letter from Luc Dumont, former Director General for IRSSA Dispute Resolution and Operations, to Father L'Heureux, that the payment of \$900,000 for legal fees fulfills the Government of Canada's commitment to contribute towards the legal fees incurred by Catholic entities in the negotiation and certification of the IRSSA (Annex D). The only agreement to pay legal fees was with respect to fees incurred during the negotiations leading up to the IRSSA and prior to signing the IRSSA in May 2006. There is no subsequent agreement between the Government of Canada and the Catholic entities to pay legal fees beyond those already agreed to and fully paid out by Canada. Therefore Canada has no authority to cover any legal costs incurred by the Catholic Entities after they signed the Agreement.

#### Moving Forward Together (MFT) Fund Raising Campaign

We understand that the national fundraising campaign has been a challenging undertaking. However, we expect that the \$1.8 million loan to MFT, made by CCEPIRSS, will be fully repaid or these monies be recovered so that CCEPIRSS will finalize its obligations under the IRSSA to provide \$20,655,425 in cash contributions by September 2012.

Pursuant to Schedule O-3, article 3.4 and Schedule C, article 5 of the IRSSA, the Catholic entities' cash contributions are to be dispersed as follows: a minimum of 80% (\$16,524,339) is to go to the AHF with the remaining 20% (\$4,131,085) going to the AHF or programs under schedule B (Annex E). The obligation to pay the full 80% to the AHF is a priority and we would not agree to any deduction being made from this amount.

#### Interest on CCEPIRSS Funds

Under section 3.12.1 of Schedule O-3 of the IRSSA, CCEPIRSS can request consent from the Government of Canada to use funds from the capital amount held by the Corporation to pay for reasonable administration costs that exceed the interest earned on these funds.

CCEPIRSS' financial statements indicate that from September 2007 to March 2011 the Entities paid \$14,582,956 to the Corporation and that, during this same period, \$6,252 in interest was earned on these payments. Based on information obtained from the Bank of Canada, we have determined that the average interest rate from September 2007 to March 2011 ranged from .50% to 4.43%. Given these low rates of interest it is reasonable that administrative expenses exceeded the amount of interest earned, however, the Bank of Canada interest rate information indicates that CCEPIRSS did have the potential to earn at least \$134,213 in simple interest during that time (Annex F).

In response to the request made in your letter of October 11, 2011, it has been determined that \$1 million is allowable as reasonable administrative costs for the period of September 2007 to March 2011 (Annex G) and that it can be paid out of the capital amount held by the Corporation. This determination is based on CCEPIRSS financial documents, research and analysis completed by our financial unit and legal services as well as information provided during our meeting of December 9, 2011.

We expect that CCEPIRSS will fulfill its obligation to pay the AHF the remaining \$2,524,339 as soon as possible. On our part, we are prepared to forgive one million dollars in administrative expenses.



For the purposes of clarity, the following chart illustrates the results of the Catholic obligation under the IRSSA and Canada's agreement to allow \$1 million for administrative expenses. Once the AHF has received its full payment of \$2,524,339 the remaining amount of \$475,085 can be held by CCEPRISS in case of additional administrative expenses that cannot be covered by interest from April 1, 2011 up to September 2012, should the Corporation choose to request it.

Total amount owing under the IRSSA	Compensation paid prior to SA	Net amount owing	Minimum of 80% to be paid to AHF	Remaining 20% (to AHF or programs under schedule B)
\$29M	\$8,344,575	\$20,655,425	\$16,524,339	\$4,131,085
			Amount Paid to date of 80% to AHF	Amount Paid to date of the remaining 20%
			\$14,000,000	\$2,656,000 to Returning to Spirit
			Amount owing of the 80% to AHF	Amount owing to date for the remaining 20%
			\$2,524,339	\$1,475,085
Total still owing			\$3,999,424	
Amount agreed to for administrative costs from September 2007 to March 31, 2011			\$1,000,000	
Remainder owing - minus amount allowed for administrative costs			\$2,999,424	
Amount to be paid to AHF			\$2,524,339	
Remainder - can be held in case of additional administrative costs that cannot be covered by interest up to September 2012.			\$475,085	

I urge CCEPRISS to fully pay what is owed to the AHF as soon as possible and to inform us once payment is made. Please do not hesitate to contact me if you have questions or require clarification on any of the above.

Sincerely,

Elisabeth Châtillon

Elisabeth Châtillon

Encl.:

Annex A: Schedule N, page 12, article 14

Annex B: Indian Residential School Settlement Agreement, pgs 72-73, article 13.14 and pg 75, article 13.11

Annex C: Legal Fees

Annex D: October 9, 2009 letter from Luc Dumont to Father l'Heureux

Annex E: Indian Residential School Settlement Agreement, Schedule O-3, pg.11, article 3.4 and Schedule C, pg.47, article 5

Annex F: Interest

Annex G: CCEPIRSS Administrative Costs

cc. David McArthur, Chief of Staff, Office of the Minister, Aboriginal Affairs and Northern Development Canada

Michael Wernick, Deputy Minister, Aboriginal Affairs and Northern Development Canada

Susan MacGowan, Chief Financial Officer, Aboriginal Affairs and Northern Development Canada

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2015 SKQB 220**

Date: **2015 07 16**  
Docket: QBG 816 of 2005  
Judicial Centre: Regina

---

BETWEEN:

LARRY PHILIP FONTAINE, *et al.*

PLAINTIFFS

- and -

THE ATTORNEY GENERAL OF CANADA, *et al.*

DEFENDANTS

## Counsel:

James S. Ehmann, Q.C.  
Wayne Schafer

for CCEPIRSS and the Catholic Entities  
for the Attorney General of Canada

---

DECISION  
July 16, 2015

---

GABRIELSON J.

