

INDIAN RESIDENTIAL SCHOOL SETTLEMENT AGREEMENT ENGAGING THE CATHOLIC COMMUNITY

Mr. Gerry Kelly

Good Evening and thank you for the honour and opportunity to speak with you this evening looking forward from the Indian Residential Schools Settlement Agreement to the next chapters in relations between Aboriginal and non-Aboriginal Catholics, Catholic entities signatory to the agreement, the broader Catholic community and Canadians in general

Why this topic now

- TRC and the public conversation
- Gospel Mission of reconciliation
- Struggle with reconciliation in the context of social sin

I recognize that this is a topic that, for many of us, is as puzzling and it is painful. For many of us it is the one area where, if we feel like the Catholic Church is moving past the deepest part of the Abuse in Institutions crisis, we find ourselves in what appears to be an ongoing version of that same conversation.

I appreciate that, even in this context, you are affording time and attention to this question today. I think it is an important conversation to have and I further believe that the context for this conversation is quite positive. Now more than ever dialogue is possible.

This conversation is important if only because one component of the Settlement Agreement, the Truth and Reconciliation Commission, is preparing to put effort and considerable resources into keeping the legacy of the question in the public focus for the next 5 years and beyond. For the next five years there will be community events and at least seven large public gatherings. The shape of the different events has not yet been determined but we can certainly expect that they will serve the goal set out by Commission Chair Justice Murray Sinclair,

We want a complete picture of what happened in these schools and what happened because of these schools. It is only once we confront the full truth of this shared history, that we can start to forge new bonds of trust, respect and reconciliation."

However, I believe it is important for even more fundamental reasons than that. Even if the legacy of IRS were not of great public concern and our relationship with First Nations, Metis and Inuit People were to move back to its habitual place in the margins of public attention. Even in that context I believe the question would remain a crucial one for Catholics in Canada because it touches directly on the Gospel mission of Reconciliation.

Almost a year ago, in my home Parish in Ottawa a small group of parishioners began an Advent exploration of the theme of reconciliation. As a part of that there was an effort to prepare for the work of the TRC. Through the year a few gatherings were held. One looked at various apologies from Catholic entities. One attempted to hear the voice of First Nations people speaking about the School experience and another listened to the stories of Aboriginal and Catholic participants in the recent meeting with the Holy Father in Rome.

A number of good first steps were taken and are planned for this year as well, which is a real testament to the good will of parishioners. But it also came more and more clear that while we have a rich tradition of Reconciliation and on a popular level have learned well about personal woundedness and healing, we struggle with an understanding of structural sin and with what reconciliation might look like in that context.

It is painful, not just to watch but to participate as we struggle to understand our role and responsibility. As we try to capture this picture with a very limited palate and one heavily tinted with guilt and shame. I frankly find these not very helpful in understanding social or structural sin. Nor is the popular tendency to divide the world into victims and perpetrators helpful for understanding the dynamic of social sin in which everyone is in some way a victim. It doesn't help with our understanding nor does it provide the kind of foundation necessary for actions in support of reconciliation.

The Settlement Agreement (components benefits and costs)

- Out of litigation and into the effort of reconciliation and healing
- Concrete commitments
- What was lost (problems with IAP, cost of fragmenting the Catholic voice)

It is no secret that some major elements of the Indian Residential Schools Settlement Agreement have struggled in the early stages of the implementation. Certainly the Truth and Reconciliation Commission suffered the resignation of the first commissioners.

However under the new leadership of Justice Murray Sinclair, Chief Wilton Littlechild from this region and Commissioner Marie Wilson a woman with great experience in Canada's North, the process has seemed to find renewed energy and focus.

I will return later to some reflections on the challenges and opportunities of that process. For now I would simply state that the signs indicate that the process is once again moving steadily forward and seems to be doing so in a very measured and sensitive manner. I think Catholics should be encouraged by the breadth of dialogue that the Commissioners are seeking.

