



## **Canada**

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### **Introduction**

1. Treatment of historical legacies of discrimination against Aboriginal groups in Canada (First Nations, Inuit, Métis) currently focuses on settlement for abuses committed against Aboriginal children in educational institutions known as “Indian Residential Schools” (IRSs), which pursued a policy of forced assimilation for more than a century.
2. Although Canada is not going through the transitional processes that typically trigger examination of past mass crimes, the country is taking measures used in transitional justice settings. These include a Truth and Reconciliation Commission (TRC) and reparations to victims through an administrative program.
3. The IRSs were part of a long-standing and deeply traumatic situation in state-Aboriginal relations. Launched in 1874, the schools formed a nationwide system that operated for more than 100 years, most extensively from the 1920s to the early 1960s. The last residential school closed in Saskatchewan in 1996. Throughout their long history, the IRSs operated under different forms of management, in cooperation between the Canadian government and Anglican, Catholic, Presbyterian, and United churches.
4. The IRSs constituted a highly repressive system that inflicted physical abuse (including sexual crimes) and systematically suppressed the cultural identity of Aboriginal boys and girls. Survivors blame the schools for painful consequences, including the destruction of families, weakening of Aboriginal institutions and cultures, severe trauma leading to high levels of family violence, and addiction within Aboriginal communities.
5. After years of lawsuits and negotiation by Aboriginal groups, churches, and the government, Canada agreed to a package of reparations for school survivors in 2006. The Indian Residential Schools Settlement Agreement (IRSSA) came into force in September 2007. This agreement includes provisions for financial compensation, a truth commission, and additional healing measures for IRS survivors.
6. The process of settlement of Aboriginal claims in Canada provides a useful example and may be considered as a step toward the affirmation of indigenous rights and the

acknowledgment of past abuses. Contingent on the success of its implementation, these measures could even initiate a transition of sorts, a profound transformation in the way the country relates to its indigenous population.

## **Overview of Settlement**

7. The IRSSA includes the following individual and collective measures:

- *Common Experience Payment (CEP)*: lump-sum compensation for former residential school students, recognizing the group harms that resulted from the schools. Former students who spent at least part of one scholastic year living at the schools are eligible for a payment of CAN\$10,000, plus CAN\$3,000 for every year thereafter. CAN\$1.9 billion has been set aside for the direct benefit of former IRS students. As of August 2008 the government had received almost 95,000 applications and issued payments to some 68,000 survivors.
- *Independent Assessment Process*: available in addition to the CEP, provides for compensation of up to CAN\$275,000 for sexual abuse, serious physical abuse, or other abuses that caused serious psychological effects.
- *Truth and Reconciliation Commission (TRC)*: CAN\$60 million to carry out work over five years, providing a forum to reveal survivors' experiences and educate the public about IRS conditions and legacy.
- *Healing*: a CAN\$125 million endowment for the Aboriginal Healing Foundation for initiatives related to memory and spiritual renewal; church entities involved in the administration of IRSs will contribute up to CAN\$100 million in cash and services.
- *Commemoration*: CAN\$20 million for events and memorials to ensure acknowledgment of the legacy of the IRSs.

8. The government has also presented a comprehensive statement of apology to the Aboriginal groups affected by the IRSs. The apology took place in a solemn session of the Canadian House of Commons on June 11, 2008. In its apology the government recognized that:

- The IRSs separated children from their families with the explicit goal of isolating them from their cultural environment and assimilating them into the dominant culture.
- The IRSs operated on the assumption that the dominant culture was superior to Aboriginal culture, which was to be completely eliminated from every Aboriginal child. Indeed, the IRSs intended "to kill the Indian in the child."
- The IRSs prohibited Aboriginal cultural practices and tried to suppress their languages.

- The IRSs neglected basic duties to the students, including health care and proper nourishment, resulting in deaths and illnesses.
- The IRSs had a lasting negative impact on Aboriginal cultures, heritage, languages, and the well-being of individual survivors.

9. The governmental apology, supported by all the political parties, committed the government to support the correct implementation of the IRSSA and the work of the TRC. Established on June 1, 2008, this TRC is the first in the world established to deal exclusively with crimes committed against children and Aboriginal groups. Since it was set up in a country not going through transitional (such as post-conflict or post-authoritarian) processes, it constitutes an important precedent in the treatment of historical injustice.

10. The TRC will provide former students and anyone affected by the IRSs with an opportunity to come forward and share personal experiences in a safe, respectful, and culturally appropriate manner. It will research and examine the conditions that gave rise to the IRSs and give people the chance to share their experience of a significant part of Canadian history, still unknown to most Canadians. The TRC will complete a report including recommendations to the parties to the Settlement Agreement and to all Canadians. It will host seven national events in different regions across Canada and support local events designed by communities to meet their unique needs. All former students and their families, even if they choose to opt out of the IRSSA, can take part in the Commission's activities.

### **Positive Trends**

11. The negotiation of the IRSSA is a model of constructive work by government and interested parties. During years of work and mutual consultation the question of redress for the IRS legacy was examined carefully and produced a very significant agreement. The active participation of representative indigenous groups guarantees sustainability of the agreement.