## INTRODUCTION

[1] On June 3, 2015, I heard a Request for Directions [RFD] brought on behalf of the Corporation of Catholic Entities Party to the Indian Residential School Settlement Agreement [CCEPIRSS or Corporation] and a group referred to as the Catholic Entities. For reasons explained below, I will refer to this RFD as "RFD #2". The RFD process is the means by which disputes concerning rights and obligations

created by the Indian Residential Schools Settlement Agreement [IRSSA or Settlement Agreement] are determined.<sup>1</sup> I heard RFD#2 in the capacity of the Saskatchewan Supervising Judge for the purposes of the implementation and administration of the IRSSA.

[2] The parties accept that this court has jurisdiction to hear and decide this RFD. They differ somewhat as to the source of this court's jurisdiction. CCEPIRSS claims that the court's jurisdiction emanates specifically from its powers to enforce a negotiated agreement according to its terms on a summary basis. Canada accepts that this court has jurisdiction to determine this matter, without citing any specific authority.

[3] In its most straightforward aspect, this court's jurisdiction to hear and determine this RFD is derived from the orders approving and implementing the Settlement Agreement, and specifically the approval order dated December 15, 2006 and the implementation order dated March 8, 2007. As long as the issues lend themselves to determination by way of summary procedure (a point on which all parties are in agreement), there is no impediment to having the issues in RFD #2 determined by this court through the Request for Directions process.

[4] The narrow issue on RFD#2 was whether CCEPIRSS and Canada have entered into an enforceable settlement of all issues relating to CCEPIRSS' obligations under the Settlement Agreement. CCEPIRSS asserts that there is such an agreement. Canada claims that there is not.

---

<sup>1</sup> The RFD process was established by the Implementation Orders made by each of the nine courts that approved the IRSSA. The SKQB Implementation Order is dated March 8, 2007. The Implementation Orders are substantially identical. Appended to each is the "Court Administration Protocol", which provides for what it terms "a streamlined process for addressing all matters that require court orders, directions or consideration during the course of the administration (of the Settlement Agreement)".



[5] For the reasons set out below, I conclude that there is an enforceable settlement of all issues between these parties relating to CCEPIRSS' obligations under the Settlement Agreement.

## **BACKGROUND FACTS**

[6] For the most part, the background facts were not in dispute. These facts can be divided into three parts which I list as (a), (b) and (c).

### **(a) The Indian Residential Schools Settlement Agreement**

[7] The various emanations of the Roman Catholic Church in Canada [Catholic Entities] are parties to the Settlement Agreement. The Catholic Entities agreed to assume three kinds of obligations:

- a. *First*, to pay \$29 million in cash [Financial Obligations];
- b. *Second*, to contribute specified in-kind services with a value of \$25 million [In-Kind Obligations]; and
- c. *Third*, to make best efforts through the seven-year period following the day after the coming into force of the Settlement Agreement to raise \$25 million through a Canada-wide fundraising campaign, which came to be known as Moving Forward Together [Fundraising Obligations]. The Settlement Agreement specifically provided that best efforts shall be deemed to have been made where the fundraising campaign demonstrates on a Canada-wide level in each of the seven years an approach and means that is consistent with the approach and means used

by professionally managed national fundraising campaigns, including those operated by universities and hospital foundations.<sup>2</sup>

[8] Because there was no central body with legal personality to represent them, the Catholic Entities established a not-for-profit corporation, namely CCEPIRSS, for the exclusive purpose of implementing and carrying out the Catholic Entities' obligations under the Settlement Agreement.

**(b) RFD #1**

[9] On December 24, 2013, Canada submitted an RFD in respect of matters relating to CCEPIRSS' Financial Obligations under the Settlement Agreement [RFD #1]. In RFD #1, Canada sought directions with respect to the following issues:

- a. Whether the legal fees incurred by CCEPIRSS to administer the Financial Obligations of the Catholic Entities under the Settlement Agreement could be deducted as "reasonable administration costs";
- b. Whether the legal fees claimed by CCEPIRSS were "reasonable administration costs" pursuant to the Settlement Agreement;
- c. Whether "reasonable administration costs" incurred by CCEPIRSS should be deducted after the minimum 80 percent of the Net Amount referred to in the Settlement Agreement was transferred from CCEPIRSS to the Aboriginal Healing Foundation;
- d. Whether Canada's consent is required before CCEPIRSS could pay the amounts claimed as reasonable administration costs; and

---

<sup>2</sup> Schedule O-3 to the Settlement Agreement, Exhibit "F" to the Affidavit of Gordon Kuski dated February 27, 2014 ("Kuski Affidavit")

- e. Whether amounts deducted as administration costs without Canada's consent must be reimbursed by the Catholic Entities, CCEPIRSS or the Board of Directors.

[10] CCEPIRSS filed a response, and both parties filed evidence in relation to RFD #1. Both parties were represented by experienced counsel. CCEPIRSS was represented by Gordon Kuski and Canada was represented by Alexander Gay.