... the Commission is committed to hearing from all those who wish to share their thoughts and memories of the IRS system and legacy. This includes former students as well as former staff. It includes those who have stories of pain and suffering, as well as those who remember moments of laughter and acts of kindness.

We want a complete picture of what happened in these schools and what happened because of these schools. It is only once we confront the full truth of this shared history, that we can start to forge new bonds of trust, respect and reconciliation. (Letter to Winnipeg Free Press)

The TRC of course is one component of a much larger settlement agreement. There will be, for a long time to come, debate about the significance and the ultimate value of the settlement agreement. Everyone involved in the negotiations was aware at the time that there was considerable water in this wine. We should not lose sight however of the amazing accomplishment that it is. In the face of the largest lawsuit in Canada's history, this agreement accomplished an important resolution and created an opportunity to move from the destructive dynamic of litigation and defense to a possibility of dialogue, reconciliation and healing.

In concrete terms, to achieve the end of litigation and the beginning of a process designed to support healing and reconciliation, fifty Catholic Entities made a number of clear commitments

1. Financial Support for healing and reconciliation

- \$29 M. including Approx. \$7M in previous settlement payments
- Payable over 5 years
- To support efforts for healing and reconciliation
- Distributed in cooperation with an Aboriginal Funding organization (AHF)
- 20% can be allocated by the Catholic entities (through Corporation) regardless of fit with the AHF mandate.

2. In-kind support for healing

- \$25M in programs and services
- Contributable over 10 years
- Approved and assigned valued by Three-party evaluation committee
- Acceptable categories of contribution include-Community support and presence, Healing programs, Archives and documentation

3. Canada – wide fundraising campaign
 - \$25M target
 - Best efforts requirement
 - 7 year timeline
4. Cooperation with the Independent Assessment Process designed to resolve claims for sexual and serious physical abuse.
5. Support for and participation in the Truth and Reconciliation Commission
 - Archives

We must acknowledge that there are losses in the agreement that go beyond the commitments made directly. The most painful being what is being experienced as an imbalance and unfairness of the Alternative Dispute Resolution process (now reshaped as the Independent Assessment Process (IAP)).

This mechanism which has the mandate of hearing and adjudicating allegations of sexual and serious physical abuse at the schools in a manner that avoids re-victimizing the former students is proving to be a painfully imbalanced process in which fairness for the alleged perpetrators seems to be in serious jeopardy.

For Catholic entities, whose senior members (former IRS staff) are subjected to a process in which they are for the most part defenseless, fairness appears to be the latest victim.

The IAP is part of the settlement agreement and is therefore the creature of all involved parties and intended to be a fair alternative to litigation. However, as it is being rolled out, it is apparent at least to the Catholic Representatives that it has inherited its fundamental approach from the Alternative Dispute Resolution process which Roderick Donlevy explained well to this gathering two years ago. As such it manifest some of the same weaknesses.

- Adjudicators proceed guided by the first principle that the residential schools were inherently bad and havens of systemic and horrific abuse.
- The adjudication process is designed to assure that the claimant is validated heard and believed.
- In order to accomplish this, the right to face one's accuser is removed and only an indirect process for challenging allegations remains.

As long as these conditions persist this process will continue to deliver findings which validate an extra-ordinary number of claims, filtering out only the most absurd. The harm to former staff will continue to undermine the efforts toward reconciliation.

Catholic entity representatives continue to be present at the Chief adjudicators reference group, a committee of parties engaged in the agreement and through that forum are trying to advocate for greater fairness. However there is not a great deal of sympathy for the cause of alleged perpetrators (Persons of Interest) and support is very hard to find.

Another important loss is less the result of the agreement than the damage caused during litigation. Throughout the litigation and negotiation process the Government of Canada pursued the Roman Catholic Church as a whole into the role of co-defendant in the lawsuits.

