

CBA Proposed Guidelines

Resolution Search - Residential Schools

00-04-A

Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools

Aboriginal Law Section

WHEREAS survivors of Aboriginal residential schools are often vulnerable and in need of healing as well as legal assistance;

WHEREAS the identity of persons who attended Aboriginal residential schools is available without their consent;

WHEREAS survivors of Aboriginal residential schools wanting to seek compensation from the Government of Canada and the churches involved should have legal assistance which takes into account the potential impact on their well-being when they begin to address their abuse;

BE IT RESOLVED THAT

1. The Canadian Bar Association urge each law society to adopt the following guidelines for recommended conduct for lawyers acting or seeking to act for survivors of Aboriginal residential schools, that recognizes their vulnerability and need for healing:
 - (a) Lawyers should not initiate communications with individual survivors of Aboriginal residential schools to solicit them as clients or inquire as to whether they were sexually assaulted;
 - (b) Lawyers should not accept retainers until they have met in person with the client, whenever reasonably possible;
 - (c) Lawyers should recognize that survivors had control taken from their lives when they were children and therefore, as clients, should be given as much control as possible over the direction of their case;
 - (d) Lawyers should recognize that survivors may be seriously damaged from their experience, which may be aggravated by having to relive their childhood abuse, and that healing may be a necessary component of any real settlement for these survivors. Lawyers should therefore be aware of available counselling resources for these clients to ensure that they have opportunities for healing prior to testifying;
 - (e) Lawyers should recognize that damage to the survivors of Aboriginal residential schools may well include cultural damages from being cut off from their own society, and should endeavour to understand their clients' cultural roots;
 - (f) Lawyers should recognize that survivors are often at risk of suicide or violence towards others and should ensure appropriate instruction and training for their own employees, including available referrals in time of crisis;
2. This resolution be sent to each law society in Canada for implementation, as well as to the Assembly of First Nations, Congress of Aboriginal People, Inuit Tapiritsat of Canada and other National Aboriginal organizations for distribution to aboriginal peoples across Canada.

02-02-A

Residential School Claims

WHEREAS the Government of Canada, in its 1998 Statement of Reconciliation, acknowledged that the residential school system has its "left legacies of personal pain and distress that continue to reverberate in Aboriginal communities to this day";

WHEREAS it is in the interest of all Canadians to develop a just and expeditious national solution for resolving the claims of survivors of the residential school system;

WHEREAS initiatives by interested parties have been unsuccessful to date in developing a national resolution of survivors' claims;

BE IT RESOLVED THAT the Canadian Bar Association urge the Government of Canada and all other interested parties to embark immediately on discussions with the goal of developing a national resolution of the residential school claims.

04-08-A

Scope of Residential Schools Dispute Resolution Process

WHEREAS several comprehensive studies, including the Royal Commission on Aboriginal Peoples and the Law Commission of Canada report, Restoring Dignity: Responding to Child Abuse in Canadian Institutions, have documented the immediate individual harm and the long term collective harm caused by Canadian government efforts to eradicate aboriginal language and culture by placing aboriginal children in Indian Residential Schools; WHEREAS the Government of Canada and the Canadian Bar Association have recognized the extreme vulnerability of survivors of residential schools, and the potential for further harm in seeking to resolve their claims through litigation;

WHEREAS the Government of Canada has established a dispute resolution process to give survivors an alternative to the litigation process, but have limited that process to claims of physical and sexual abuse only; WHEREAS the Canadian Bar Association supports alternatives to litigation in appropriate cases.

BE IT RESOLVED THAT the Canadian Bar Association urge the Canadian government to broaden the scope of the Residential Schools Dispute Resolution process to include automatic base compensation for loss of language and culture, and for minor physical and sexual abuse, for all claimants proving attendance in a residential school, with provision for additional compensation in cases of serious physical and sexual abuse.

Carried

07-09-M

Guidance for Lawyers Acting for Survivors of Indian Residential Schools

WHEREAS former students of Indian residential schools need legal assistance that is sensitive to their vulnerability and the potential for further trauma when they address memories of abuse and neglect;

WHEREAS the identities of former students are publicly available without their consent;

WHEREAS Indian Residential Schools Resolution Canada, the Chief Adjudicator for the ADR process established to address abuse claims, and Canadian Bar Association members have raised concerns about the conduct of, and seemingly excessive fees charged by, a small minority of lawyers acting for former students, and the potential for that conduct to tarnish the reputation of the legal profession generally;

WHEREAS in 2000, the Canadian Bar Association recognized the emerging problem and urged law societies in each province and territory to adopt guidelines for lawyers who act (or seek to act) for former students of Indian residential schools;

WHEREAS the law societies of Upper Canada, Northwest Territories and the Yukon have endorsed the Canadian Bar Association model guidelines;

WHEREAS in 2006, the Government of Canada designated at least \$1.9 billion for "common experience" payments to all former students;

WHEREAS many former students have claims in addition to the common experience payments for sexual and serious physical abuse suffered;

WHEREAS Courts in some jurisdictions that have considered the Settlement Agreement have remarked upon the conduct of counsel acting for former students in those approvals;

BE IT RESOLVED THAT the Canadian Bar Association:

1. renew its call for law societies to adopt model guidelines for lawyers acting for former students of Indian residential schools;
2. urge the law societies to be particularly vigilant in monitoring the conduct of those lawyers, given the imminent release of significant funds for common experience payments to address remaining claims of former students of Indian residential schools; and
3. inform the Assembly of First Nations, the Congress of Aboriginal Peoples, the Inuit Tapirisat of Canada and other national Aboriginal organizations of these initiatives.

Carried as amended