[11] Although the grounds raised in RFD #1 were relatively narrow and confined to the issue of CCEPIRSS' Financial Obligations under the Settlement Agreement, some of the evidence strayed somewhat outside the four corners of the issues raised in RFD #1.

[12] For example, Canada's affiant on RFD #1, Ms. Stellick, largely gave evidence on RFD #1 concerning Canada's concerns with respect to deductions CCEPIRSS had made from the \$29 million in Financial Obligations. However, she also deposed as follows at para. 55 of her affidavit:

55. As of today, there have been many problems in getting the Catholic Entities to fulfill their obligations under the IRSSA. CCEPIRSS has failed to pay the amounts owed to the AHF and to programs, they have failed to meet their \$25M fundraising obligation and they have failed to garner an adequate amount of investment income. The amount raised, which is reported to be about \$3M, is a fraction of what they had committed to in the IRSSA. The obligation to raise funds is subject to best efforts and thus Canada is not in a position to take enforcement measures.

[13] Not surprisingly, Ms. Stellick was cross-examined on this statement. With respect to CCEPIRSS' In-Kind Obligations, Ms. Stellick gave evidence as follows:

23. Q: ... But separate and apart from the \$1.6 million [the amount at issue in RFD #1] ... is it the government's position that – had it been the government's position that the 25 million in-kind obligation had been met?

A: I don't think there is an intention to dispute that.

24. Q: All right. So for the purposes of what we are talking about, let's just park the in-kind obligation.

A: For the In-Kind Services, which were not any financial donations, they were really just a sort of subtractive process.

25. Q: Yes. So is there any complaint presently extant on Canada's part about how the in-kind thing was handled?

A: I don't think so now. I think initially – from what I saw in the files – there were discussions, and perhaps – and some perhaps disagreement over what would be included.

26. Q: Right.

A: From what I saw in the records, that that became resolved. And, at this point, I am not aware of any disputes or concerns.<sup>3</sup>

[14] Ms. Stellick was also cross-examined about Canada's position with respect to CCEPIRSS Fundraising Obligations. She noted the "huge gap" between the \$25 million that had been hoped to be raised versus the \$3-4 million that had been raised, and said, "Well, it is just a big gap, and it seems like, you know, you wonder if there couldn't be more, have been done."<sup>4</sup> As to Canada's position she said, "I think there is some concerns perhaps that more efforts couldn't have been made to raise further funding from across Canada".<sup>5</sup> When asked about what suggestions Canada had for ensuring that CCEPIRSS and the Catholic Entities made their best efforts to

---

<sup>3</sup> Cross-examination of Pamela Stellick ("Stellick Cross") at Q 23-26, Exhibit E to Kuski Affidavit

<sup>4</sup> Stellick Cross, *supra* at Q 157

<sup>5</sup> Stellick Cross, *supra* at Q 160



fundraise raise \$25 million, Ms. Stellick answered, “I don’t think it is Canada’s place to offer or suggest or tell them how to run their fundraising campaign.”<sup>6</sup>

[15] As counsel for Canada on RFD #1, Mr. Gay reviewed Ms. Stellick’s affidavit and was present during her cross-examination. He raised no issue at the time with Ms. Stellick’s evidence. On RFD#2, Mr. Gay gave evidence that he was not concerned during RFD #1 with respect to matters that were outside the limited scope of RFD #1. While he expressed some concern about whether CCEPIRSS had, in fact, satisfied its obligations with respect to its In-Kind Obligations and Fundraising Obligations, he had no knowledge as to whether Canada currently takes the position that CCEPIRSS is in default of either or both of those obligations.

### **(c) Settlement Negotiations**

[16] Mr. Kuski obtained instructions from his clients to settle not just RFP #1, but all matters between the parties relating to the Settlement Agreement.<sup>7</sup>

[17] Further to those instructions, on June 26, 2014, Mr. Kuski wrote a letter to Mr. Gay which stated, “I have been instructed to make the following offer to you in order to *settle all matters between the parties*”.<sup>8</sup> Mr. Kuski made no specific reference to RFD #1 in the letter, nor did he emphasize the portion of the letter that has been italicized here. The caption line of the June 26, 2014 letter included a reference to the Catholic Entities, who were not directly parties to RFD #1.

---

<sup>6</sup> Stellick Cross, *supra* at Q 161

<sup>7</sup> Kuski Affidavit, *supra*, para 15.

<sup>8</sup> Emphasis added.

[18] Mr. Kuski's June 26, 2014 letter clearly proposed that a term of the settlement would be that Canada would "provide to CCEPIRSS and the Catholic Entities a General Release with respect to all matters between the Parties, and more specifically, will provide a Release and an Indemnity in accordance with the terms contemplated by Section 4.5 and Section 4.6 of the Settlement Agreement, Schedule 'O-3'."

[19] Sections 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement provide as follows:

4.5 In the event that the terms of this Agreement are fully complied with then notwithstanding anything to the contrary herein or elsewhere contained, the Government will release and forever discharge each Catholic Entity from any and all causes of action, claims or demands for damages for IRS Abuse Claims or claims included in the Approval Orders. In such event the Government will also agree not to make any claims or demands or commence, maintain or prosecute any action, cause or proceeding for damages, compensation, loss or any other relief whatsoever against any Catholic Entity arising directly or indirectly from any IRS Abuse Claim or other claims included in the IRSSA.