I am sure I don't need to review here why that effort failed. It would be an interesting study in legal strategy to analyze why the federal approach continued so long in that direction in spite of the clear evidence of the autonomy of separate Catholic Corporations engaged with Canada in the operation of the schools.

This legal reality was consistently overlooked for either ideological or strategic purposes or some mixture of both.

Throughout the negotiations government representatives agonized over ways to outflank the de-centralized corporate structure of the Catholic Church. They finally abandoned that approach only when it appeared to be a good strategy to put the complexity of the situation before the courts.

In the statement of defense in the Baxter Class Action, Canada first broke with its grand design and third partied over 50 Catholic organizations in an effort to underscore its argument that the sheer numbers of entities and jurisdictions made a class action unreasonable.

That whole confrontation has cost us dearly. In the face of litigation Catholic organizations have had to insist upon the autonomy and independence of each corporation clearly identifying where potential liabilities lie and do not. In the process a unified Catholic voice has been muted, the Catholic Community has been sidelined and its potential to come together in solidarity in service of reconciliation and healing has been seriously damaged.

The resolution of litigation opens the way for pastoral presence and action

- CCCB participation in the exploratory dialogues, the Residential schools working group
- Pastoral statements (Let Justice Flow Like a Mighty River, Rediscovering, Recognizing and Celebrating the Spiritual Heritage of Canada's Aboriginal Peoples.)
- A period of silence as efforts to be present in a pastoral way was used to draw the 'whole Church' into litigation.
- Post-litigation, a time for invigorated pastoral presence, action.

In the pre-negotiation stages the Conference of Catholic Bishops maintained an active participation in the different multi-party discussions seeking remedies for alleged harms and a common ground for dialogue and understanding. The Bishops of Canada participated in the "Exploratory Dialogues" large multi-day meetings sponsored by Justice Canada to bring Aboriginal and First Nations representatives, survivor representatives, government and church. These sessions were long and sometimes very painful but offered the best opportunity at the time to be present in a pastoral manner.

The Bishops participation continued until it became more than evident that any presence of the CCCB was used by Canada as an opportunity to bolster its "whole Church" efforts. Eventually the CCCB had to pull back from all of these discussions and has been from that point no longer able to actively encourage solidarity with respect to reconciliation.

However the CCCB was neither silent nor completely absent. There has been much said about the lack of an apology at that time however that can overlook the amount of reflection that took place and the public statements that were issued.

In 1993 The Permanent Council met with the Royal Commission on Aboriginal Peoples and presented its brief entitled: Let Justice Flow Like a Mighty River. On the question of IRS the Bishops stated:

There are many stories of solidarity and genuine friendship between missionaries and Native Peoples. Yet, there are also stories of oppression and mistreatment of Native Peoples within the institutions administered by the Church. We who have shared in the blessings of the Church must also bear the burden of its past. The shocking revelations about abuse experienced at some residential schools have moved us to a profound examination of conscience as a Church.

Several Church groups and religious congregations have made public statements acknowledging past sufferings. These have led to efforts to find avenues of healing and reconciliation.

Justice and healing concern not only the Churches but the government, and the whole of Canadian society. The Indian residential schools were initiated by the federal government, sustained by government funds as well as Native Peoples' funds that the government administered, and supervised by government officials. Far from being clandestine, the government's policy concerning the schools was expressed repeatedly, openly, and publicly. It reflected the political and social thinking of the time, and enjoyed general public support.

The residential school system was designed to have a total impact on the habits and personality patterns of the children. As such, the system was dangerously flawed by the underlying policy which was fundamentally racist.

Again in May 1999, the Office of the Commission for the Evangelization of Peoples issued a Pastoral Letter entitled, *Rediscovering, Recognizing and Celebrating the Spiritual Heritage of Canada's Aboriginal Peoples*. The text itself has a tone of celebration specifically for the resurgence and the rediscovery of the full expression of Aboriginal spiritual heritage as it exists within the Christian faith communities, but also as it exists within the Aboriginal community broadly. It made a commitment to dialogue in that context.