12. The Canadian Supreme Court has addressed the question of Aboriginal rights and the ability of the government to legislate them since the seminal *Sparrow* decision (1990). In that case and others the Supreme Court decided that the governmental power to legislate with respect to Aboriginals must be reconciled with the duties of affirmation and recognition of Aboriginal rights. As a result Canadian legislation on Aboriginal issues must undergo constitutional scrutiny. Constitutional jurisprudence, then, will be a powerful instrument for the appropriate implementation of the IRSSA and the work of the TRC.

13. The fact that around 68,000 individuals have already received compensation since the date of the agreement indicates that the process of reparations is not administratively burdensome for the victims, and the government is being diligent to ensure that victims receive compensation without undue delay.

14. The government's apology was comprehensive, solemn, and explicit. It included acknowledgment, expression of sorrow, and commitment to non-recurrence in the future. The

apology provides an appropriate basis for further elaboration and recognition of the structural causes of IRS abuses and Aboriginal marginalization.

15. The TRC is taking a deliberate, planned approach to its work and is conducting outreach to Aboriginal groups. The commission is zealous about its independence and has undertaken significant preparatory work in the months since its formal establishment. It has assessed the experience of other truth commissions around the world and is incorporating the most important lessons learned.

### **Concerns**

16. Despite notable reasons for optimism, some issues involved in addressing historical injustice in Canada still require attention.

17. In particular, the settlement and the work of the TRC do not mention prosecution of persons who may be still alive and were responsible for crimes against Aboriginal children. In fact, the settlement does not formally recognize the extent of criminal conduct, generically viewed as “harms and abuses,” perpetrated in the IRSs.

18. In addition, although the TRC is mandated to make a comprehensive historical reconstruction of the development of the IRSs, it is explicitly forbidden to name persons responsible for any wrongdoing. Its access to or use of testimony is severely curtailed if that testimony provides information about abusers. The preservation of procedural fairness and guarantees of due process are essential; however, the TRC mandate leaves open grave questions about whether such restrictions block the fundamental goal of complete acknowledgment of the truth. The mandate is unclear on whether the TRC may even report on information of interest to criminal justice that might fall into its hands.

19. The TRC was established with clear institutional support from government agencies in the allocation of staff and offices. However, this arrangement has led to concern that at the beginning of its work the Commission did not have all the appropriate guarantees of full operational independence from the government.

20. The reparations program established in the IRSSA provides few opportunities for explicit recognition of harm in individual cases. Even if they are materially generous, reparations programs that do not clearly acknowledge wrongdoing often fail to satisfy the victims of human rights violations. Canadian individual survivors receive payments after a relatively simple process, but their expectation of individual recognition is often unmet or postponed.

21. The reparations program does little to rectify the collective harm caused by the IRSs. Furthermore, the government has refused to consider issues such as the loss of language and culture in the context of reparations.

22. Although the Canadian process marks a significant step toward the affirmation of Aboriginal rights, it is surprising that the country voted against the widely supported United

Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on September 13, 2007.

### **Recommendations and Challenges**

23. To secure the best possible implementation of the agreement, the appropriate mechanisms foreseen in the IRSSA should examine certain important issues. These include the situation of individuals who may have been left out of the benefits of the agreement, even if they attended IRSs. The reasons for this unwanted exclusion may be poor or narrow definitions for purposes of the agreement, or the way the list of IRSs in the agreement was negotiated. However, the IRSSA has built-in mechanisms for clarification and improvement and they should be used.

24. The Canadian government should commit to the distribution of the solemn apology statement of June 11, 2008, as an integral component of the reparations, to be sent to each victim and to representative institutions of Aboriginal groups. This would give the reparations process a necessary element of symbolic recognition.

25. The government should ensure and respect the full independence of the TRC. The commissioners are solely responsible for the appropriate interpretation of their mandate, prioritizing a holistic vision of victims' rights to truth, justice, and reparations. No governmental agency should allow interference in or noncooperation with this essential task.

26. The TRC must continue to operate with clear independence. It must envision its work as part of a holistic process of healing in the relations between Canada and Aboriginal groups, including comprehensive reparations and justice. The commission should design appropriate mechanisms to ensure that information of potential interest to criminal justice is not lost and that law enforcement is not hindered. The commission should always put the rights and needs of victims first, creatively design procedures to receive the full truth, and recognize the experiences of women and youth affected by intergenerational legacies.

27. As a complement to the individual reparations already provided, the Canadian government should commit itself to providing collective reparations, as well as addressing issues of language revitalization, access to land, and cultural preservation. Canada should ensure that reparations have the potential to transform the social conditions that keep Aboriginal groups in a marginal position. Therefore the IRSSA must be seen as only part of a holistic approach that includes recognition of collective harm and the design and implementation of collective reparations. Canada already has a strong precedent for such a design in the 2005 Kelowna Accords, which resulted from a consultative process between the government and Aboriginal groups that aimed to ensure the latter's full enjoyment of their social, economic, and cultural rights.

28. As a natural continuation of the true affirmation and recognition of Aboriginal rights, and in response to the challenge of a new relationship with its Aboriginal population, Canada should launch comprehensive internal consultations on committing to the UN Declaration on the Rights of Indigenous Peoples.