4.6 So long as a Catholic Entity is complying with its obligations under this Agreement, the Government agrees to indemnify and save harmless such Catholic Entity from any and all claims for Compensation payable to a Claimant in an IRS Abuse Claim. If a Catholic Entity is not complying with its obligations under this Agreement, then the Government will not indemnify and save harmless such Catholic Entity for the period of time it is not in compliance.

[20] Following the delivery of Mr. Kuski's June 26, 2014 letter, negotiations between the parties ensued. Nothing was memorialized in writing until September of 2014. The parties agree there was a phone call on September 17, 2014, between Mr. Kuski for CCEPIRSS on the one hand, and Mr. Gay and Ms. McConville for Canada on the other. It is agreed that during this call, Mr. Kuski raised CCEPIRSS' offer

from \$1 million to \$1.2 million. Mr. Kuski also claims that during this call, Mr. Gay confirmed to Mr. Kuski that the conditions regarding a final release as outlined in the June 26, 2014 letter are “of course” fine. Mr. Gay firmly denies having said this.

[21] The written communications pick up following this call. On September 18, 2014 at 7:08 a.m., Mr. Gay wrote to Mr. Kuski saying, “The clients accept \$1.2M as a quantum. The thing that needs to be resolved is the paperwork and the wording on the release documents. How do you propose to proceed?”

[22] Mr. Kuski responded at 9:13 a.m. to Mr. Gay with an email that said, “Thanks for this. We have a deal. I’ll call you today to discuss logistics.”

[23] Mr. Kuski then sent a letter to Mr. Gay, also dated September 18, 2014 and delivered by email. The letter included the following paragraphs:

This will confirm that the [CCEPIRSS], the Catholic Entities, and Canada (the “Parties”) have settled all matters between them on the basis that CCEPIRSS will pay to Canada the sum of \$1.2 Million.

As part of the settlement Canada agrees that it will provide to CCEPIRSS and the Catholic Entities a General Release with respect to all matters between the Parties, and more specifically, will provide a Release and an Indemnity in accordance with the terms contemplated by Section 4.5 and Section 4.6 of the Settlement Agreement, Schedule “O-3” (as was set out in my letter to you of June 26, 2014).

[24] Mr. Gay responded by way of email at 11:37 a.m. on September 18, 2014. That email said:

I received your letter of today’s date.

For the moment, we have agreement on quantum. We have no agreement on the terms of the settlement. I have not seen the paper

that you propose. Paras. 4.5 and 4.6 of Schedule O-3 say what they say and the Catholic Entities benefit from these terms, regardless of what is said in the eventual release. I am not sure that we need to re-state what has been agreed to in the Settlement Agreement.

In any event, I am sure that we will be able to discuss and get this thing finalized. I am open to suggestions.

[25] At 4:02 p.m. on September 18, 2014, Mr. Kuski sent Mr. Gay an email attaching a draft General Final Release. The General Release document itself had a “draft” watermark stamped on it. The covering email read:

Please see attached draft General Final Release.

Please let me have your comments. As I indicated to you in our telephone conversation, I have not yet shared this with anyone else so it is entirely possible that there will be some suggested changes coming from our side.

Hopefully this will help us get to where we want to go.

[26] The draft General Release prepared by Mr. Kuski was, for the most part, consistent with his letter of June 26, 2014 (subject to quantum, which had increased from \$1 million to \$1.2 million) and his letter of September 18, 2014. There is one important qualification. While Mr. Kuski’s two letters had offered a payment in exchange for releases and indemnities as provided in ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement, the draft General Release proposed that Canada would provide releases and indemnities as provided in ss. 4.5, 4.6 *and* 4.7 of Schedule O-3 to the Settlement Agreement. As far as the record before this court shows, this was the first time any party had raised s. 4.7<sup>9</sup>.

---

<sup>9</sup> Section 4.7 of Schedule O-3 to the Settlement Agreement provides:

“Where the Corporation certifies that a Catholic Entity has fully complied with its obligations under Sections 3.3 and 3.5 of this Agreement, and where best efforts have been made to date and the Canada-Wide campaign is successful having regard to other professionally managed national fundraising campaigns, and the Catholic Entity commits to continue its best efforts in the Canada-Wide campaign, the Government shall release and forever discharge that Catholic Entity from any and all



[27] During his cross-examination, Mr. Gay testified that when he saw that Mr. Kuski's proposed General Release included a release of all matters between the parties under the Settlement Agreement, and not just matters related to RFD #1, he thought Mr. Kuski's action in doing so was "cheeky" and "pushing the envelope". Mr. Gay also testified, "I knew full well that it wasn't something I was prepared to recommend to the clients."<sup>10</sup> However, Mr. Gay did not say any of this to Mr. Kuski at the time. Rather, Mr. Gay simply sent an email asking for the draft General Release in Word format, which Mr. Kuski's office provided.

[28] On September 24, 2014, Mr. Kuski sent Mr. Gay an email asking where he was with respect to the Release. Mr. Gay responded that the document "Went to client. Last I heard they were fine, but needed another level of approval. Another day is likely all I need. I did make a few edits as well." Again, Mr. Gay did not take this opportunity to advise Mr. Kuski that there had been no meeting of the minds in terms of the essential issue of the scope of the release.

