

Residential School Claims: A National Class Action

*By Andrew Desmoulin, Articling Student in the Law Office of Mr. Richard Courtis
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In 1998, a group of Indian Residential School survivors from various First Nation communities in the Armstrong area walked into a small Thunder Bay law office, seeking advice as to how best to obtain compensation for the abuse they had suffered as children in residential schools. They met with Mr. Richard Courtis, a lawyer who has spent a number of years serving Aboriginal communities and who is familiar with the legacy of despair, poverty and abuse that Indian Residential Schools have left behind.

From there on, it was decided that the most effective way of obtaining compensation laid in the pursuit of a class action lawsuit. What began in one Thunder Bay law office has now expanded to a national scale, with more than 20 law firms from all across Canada supporting the cause.

In April 14th 2004, the National Class Action lawsuit received an official endorsement from the National Association of Japanese Canadians. Their letter outlined the similarities between experiences of Japanese Canadians during World War II and aboriginal students at IRSs. President Kako Micki wrote to the Federal Minister of Indian Residential Schools Resolution Canada, Denis Coderre, asking that a fair and equitable settlement for IRS survivors be reached. Kako Micki noted in the letter that the Japanese Canadians were able to get compensation for the loss of culture and language in their claim. Included within their claim was also compensation for cultural abuses, something that is not present in the Government's Alternative Dispute Resolution (ADR) process for aborigines. This begs the question as to why the federal government would recognize the loss of culture and language for one ethnic background and not another.

Once again, it appeared as though the government was treating Indian people unequally.

The National Class Action offers an opportunity for all survivors across Canada, no matter which of the Indian Residential Schools they had attended, to be properly compensated once and for all. This is also a chance for the federal government to officially take responsibility for the neglect and abuse that aboriginal children were subjected to in these schools.

The federal government knows that the IRSs were operated nationwide under a federal policy of assimilation and it only makes sense to settle all claims for all survivors. Pockets of individual compensation based on individual schools will never truly recognize the scope of this offence and will not serve the interests of efficiency and conservation of judicial resources.

If the Canadian government is serious about seeking closure on this dark chapter in Canadian history, a national class action would seem to be the correct and obvious remedy. The ADR process only permits those who can prove sexual or serious physical

abuse to qualify for compensation. However, a National Class Action, apart from being a more equitable and remedy than ADR, also offers compensation for an entire range of harms, from emotional and/or psychological abuse through to the worst imaginable sexual abuse.

In addition, a settlement of a National Class Action would benefit both the victims and the government. All victims would receive compensation; Canada would in turn receive a full release from all the plaintiffs.

Furthermore, unlike the ADR process, the National Class Action has the potential to raise awareness of the history of Indian Residential Schools. If the National Class Action were make its way through the courts, it would educate the non-Aboriginal Canadian public about the intergenerational impacts that residential schools have left behind. The so-called residential school syndrome, the consequences of which continue to wreak havoc in First Nation communities from coast to coast, will be brought to light.

After the lawsuit is certified, that is when the common issues of fact or law between all plaintiffs' claims are identified, survivors will have about a year to come forward with claims for additional damages or they will be able to accept the base compensation award. Once this is completed, this matter will never have to be litigated again. The entire process could be completed within two years.

As of today, the Nation Class Action is in negotiations to settle. This process began in August 2005 and is scheduled to last into the spring of 2006. During these negotiations it is hoped that a favourable resolution for all survivors will be reached.

Both parties, the government and the lawyers for the IRS survivors, have entered this process in good faith, and there is hope that an appropriate settlement may be reached soon. However, should the current negotiations fail, the National Class Action will likely go to court to seek certification.

If you are interested in finding out more about the National Class Action, you can contact the Office of Mr. Richard Courtis at (807) 623-3000 or toll free at 1-877-266-6646 .

If you live in a community where a large number of individuals would like first hand information regarding this class action, you may also contact NAN legal services at our Thunder Bay office about the possibility of having a Clinic Day for your community on this topic.

****The views expressed in this article are those of the writer and not necessarily those of NALSC or its staff.*