Why the focus on Indian Residential Schools?

- Context of the moral crisis regarding children in Institutional care

But there is also a lament which is expressed most clearly in this one line:

"We remember as well with profound regret those dimensions of Catholic mission history that were too closely identified with the European forces of expansion and assimilation and so contributed to your suffering."

Over the past 20 years, one institution—the Indian Residential School—has come to symbolize the damage expressed in that statement.

We need to reflect on the power of this symbol. In the 120-year history of the schools, one in 10 Aboriginal people attended a residential school. You have often heard that number cited. I want to be clear, though, that in the 1940s, the peak period for the schools, one in three children were in a residential school. So the one in 10 average actually minimizes the impact of the schools during that time in our history.

I would like to ask two questions in the light of that:

First, how is it that in the past two decades that the residential school institution has so dramatically defined, or at least significantly shaped, the relationship between the government, the church and the Aboriginal people in Canada?

How does the church, which acknowledges with profound regret that it was a part of this marginalizing process in a very significant way, now stand as an agent and a witness to reconciliation?

I believe the first question has two answers and we should be aware of both. In the first place, we have to recognize that the issue of residential schools and abuse in residential schools emerged as a particular instance of the broad question of child abuse in institutional settings in Canada.

Placed in an historical context, it grew out of the background of Mount Cashel (in Newfoundland) and the experience of the institutions in Alfred and Uxbridge (in Ontario). Also in the background was the Shelborne situation in Nova Scotia and the Jericho Hills crisis in British Columbia.

When the reconciliation agreement for the former students at the reform school in Alfred was announced in the press, with \$16 million established as a reconciliation fund for those students, J. R. Millar, a historian from Saskatoon who was in the process of researching and writing his major work *Shingwauk's Vision: A History of Native Residential Schools*, asked the question: If \$16 million can be set aside to meet the needs of predominantly non-Aboriginal children in Alfred and Uxbridge, and nothing has been set aside to meet the needs of those who attended residential schools, is there anything behind that but racism?

In 1994, when the Assembly of First Nations began its Working Group on Indian Residential Schools, a member of the Alfred reconciliation committee was recruited to participate. When Senator Douglas Roche gave a presentation in Nova Scotia on the resolution of issues arising from the Indian Residential Schools, he drew specifically on the conflict resolution process being used in the Alfred reconciliation effort. So clearly, one answer to that first question is that it emerged as an instance of the whole issue of child abuse in institutional settings in Canada.

This context needs to be acknowledged. However, to leave it there misses much of the import of why this question has been so dominant for so long. Having participated in many for a and having been the Catholic representative present in healing circles, exploratory dialogues and many deeply personal encounters. I can say with confidence that the most consistent grievance from the Aboriginal community and the former students of residential schools, quite apart from the specific issues of abuse that surfaced in criminal and civil proceedings, is that the school system itself focused on children all that was and is inherently toxic in the colonizing relationship and its racist assumptions.

Historian John Webster Grant in his book, *The Moon of Wintertime*, referred to the residential schools as institutions "where the concern was not merely to impart instruction, but the concern was to change habits and personality patterns. The residential school was geared for a total impact on the child." In that statement have an understanding of the issue in its "total institutional" character.

Today, we have come to a much more profound understanding about the vulnerability of those in a "total institutional" setting. Children in such institutions have a number of forces upon them that make them vulnerable to those who would exploit them in physical or sexual ways. But the point of John Webster Grant's commentary is that the institution itself had a focus that was infused with the assumptions of European expansion and assimilation.