[29] Mr. Kuski responded with an email that said, "Thanks Alex. But please remember my clients have not seen my draft and they may have some comments."

[30] On September 30, 2014, Mr. Gay sent Mr. Kuski an email that read, "Sorry for the delay. I have made a few changes to the document. I know that you need to present it to your client as well. I will need to also put it to the ADNRM, but I am reasonably certain that it would be approved as is." A draft General Final Release was appended to Mr. Gay's email. Instead of releasing CCEPIRSS and the Catholic Entities from all matters arising out of the IRSSA (as proposed by Mr. Kuski), the

---

causes of actions, claims or demand for damages for IRS Abuse Claims or claims included in the Approval Orders and shall not make any claim or demand or commence, maintain or prosecute any other cause or proceeding for Compensation made against that Catholic Entity in an IRS Abuse Claim."

<sup>10</sup> Gay cross-examination, pages 68-69.

version proposed by Canada would release CCEPIRSS and the Catholic Entities only from matters relating to the payment to be made by CCEPIRSS to the Aboriginal Healing Foundation (that is, the matter that was directly related to RFD #1). The draft General Release sent by Mr. Gay to Mr. Kuski was not redlined, and Mr. Gay did not expressly advise Mr. Kuski of the significant difference between the release proposed by Mr. Gay and the earlier version proposed by Mr. Kuski.

[31] On cross-examination, Mr. Kuski testified that when he read the version of release sent to him by Mr. Gay, he was “very concerned and upset” because, in his view, Mr. Gay had “changed the deal”.<sup>11</sup> At the time, Mr. Kuski did not accuse Mr. Gay of this in writing, although he said he discussed that with Mr. Gay over the phone. Rather, he tried to “finesse” the deal by sending a letter dated October 1, 2014, in which Mr. Kuski set out his clients’ position and asked Mr. Gay to “consider our position and obtain instructions from your client to execute a modified General Final Release” in terms that Mr. Kuski proposed. Mr. Gay responded by way of email that he would put Mr. Kuski’s letter to his client and seek instructions, but that, “We may have a problem.”

[32] Following further discussion, on November 10, 2014, Canada refused to consent to the broad release as proposed by Mr. Kuski. RFD #2 was commenced by CCEPIRSS and the Catholic Entities shortly thereafter.

## **SUBMISSIONS BY PARTIES**

[33] On behalf of CCEPIRSS and the Catholic Entities, Mr. Ehmann organized his submissions around three central points: (1) it was no answer for

---

<sup>11</sup> Kuski cross-examination, page 27

Canada to point to the fact that the settlement that CCEPIRSS contends was formed extended beyond what was at issue in RFD #1, since parties can, by agreement, extend the scope of their settlement to matters outside those clearly pleaded; (2) there was a “meeting of the minds” (sometimes referred to as “*consensus ad idem*”); and (3) Canada’s counsel had authority to bind his client – and did so.

[34] In his responding submissions on Canada’s behalf, Mr. Schafer pointed to: (1) the context in which settlement negotiations had to be considered, namely, the issues arising in RFD #1, which created the framework under which all settlement negotiations occurred; (2) evidence, including from Mr. Kuski’s cross-examination, militating against a finding that there was a “meeting of the minds”; and (3) evidence tempering the proposition that Mr. Gay had (and held himself out as having) the authority to bind his client.

## ANALYSIS

[35] The legal principles governing determinations as to whether enforceable settlements have been reached are not controversial:

- a. There will be an enforceable settlement agreement when the evidence proves on the balance of probabilities that an objective reasonable bystander, knowing the facts, would conclude that the parties consented to the terms of the settlement with the intent to be bound by the same.<sup>12</sup>
- b. When a court is asked to find a contract in correspondence, and not one particular note or executed memorandum, the whole of that which passed between the parties must be taken into consideration.<sup>13</sup>

---

<sup>12</sup> *Lacroix v. Loewen*, 2010 BCCA 224 (CanLII)

<sup>13</sup> *Tether v. Tether*, 2008 SKCA 126

- c. In such cases, the court should ask:
  - i. was there a meeting of the minds that would be manifest to the reasonable bystander;
  - ii. was there consensus on all essential terms of the agreement; and
  - iii. did the parties make their agreement conditional upon, and subject to, execution of a formal document?<sup>14</sup>
- d. The question of contract formation may be distinct from the question of contract completion. If there is agreement on all essential terms, then the absence of formal documentation will not be a bar to enforcing the agreement unless it is clear that the agreement was only a tentative one that was not intended to be binding until the documentation was complete.<sup>15</sup>
- e. When settlements are negotiated between counsel, there is a presumption that counsel has authority to bind his or her client. This presumption is rebuttable by evidence that both parties understood that counsel was acting with limited authority.<sup>16</sup>

**(a) Was there a meeting of the minds?**

[36] In the present case, the parties agree that CCEPIRSS agreed to pay \$1.2 million to Canada, and that Canada agreed to accept that amount. The parties agree that in exchange for this payment, Canada was required to give a release. The only issue is whether the parties were in agreement as to the general scope of the release.

