Speech for

Deputy Minister Mario Dion

On the occasion of the

Residential School Legacy Conference

Calgary, Alberta

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Good morning.

My name is Mario Dion. I was asked by the Prime Minister last year to provide leadership as the second Deputy Minister responsible for Indian Residential Schools Resolution Canada. I consider myself privileged to be able to play a key role in trying to bring justice to thousands of Aboriginal peoples who have been the victims of one of the worst tragedies in our history.

My background is relevant, I think. I have spent close to twenty-five years as a French Canadian civil law lawyer in the federal government working as a manager in the Department of Justice, but also at PCO and corrections. I have never been involved in Aboriginal litigation before. In fact I have never litigated a single case. My interest and work has always been in the social arena. I have been told by several people over the years that I am a good listener even by some Aboriginal people recently. I care about people. I think I have shown in the past that I can manage things to achieve results when I think it is important. I was the Champion for diversity in my former Department. I know racism exists but I truly despise it. I profoundly believe in equality and the need for justice. I know that many people in our society feel less than equal and that something must be done about it.

The situation that exists in many Aboriginal communities is shameful. The Prime Minister of our much otherwise admired country said it loud and clear in his response to the *Speech from the Throne*. That so many descendants of our first peoples are in such a situation is a real national disgrace.

As we heard from Dr. Ing yesterday, residential schools are at the source of much of the violence and substance abuse that exists in Aboriginal communities. No one who is slightly informed disputes that anymore.

So I said yes the same afternoon the call came in. I left a comfortable position of Associate Deputy Minister of Justice to come and try to make a breakthrough.

Much of the Resolution Framework had been set up already. I found out that a comprehensive approach to compensation but also to health support and commemoration had been developed in conjunction with survivors and other stakeholders and that it seemed to offer promise. I am convinced my team will be instrumental in bringing fair resolution to survivors in a humane way.

I would really like to thank the Assembly of First Nations, and its National Chief who I have had the privilege of meeting on many occasions since I arrived in the Department, and who I admire very much, Ken Young as well as the University, this Law faculty and Professor Kathleen Mahoney for having assembled such an impressive group of speakers to further everybody's understanding and to discuss the best and fairest solutions to try to alleviate its effects.

I am here with Elizabeth Sanderson, a dear colleague from the federal Department of Justice who has worked on human rights since the early 80's and has often been seen as a progressive thinker within the federal government. Elizabeth will offer her perspective on our approach. Then, Doug Ewart who has spent countless hours developing the model, will explain some of its key features. Holly Holtman, a legal specialist with our legal branch who has spent a lot of time developing the compensation aspect of the new ADR will explain where it comes from and how it works.

We have been given sixty minutes to explain the DR Model launched by former Minister Goodale in November of last year and to try to answer any question you may have. This will obviously be a very difficult challenge.

I would like to take a few minutes to outline the philosophy and rationale behind the resolution framework and the DR Model. I will then turn to Elizabeth, Doug and Holly in that order and ask them to cover particular aspects of the model. We will try and manage the panel so that at least fifteen minutes will be left for comments and questions. The presentations are so interlinked that this is the only way to go.

Bien que les présentations seront faites en langue anglaise étant donné la forte prédominance de personnes parlant cette langue dans la salle, il nous fera bien sûr plaisir de répondre à toute question dans la langue officielle de votre choix.

Let us start with some facts that are relevant to what we will be discussing.

There are currently over 12,000 claimants involved in litigation against the government. Most often survivors are also suing a Church organization as a result of what they had to endure while living at one of 90 residential schools. Forty of the schools that once existed are not currently the subject of any claim at this point and time.

I read in the Ottawa Citizen that our Minister of Justice said on Thursday that there is no other single area with as many claims against the Government of Canada. We continue to be served with a few new claims each week but not with 40 or 50 each week as was the case not long ago.

The vast majority of claimants- 90%- allege they were victims of physical or sexual abuse or both. A large proportion also make claims based on alleged loss of language and culture, loss of education opportunity, malnutrition and a number of other heads of claims.

Eleven hundred of those claims have now been resolved out of court- 200 as a result of pilot DR projects initiated over the last four years and over 900 as a result of out of court settlements. The pilots are coming to an end soon and were often difficult but they have been rich in lessons as well as successes. For instance, elements of the 1998 dialogues mentioned by Glen Sigardson yesterday were built into the Gitxsan UCC- Canada ADR. Chief Fontaine said we should celebrate success. I agree with him. It is good for morale and creates a positive atmosphere. So, you should know that next week, the Gixstan claimants who attended the Edmonton School will celebrate trough a potlatch with Brian Thorpe of the UCC and Paulette Reagan of my office the settlements of their cases with elders and families.

In Alberta however the proportion of claims that have been resolved is very, very low. Just over 1%. It approaches 50% in British Columbia.

The Government has already paid 60 million dollars to former students in settlements. The average settlement is around $78,000, when the Church pays its share and $55,000, when it does not. The range is quite large - the lowest settlement was for $910 and the largest was over $165,000. Those are the facts.

Only 17 judgments have been rendered to date throughout Canada. Many of those judgments have been unfavorable to claimants.

Over the last 10 months alone, close to 400 claimants have seen their claim resolved. Initial estimates were that it could take over 50 years for residential school claims to be heard and decided. I am very pleased to report that a much greater number of claims are being resolved each month. I think this is due to a better knowledge on the part of the research staff, resolution managers and the lawyers involved of how to approach those very difficult cases. I hope I am right because the average claimant is 57 years old and should not have to wait for years and years before he-she feels justice is being done. As the abuse often took place decades ago, it is very important that access to justice be provided as soon as possible in an environment where validation can take place in the most humane fashion possible.