Rupert Ross is a lawyer in Northern Ontario who has written a number of insightful works on Aboriginal communities, the most widely read perhaps being "Dancing with a Ghost" which came out of his experience as Crown Attorney in Northern communities and his recognition that he was a continuation of the same set of assumptions. Reflecting on the residential schools issue, he says,

"It's not the case of isolated individuals sustaining losses and then returning to a healthy social context, but it's a case of almost everyone sustaining almost identical losses and having only strategically disrupted social contexts to return to. It's a wholesale disruption that has spawned the degree of family and community brokenness that now plagues so many communities."

Wardship and its manifestations

- Indian Residential Schools
- The sixties scoop
- Incarceration
- Children in care

The late Art Solomon, an Ojibway elder, said that residential schools have to be seen as an instance of a larger reality. He encouraged anyone who wanted to understand residential schools, to see them in light of what happened after the schools. He reflects on the 1960s "scoop." As the residential schools reduced their presence in Aboriginal communities, social workers in record numbers were scooping children out of these communities.

By the late 1970s, "as many as one in three status Indian or Metis children were removed - at least temporarily - from their homes. In some provinces, one in two spent a childhood as a permanent ward of the government. Many were adopted into white homes"

Elder Solomon insisted that we recognize this "reflex of wardship."

In five years (1996 – 2001) the number of First Nations children resident on reserve in the care of the state increased by more than seventy percent.

Today, there are more children in the child welfare system and not with their families than there were children in residential schools at their height. "In three sample provinces one in ten Status Indian children were in care as of May 2005 as compared to just one in 200 for other children".

Residential schools may have closed but, at best estimate, we are raising between 22,500 and 28,000 Aboriginal children in state care today. (Policy Statement on Aboriginal Children: National Children's Alliance)

If we look at residential schools in isolation without looking at them in terms of this whole womb to tomb wardship of Aboriginal people, we miss what is a pathology within our system.

Justice Murray Sinclair, chair of the TRC is very aware of this pattern. As former chair of the Manitoba Justice enquiry invites us to look at Aboriginal over-representation in incarceration in a similar way. He has pointed out on a number of occasions that it is not as a reality with a long history, but a reality that emerged in the 1960s. The people who are being over incarcerated than and up until very recently are the same people who were in residential schools.

And this phenomenon shows no signs of slowing.

"Experts believe that should the current trend continue unchecked, Aboriginal people could comprise 25 percent of Canada's correctional population in less than 8 years, even though they are less than three percent of the adult Canadian population."

When we recognize this, we can understand the present emphasis on residential schools and why it has such a high profile in our public conversation.

Habits that do not help us ?

- Repeating the argument of Intention (We meant well and served in the best way we knew)
- Repeating the argument of Consequences (Leaders benefited)
- The three font principle and the need to address the context (Colonialism)
- Bagot Commission---to the Act for Gradual Civilization of Indians)

If we go into the history of Indian Residential Schools, the first question to ask is where do we begin? We would be wrong to begin the story in 1867 with Confederation. We need to go back to the Bagot Commission in 1844 to find the genesis of the Indian residential schools. By that time, the military alliances that had formed during the War of 1812, and which had dragged on, had ended. The relationship with Aboriginal peoples had shifted from a military relationship into one with the civil authority. A policy of land seizure under Francis Bond Head was being enforced. The Bagot Commission was established to study "the Indian Problem" and recommend a comprehensive way forward.

The Bagot Commission is the first instance in Canadian policy making following its transfer to civilians hands. It is the earliest comprehensive study where it is clear that the Indian in public policy has lost the status of warrior and ally and is now the Aboriginal family and the Aboriginal community is viewed as the problem. The Bagot Commission uses the term "the civilization process" and, while the term has many meanings including the formal meaning of enfranchising it is consistently a term referring to changing the

habits, personality and social patterns of Aboriginal persons. Aboriginal children were given particular attention. To be civilized they had to be separated from their family and community context.

Residential schools are recommended as the instrument of civilization which was to focus on Aboriginal children since there was an assumption that the Aboriginal community and the Aboriginal nations were disappearing. Aboriginal children would come through the corridors of residential schools into Canadian society.