---

<sup>14</sup> *Tether*, *supra*, at para 62

<sup>15</sup> *Fieguth v. Acklands Ltd.*, (1989) 59 DLR (4th) 114 (BCCA); *Great Sandhills Terminal Marketing Centre Ltd. v J-Sons, Inc.*, 2008 SKCA 16

<sup>16</sup> See, for example, *Iverson v. Iverson*, 2009 SKQB 246; *IPC Insurance Strategies Inc. v. Sawa*, 2009 SKCA 80



**(b) Was there consensus on all essential terms of the agreement?**

[37] It is the position of CCEPIRSS and the Catholic Entities that they expressly agreed to pay \$1.2 million in exchange for broad releases and indemnities in accordance with ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. Importantly, Canada in response does not appear to say that there was an express agreement between the parties that CCEPIRSS would pay \$1.2 million in exchange for a release of matters relating to RFD #1. Rather, Canada's position is that the parties would deal "with quantum first and terms second."<sup>17</sup>

[38] Canada's interpretation of the communications between the parties presumes that CCEPIRSS and the Catholic Entities would agree to pay a significant sum of money in a settlement without knowing precisely what it was they were settling. In my view, that is not a reasonable interpretation of what transpired. The fact of a settlement implies a release, and it is not logical to say that the quantum of the settlement was agreed to but the fundamental and essential scope of the release was not. That is not how reasonable parties negotiate settlements.

[39] If Canada's position during settlement negotiations was that it would only accept \$1.2 million to settle the narrower matters raised by RFD #1, then one would have expected Canada to say so very clearly at a much earlier time. The balance of the record before me proves that, despite the relatively narrow issues raised by RFD #1, the parties were negotiating with respect to all matters at issue between them in relation to the Settlement Agreement.

---

<sup>17</sup> Gay cross-examination, page 56

- a. Ms. Stellick's affidavit and cross-examination on RFD #1 dealt, at least in part, with the broader issues of the Settlement Agreement, not just the issues raised by RFD #1.
- b. Mr. Kuski's June 26, 2014 letter made it plain that the settlement was to release "all matters" between CCEPIRSS, the Catholic Entities and Canada, and was to include the very general releases contemplated by ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. There is nothing in writing to suggest that Canada was opposed to settlement negotiations on this basis.
- c. I acknowledge that there is disagreement about whether, during a phone call on September 17, 2014, Mr. Gay indicated that the releases sought by Mr. Kuski were "of course fine". Mr. Kuski deposes this occurred; Mr. Gay deposes that it did not. Both parties have consented to the RFD process to resolve this dispute, and this is a summary process that is not suited for resolving issues of credibility. Accordingly, my findings are based on the written communications between the parties.
- d. The written evidence is clear that Mr. Kuski, at least, continued to be of the view that settlement negotiations were proceeding on the basis that any sum paid by his clients to Canada would resolve all issues between the parties, and not just the issues pleaded in RFD #1. Not only was this communicated in his letter of June 26, 2014, but it was also an express term outlined in his letter of September 18, 2014, which he wrote to "confirm" the settlement that had been reached.
- e. Although Mr. Gay responded to that letter by saying (in part) "we have no agreement on the terms of the settlement", the balance of the email from Mr. Gay to Mr. Kuski sent September 18, 2014 at 11:37 a.m. would lead a reasonable bystander to conclude that there was no

controversy over including general releases and indemnities in accordance with ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. Nor would a reasonable bystander conclude that there was controversy over releasing “all matters” between CCEPIRSS, the Catholic Entities and Canada.

- f. When Mr. Gay received Mr. Kuski’s proposed General Release later on September 18, he took no steps to advise Mr. Kuski that an essential term of that Release – namely, its scope – was unacceptable to Canada.
- g. Mr. Gay’s revised version of the Release provides that Canada “agrees that the provisions concerning releases and indemnities as provided in ss. 4.5, 4.6 and 4.7 of Schedule “O-3” of the Settlement Agreement may apply to this General Final Release” [emphasis added]. Apart from the addition of the word “may”, this section of Canada’s proposed Release is identical to the one proposed by Mr. Kuski. This provision of the Release makes no sense if the Release is intended to be narrow in scope, as Canada now contends.

**(c) Was the settlement conditional upon the execution of a formal document?**

[40] I find that the settlement was not subject to or conditional upon the execution of formal documentation. I find on the evidence that a reasonable bystander would conclude that, as of 7:08 a.m. on September 18, 2014, counsel had agreed that CCEPIRSS would pay Canada \$1.2 million in exchange for the broad releases and indemnities contemplated by ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement. Neither Mr. Kuski’s settlement offer letter of June 26, 2014 nor Mr. Gay’s email acceptance of September 18, 2014 make mention of any settlement being conditional upon execution of formal documents.

**(d) Was counsel's authority to settle qualified?**

[41] The only remaining issue is whether a reasonable bystander would have understood that the agreement of counsel was subject to approval by others at Canada. I find that such a restriction is not reasonable in the circumstances.

[42] Canada submitted that Mr. Kuski, as a senior counsel with experience litigating against Canada, would have understood that there were levels of approval that Mr. Gay required. Even if I were to make that finding, on the record before me I find it was reasonable for Mr. Kuski to have determined that Mr. Gay had received approval on all material aspects of the settlement prior to accepting the settlement offer on September 18, 2014.

[43] It is true that the Release was stamped "Draft", that both counsel anticipated their clients might have some comments on the wording of the Release, and that both counsel communicated to each other that their clients might have comments on the wording of the Release. However, it would reasonably have been expected by the parties that the comments of their respective clients would amount to wordsmithing, and not to the essential terms of the deal, which were that CCEPIRSS would pay \$1.2 million in exchange for the releases and indemnities contemplated by ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement.