It is with those goals in mind that the dispute resolution model was developed as an alternative to litigation - not as a substitute or a surrogate - but as a true alternative in those cases where former students' claims relate mostly to sexual or physical abuse. Of course litigation remains an important avenue for many claimants, for instance when a claimant feels he or she has an important claim for wage loss, past or future as it may very well be the case for a good number of claimants.

The model does not compensate for loss of language and culture. That is because no such claim is compensable at this time under Canadian law. As you very well know, the law is a living instrument quite difficult to anticipate most of the time. For now, the Government has decided to take an approach based on programs to maintain and revitalize

Aboriginal languages and is investing tens of millions of dollars each year with that end in mind.

Because of the fundamental nature of the grief experienced by Aboriginal peoples as a result of their loss, the government has also decided to stop asking claimants who settle to give away their right to pursue compensation trough the courts for language and culture.

My Department's goal in setting up the DR and making it available to all claimants is therefore meant only to offer an alternative in which the federal government guarantees to claimants that their case will be heard and decided by a competent, culturally sensitive, independently appointed adjudicator within nine months of a completed form having been submitted to the Department for claims of sexual or physical abuse or wrongful confinement as defined in the Model.

That's all the model tries to address. Of course, the whole legacy of those schools is much more complex and needs to be addressed. We think the DR will be a worthwhile avenue for a majority of claimants. We hope that many of the people who have ordered 4500 forms over the last four months will think that as well. As this is a very serious and difficult decision to make, there is currently no deadline to apply. The form is long and complex and this is the reason why we will significantly increase access to form filler assistance over the coming months. We will look at ways to facilitate access including simplifying the form if necessary.

The process minimizes the risk a claimant takes by entering it since no one has to waive any right until they actually know whether and how much compensation the adjudicator will order the Government and the church, to pay.

Three of the four churches involved participate without any exception.

One hundred and fifty claimants have already applied including 20 last week alone. The first hearings will take place within a few weeks. 80% are represented by counsel and that's a good thing. We are still getting close to 60 calls a week from people making inquiries. Although it is too early to tell, I am quite encouraged by what is happening.

The true and perceived independence of adjudicators has understandably been and will remain a concern. No one wants to have his or her faith decided by the other side. I really resent the suggestion that this is private justice however. Give me a break!

As many safeguards as could be imagined have been taken to distance the government from having any decision-making role. The 38 adjudicators that have been selected are people who have applied after a national request for proposals was issued last summer. Every interview was conducted by a panel on which a representative of survivors, plaintiff's counsel, the churches and government had an equal vote. Each decision was based on consensus.

More than half of the aboriginal applicants, we only had seven, have been qualified to hear cases.

The chief adjudicator, a well-known and widely respected jurist, was also selected by a truly representative Board. Mr. Ted Hughes' role will be to supervise the adjudicators independent of any influence by any of the individual stakeholders involved. Everything having to do with the selection, training and supervision of adjudicators has been and will be done in partnership.

Secondly, it is essential that claimants be adequately supported by legal counsel of course when they choose to have one but also by health professionals and traditional healers and family and friends. This is the reason why hearings will be held in private, in a private setting not in a court room, and in the company of persons he or she has chosen. Ceremonies will be entirely possible and in fact facilitated. Those cases are profoundly difficult from a human point of view and everything possible will be done to reduce how difficult and painful it is for victims to tell their story. For instance, no one will be grilled by an aggressive opposing counsel; only the adjudicator will be asking questions. The government will not have lawyers attend those hearings except in order to train the resolution managers and in the most exceptional circumstances.

To provide further security, the claimant does not have to relinquish any claim in court until he or she knows what the adjudicator's decision is and how much the adjudicator will award. The system has been designed in such a way that the awards will be no less than what a court would award for such physical or sexual abuse. The Department of Justice has assured the Minister and me on many occasions that the compensation offered is a true reflection of the case law. Law is not an exact science. Everything is based on precedents when determining the value ascribed to harm. The law on this has evolved and will continue to do so.

While we can be creative with support mechanisms, commemoration and facilitating people telling their story, we are quite limited by what courts have decided in granting compensation. If the best cases are put forward in litigation, and if they are successful, the compensation under ADR will follow suit. We have asked and will continue to ask anyone, plaintiff's counsel, the various law societies or legal specialists to tell us about any decided case which in their opinion should cause our lawyers to reconsider any aspect of the compensation offered under the new DR.

Survivors in our Aboriginal Working Caucus, some of whom are here today, were involved throughout the development of the model as well as other stakeholders. The model is not perfect. Nothing ever is. But I do think it is a worthwhile addition to the avenues leading resolution. That's what the National Chief said when we launched in November. It is a valid alternative. The AFN has pressed for changes. The Government has made many.

The DR Model will be the subject of a lot of scrutiny over the next year or two and survivors, academics, plaintiff's counsels, churches and the government will evaluate whether it is an adequate approach to validation and compensation for the horrendous acts committed against so many aboriginal children. We believe it will pass the test and my Department will work very hard to make sure it does. We will not be the only judge of that. Survivors, Aboriginal people, legal practitioners and academics as well as Canadians at large will have a chance to speak up. We have listened in the past and we will continue to listen.

That was my introduction to the subject- I hope it will help situate what my colleagues will be saying. Thank you. Elizabeth…