

Aboriginal Law Firm Appeals for Changes to Proposed Residential Schools Settlement

Current Federal Proposal called “Fundamentally Flawed”

Press Statement

January 16, 2006

For Immediate Release (Vancouver) Donovan & Company, a Vancouver law firm practicing exclusively in the area of aboriginal law, has written to the leaders of all five federal political parties and to the Grand Chief of the Assembly of First Nations, calling upon them to address major flaws in the proposed settlement for former students of Indian Residential Schools.

Residential school survivors have been waiting decades for the Canadian Government to acknowledge the damage that residential schools inflicted upon them when they were children. Thousands of aboriginal children were subjected to sexual, physical, emotional, cultural, and spiritual abuse at residential schools jointly run by Canada and the major Christian Churches. Over 10,000 former students have commenced legal action for compensation.

In May 2005, faced with this flood of litigation, the Liberal government appointed former Supreme Court of Canada Justice, Frank Iacobucci, as a Federal representative to design a better settlement process for residential school survivors. Iacobucci was given until March 2006 to submit his final report. He travelled across Canada discussing matters with legal counsel of former students, legal counsel for the Churches and the Assembly of First Nations. On November 23, 2005, immediately before the federal election was called, Mr. Iacobucci announced that an agreement in principle (AIP) had been reached.

The AIP suggests the establishment of a “Common Experience Payment” for all survivors to address their loss of family, language and culture. This payment has received much press coverage, and offers former students \$10,000 for their first year at the school and \$3,000 for each additional year. To receive this payment, however, former students would be required to release Canada and the Churches of all legal claims against them for their time spent at residential school.

Residential School victims who were sexually or physically assaulted would be permitted, under the new system, to proceed to an out of court settlement process where their damages would be calculated by a “point system” awarding points based on the frequency and precise nature of the sexual assaults - rather than in accordance with legal principles. If the residential school victim insists on exercising his or her right to have his or her abuse claim heard by the Courts, the new scheme would deny the survivors the Common Experience Payment. This discrimination is fundamentally unfair and re-victimizes the survivors.

“Our clients suffered from serious sexual and physical abuse as children while in the control of Canada and the Churches. This abuse has had a lasting impact on their lives and on the lives of their families. It would be fundamentally wrong for Canada to dangle the carrot of a modest payment to compensate all residential school survivors for their “common experience” but to deny this “common experience” payment to former students who dare take the government to court. That isn’t honourable. That isn’t the Canadian way” said Karim Ramji, a lawyer at Donovan & Company who has represented over 100 residential school survivors.

In a letter sent on January 16, 2006 by Donovan & Company, to the five federal party leaders and to the Grand Chief of the Assembly of First Nations the law firm praises the initiative of the parties involved in the negotiations, but calls for a correction of critical flaws in the AIP. These flaws include the following:

- The Common Experience Payment is supposed to be payable to everyone who was placed in a residential school. But the AIP would deny this payment to victims of childhood sexual and physical abuse who take the government to court.
- As it stands, the AIP would not give victims of childhood sexual abuse the time necessary to decide how to resolve their abuse claims. The AIP would presume that survivors who do not opt out of the agreement have opted in. This would mean that they had abandoned their legal claims against Canada and the Churches. In effect the AIP places a time limit on former residential schools victims bringing claims for childhood sexual abuse; this runs contrary to Canadian legal principles.
- The AIP proposes an alternative dispute resolution (ADR) process that would settle survivors’ claims of physical and sexual abuse. This proposed process would use an improper “point system” for determining how much compensation is owed to the victims of abuse. For example, different levels “points” are awarded to penetration with an object and “digital penetration”. This dehumanizing model that awards differing “points” for the frequency and nature of the sexual acts perpetrated upon the young aboriginal victims is at odds with basic principles of Canadian common law. The AIP must be revised to ensure that victims are fairly compensated in accordance with Canadian law.

- Canada ran Indian Residential Schools with the purpose of destroying aboriginal languages and culture in this country. The AIP fails completely to address the losses of language and culture that aboriginal people have suffered because of residential school. The AIP needs to be amended to include a commitment by Canada to redress the losses of language and culture that aboriginal people.

Under the present proposal, former students would be treated unequally among themselves, despite having suffered similar losses. Those who wish to resolve their abuse claims through the court system would not be eligible for the Common Experience Payment that was meant to be available to all former students” Mr. Ramji stated.

“If the government’s reformed ADR process is better for survivors, then they will voluntarily choose to participate in it to resolve their claims. The proposed ADR process proposes to value sexual assault claims by assigning “points” based on the frequency and precise nature of the sexual abuse suffered. This approach finds no support in our legal system. This is no way to treat aboriginal people who, as children, who were raped and sexually molested while in the care of the government.” added Allan Donovan of Donovan & Company. “The AIP is a first step, but fundamental changes are required to ensure that residential school survivors are treated justly.”

“The agreement is not yet final. There is still an opportunity for the Canadian government to provide a fair and just resolution to the residential school legacy. The AIP must be amended to ensure that residential schools survivors have the same access to the justice system that other Canadian citizen have. The AIP must jettison the discriminatory and degrading “points” system of valuing claims.” said Mr. Donovan. “We urge all federal party leaders to commit to reforming the existing AIP; this issue goes beyond partisan politics.”

Mr. Donovan and Mr. Ramji call upon all of the federal political leaders in Canada, in consultation and the residential schools survivors themselves, to amend the AIP in order to achieve the fair resolution that survivors have been waiting for so long to see.

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