[44] Whether Mr. Gay in fact had authority to settle matters with Mr. Kuski is not an issue I need to decide. The only issue before me is whether any limits on Mr. Gay's authority that might have existed were communicated to Mr. Kuski. In light of the communications between the parties, which I have reviewed above, and the legal presumption that counsel have their client's authority unless the contrary is clearly



articulated, I find the reasonable bystander would conclude that Mr. Gay had the authority to enter into the essential deal that he made.

## **CONCLUSION AND DIRECTION**

[45] I have concluded that there is an enforceable settlement relating to CCEPIRSS' obligations under the Settlement Agreement.

[46] Consequently, I grant a declaration that there is a binding agreement between and among Canada, CCEPIRSS and the Catholic Entities providing that upon the payment by the Catholic Entities, through CCEPIRSS, of the sum of \$1.2 million to Canada, or its nominee, CCEPIRSS and the Catholic Entities are entitled to releases and indemnities in accordance with ss. 4.5 and 4.6 of Schedule O-3 to the Settlement Agreement, without restriction.

[47] Since my conclusion (as urged by CCEPIRSS and the Catholic Entities) is that the deal was struck by the parties by 7:08 a.m. on September 18, I cannot find that CCEPIRSS and the Catholic Entities are entitled to a release and indemnity in accordance with s. 4.7 of Schedule O-3 to the Settlement Agreement. Section 4.7 was not clearly contemplated by the parties at the time the settlement was reached. No evidence was led to explain why this section only appeared for the first time in the proposed draft General Release prepared by Mr. Kuski (which was sent after the agreement was made), rather than in the communications between the parties that preceded the agreement being made.

[48] The parties may make written submissions as to costs of up to five (5) pages each, provided that those submissions are served and filed within 10 calendar

days of the release of this decision.

  
\_\_\_\_\_. J.  
N.G. GABRIELSON

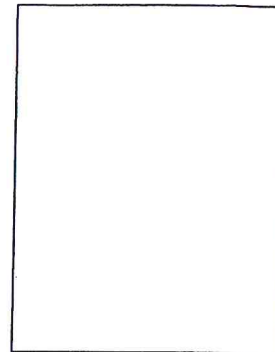
COURT FILE            816 of 2005  
NUMBER

COURT OF QUEEN'S BENCH OF SASKATCHEWAN

JUDICIAL CENTRE    REGINA

PLAINTIFF(S)        FONTAINE, ET AL

DEFENDANT(S)       A.G. OF CANADA, ET AL



**GENERAL FINAL RELEASE**

WHEREAS the Indian Residential Schools Settlement Agreement ("IRSSA") was entered into on May 8, 2006, and was approved by nine Courts of Superior Jurisdiction across Canada, including the Saskatchewan Court of Queen's Bench, on December 15, 2006;

AND WHEREAS attached to the IRSSA is Schedule "O-3" being a Settlement Agreement between Her Majesty the Queen in Right of Canada as represented by the Minister Responsible for the Office of Indian Residential Schools Resolution of Canada ("Canada") and the Catholic Entities named in Schedule A to the Settlement Agreement and attached to this General Final Release (the "Catholic Entities") and the Corporation of Catholic Entities Party to the Indian Residential Schools Settlement ("CCEPIRSS");

AND WHEREAS Schedule "O-3" of the Settlement Agreement required the Catholic Entities and CCEPIRSS to meet three specific financial obligations, namely to:

1. make a \$29 million cash contribution;
2. contribute \$25 million In-Kind Services to support healing and reconciliation programs; and
3. pursue a \$25 million Canada-wide best-efforts fundraising campaign (later identified as Moving Forward Together) to support healing and reconciliation programs;

(collectively referred to as "Specific Financial Obligations");

AND WHEREAS, in a ruling on the Request for Directions of the Catholic Entities and CCEPIRSS, dated November 18, 2014, the Honourable Mr. Justice Gabrielson of the Saskatchewan Court of Queen's Bench, on July 16, 2015, found in favour of the Catholic Entities and CCEPIRSS (the "Judicial Ruling");

AND WHEREAS Canada and the Catholic Entities and CCEPIRSS have agreed that the only issue before Justice Gabrielson, in the November 18, 2014 Request for Directions, was whether or not there had been a settlement of the Specific Financial Obligations;

AND WHEREAS Canada and the Catholic Entities and CCEPIRSS have agreed that paragraphs 5 and 45 of the Judicial Ruling are understood to be limited to the matters before Justice Gabrielson, namely the Specific Financial Obligations;

AND WHEREAS, Canada has filed a Notice of Appeal in the Saskatchewan Court of Appeal in relation to the Judicial Ruling, and the appeal is scheduled to be heard in due course as per the schedule and direction of the Court;

AND WHEREAS, in advance of the appeal of the Judicial Ruling, Canada and the Catholic Entities and CCEPIRSS have agreed to settle all of the Specific Financial Obligations, as specified and defined above, on the basis that CCEPIRSS will pay at Canada's direction the sum of \$1.2 million to the Legacy of Hope Foundation;


AND WHEREAS the Catholic Entities and CCEPIRSS are entitled to the benefits of sections 4.5 and 4.6 of the Settlement Agreement as those sections are currently worded in the Settlement Agreement;