The history of legislation from the Bagot Commission on which was designed to achieve this "civilization process" is too long to get into, but my point is this: in addressing the residential schools issue, physical and sexual abuse is not the only problem. I'm not talking here about litigation, but about reconciliation. We have to recognize that for the Aboriginal people, the issue of physical or sexual or any particular abuse is felt as an instance of the overall reality, not just an isolated event. Reconciliation is going to have to address that overall reality.

Within the Catholic community, we are struggling with what that history means and what reconciliation means. It is very important not to separate a response to residential schools from the broader issues of culture, of language, of treaty and land rights or the many other questions of justice within our own church community and the broader Canadian Society.

The church is in fact a network of communities and its almost impossible to talk in a systematic way about how a network of communities responds to a crisis. But I would like to conclude by presenting what I believe is the challenge and I hope is the opportunity of the present moment

- Seek the Truth in Dialogue

We have all kinds of efforts to find the truth of the residential schools: the work of historians, of lawyers, of researchers in archives. We have filmmakers, play-writes, documentaries and other people engaged in media. I am sure that the list is not nearly exhaustive. But as important as these are nothing can replace the effort to seek the truth in dialogue where information is shared, understanding sought and relationships nurtured.

The settlement agreement's greatest contribution may be that by removing the fear of litigation, it has opened the possibility of a higher form of dialogue.

The mandate of the Truth and Reconciliation Commission appears to be in line with this high goal and the commissioners have been consistent in their call for a broad dialogue.

I promise you that we will seek out the stories of all those connected to the schools who are still alive, from the students and the teachers, to the managers and the janitors, as well as the officials who planned and carried out the whole thing.

If you have a story to tell about the schools, we will hear it. If you cannot come to us, we will come to you. If you cannot speak, we will find someone to speak for you.

We will go to as many communities as we humanly can manage and where we can't go ourselves we will send our delegates armed with our authority to record the stories of those who wish to tell them.

How these stories will be sought, told and recorded is not clear but the commissioners are not without guidance. We have a body of evidence even today that it is possible to create contexts for this important work.

Returning to Spirit Residential School Healing and Reconciliation Program a program initiated and developed by Marc Pizandawac, an Algonquin from Kitiganzibi First Nation, and Ann Thompson, a Sister of St. Anne from B.C. has enabled hundreds of church and First Nations persons to reclaim and reconstitute their personal and communal lives. It has been described as "a profound sign of hope in the present world, that opens wide the door to the possibilities of a different future together."

The program's usual format which involves separate workshops for First Nations participants and for non-aboriginal persons and church leaders, before the two groups participate in a joint session of healing and reconciliation may serve as a model for how some of this work can be achieved.

But those who have participated in Returning to Spirit express with amazement and appreciation that the empowerment and healing experienced goes beyond the single issue of residential schools. The value of these conversations may be a foreshadowing of the value of the TRC.

When we move from litigation to healing and reconciliation and if we are paying attention to the conversation facilitated by the TRC we may find ourselves re-connecting our understanding of the whole web. We may begin to make the connections between the harm inflicted by the Indian Residential Schools and the harm that was inflicted upon almost everyone in some way or other. We may find that this conversation will not be so much about guilt, blaming and shaming as about connecting and understanding and reconciling.

The basic truth is that since all of society is affected by the IRS experience, then all of society is also responsible for the legacy of IRS. The dominant society interacted with the First Nations through its members working in the IRS. These acted within the parameters of the culture of the dominant society bringing its perception and ways of interaction. Therefore, to place the responsibility only on those who worked in the IRS and those entities involved is unjust and inaccurate. Each member of the Canadian society (civil, religious, political), be they Aboriginal or non-Aboriginal, is responsible for the resolution of the legacy of IRS.

Mr. Gerry Kelly