NOW THEREFORE, Canada, for good and valuable consideration, the sufficiency of which is hereby irrevocably acknowledged, does hereby remise, release and forever discharge the Catholic Entities (and Missionaires du Christ roi and Les Soeurs Missionaires du Christ (B.C.)) and CCEPIRSS, its directors, officers, shareholders, agents, lawyers and employees (hereinafter jointly and severally called the "Releasees"), of and from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, whatsoever against the Releasees which Canada ever had, now has or hereafter can, shall or may have, or by reason of any cause, matter or thing whatsoever existing up to date hereof arising out of, or relating to, the Specific Financial Obligations;

AND CANADA further covenants and agrees not directly or indirectly, to join, assist, aid or act in concert in any manner whatsoever with any person or entity in making any financial claim or demand whatsoever against the Releasees arising out of or in relation to the aforesaid Specific Financial Obligations hereinbefore remised, released and forever discharged;

AND IN LIGHT OF THE SETTLEMENT of the Specific Financial Obligations, Canada agrees to pay the taxable costs of the Catholic Entities and CCEPIRSS' RFD application of November 18, 2014 and to abandon its appeal of the Judicial Ruling and the Catholic Entities and CCEPIRSS agree to waive any costs in relation to the appeal to which they might otherwise be entitled;

IN WITNESS WHEREOF Canada has executed this Release as of the 30th  
day of October, 2015 under the hand of its duly authorized officer in that  
behalf.

  
\_\_\_\_\_  
Colleen Swords  
Deputy Minister  
Aboriginal Affairs and Northern Development Canada



## **SCHEDULE A**

### **LIST OF THE CATHOLIC ENTITIES**

1. Sisters of Charity, a body corporate also known as Sisters of Charity of St. Vincent de Paul, Halifax also known as Sisters of Charity of Halifax
2. The Roman Catholic Episcopal Corporation of Halifax
3. Les Soeurs De Notre Dame-Auxiliatrice
4. Les Soeurs de St. Francois D'Assise
5. Insitut Des Soeurs Du Bon Conseil
6. Les Soeurs de Saint Joseph de Saint-Hyacinthe  
(The Sisters of St. Joseph of St. Hyacinthe)
7. Les Soeurs de Jesus-Marie
8. Les Soeurs de L 'Assomption de la Sainte Verge
9. Les Soeurs de L'Assomption de la Saint Vierge de l'Alberta
10. Les Soeurs de la Charité de St.-Hyacinthe
11. Les Oeuvres Oblates de l'Ontario
12. Les Résidence Oblates du Québec
13. La Corporation Episcopale Catholique Romaine de la Baie James  
(The Roman Catholic Episcopal Corporation of James Bay)  
The Catholic Diocese of Moosonee
14. Soeurs Grises de Montréal/Grey Nuns of Montreal
15. Sisters of Charity (Grey Nuns) of Alberta
16. Les Soeurs de La Charité des T.N.O. Grey Nun's Regional Centre
17. Hôtel-Dieu de Nicolet (HDN)
18. The Grey Nuns of Manitoba Inc. Les Soeurs Grises du Manitoba Inc.
19. La Corporation Episcopale Catholique Romaine de la Baie d'Hudson  
The Roman Catholic Episcopal Corporation of Hudson's Bay

20. Missionary Oblates – Grandin
21. Les Oblats de Marie Immaculée du Manitoba
22. The Archiepiscopal Corporation of Regina
23. The Sisters of the Presentation
24. The Sisters of St. Joseph of Sault St. Marie
25. Les Soeurs de la Charité d'Ottawa – Sisters of Charity of Ottawa
26. Oblates of Mary Immaculate – St. Peter's Province
27. The Sisters of Saint Ann
28. Sisters of Instruction of the Child Jesus
29. The Benedictine Sisters of Mt. Angel Oregon
30. Les Peres Montfortains
31. The Roman Catholic Bishop of Kamloops Corporation Sole
32. The Bishop of Victoria, Corporation Sole
33. The Roman Catholic Bishop of Nelson Corporation Sole
34. Order of the Oblates of Mary Immaculate in the Province of British Columbia
35. The Sisters of Charity of Providence of Western Canada
36. La Corporation Episcopale Catholique Romaine de Grouard
37. Roman Catholic Episcopal Corporation of Keewatin
38. La Corporation Archiépiscope Catholique Romaine de St. Boniface
39. Les Missionnaires Oblates de St. Boniface  
The Missionary Oblate Sisters of St. Boniface
40. Roman Catholic Archiepiscopal Corporation of Winnipeg
41. La Corporation Episcopale Catholique Romaine De Prince Albert
42. The Roman Catholic Bishop of Thunder Bay

43. Immaculate Heart Community of Los Angeles CA
44. Archdiocese of Vancouver  
The Roman Catholic Archbishop of Vancouver
45. Roman Catholic Diocese of Whitehorse  
The Catholic Episcopal Corporation of Whitehorse
46. The Roman Catholic Episcopal Corporation of Mackenzie
47. The Roman Catholic Episcopal Corporation of Prince Rupert
48. OMI Lacombe Canada Inc.
49. Episcopal Corporation of Saskatoon
50. Soeurs Missionnaires du Christ-Roy / Sisters of Christ the King