

RESIDENTIAL SCHOOLS :
A Law Firm's View: Thomson, Rogers
By Marcia Schmitt
2006

DISCLAIMER: This article deals with subject matter that may cause some readers to have flashbacks or other emotional responses. Please call the National Indian Residential School Crisis Line at 1-866-925-4419 if you or someone you know suffers in any way while reading this article.

Introduction

As lawyers we are proud and honoured to work on behalf of the survivors who were taken, as children, from their communities and placed in residential schools across Canada. While each person's story is unique, there are many similarities among them. What has become clear is that many individuals and communities were devastated by residential schools. That is why the lawsuits on behalf of residential school survivors and their families began: to acknowledge the harm that has been caused by these schools, and to seek compensation for the victims.

Background

We have been working with residential school survivors for several years. In 2000, we started a class action lawsuit on behalf of survivors throughout Canada. Bringing a class action meant that the Court would be able to recognize the claims of thousands of people through the stories of one or two survivors (the "representative plaintiffs"). The representative plaintiffs in our action are from north-western Ontario. They attended residential schools in their childhood and were victims of a range of serious mental, physical, cultural and sexual abuses. In addition, their family members also suffered because the representative plaintiffs had gone to residential school.

Other similar lawsuits were being brought in various provinces around the same time. One of those lawsuits was the *Cloud* class action, which addressed the abuses faced by students at the Mohawk School in Brantford, Ontario. In December 2004, the Court of Appeal decided to allow that class action to go ahead. As a result of this decision and other work that we and others were doing to convince Canada and the Churches to take responsibility for their actions, negotiations began between representatives for survivors, Canada and the Churches to settle all of the residential school actions across Canada.

On May 10, 2006 the negotiations ended and a final settlement agreement was signed.

The Proposed Settlement

Briefly, the proposed settlement provides for money to be paid to every person who went to one of the listed residential schools. The amount is \$10,000 for the first year of attendance, and \$3,000 for every additional school year of attendance. This is called the *Common Experience Payment*, and is intended to address certain abuses that were, sadly, very common at these schools, such as the loss of family, culture and language, strappings, mental and emotional abuse, and neglect.

In addition to these abuses, some people suffered sexual abuse or more severe physical abuse. Their claim will be dealt with in a separate process called the *Independent Assessment Process* (“IAP”).

The proposed settlement also provides redress for inter-generational impacts of abuse through funding for programs for healing, truth, reconciliation and commemoration to bring awareness of the tragedy of these schools and the devastation they have caused.

The applications became available for survivors who were 65 and older as of May 30, 2005 (i.e., born before June 1, 1940) to apply for an Advance Payment of \$8,000.

The Road Ahead

The settlement is not yet finalized. There will be nine court hearings across Canada from the end of August through October, 2006 to determine whether the settlement is fair and reasonable. It is not necessary for former students to attend these hearings, although they may ask to speak if they wish. If anyone has an objection to the settlement, they may make it in writing by August 25, 2006. As lawyers for many survivors, we will be attending the hearings in support of the settlement. The hearing for Ontario will take place from August 29-31 in Toronto.

Once the agreement is finalized, there will be an opt-out period to allow people who do not want to be part of the settlement to say so. They can continue with legal claims, but will not be able to participate in the settlement that was reached.

Applications will become available for the Common Experience Payment shortly after the courts’ approval of the settlement is final.

Individual Claims

If you are only seeking the Common Experience Payment, you will probably not need to have a lawyer to fill out the application, once it becomes available. The applications will be available through your local band office or friendship centre, and through other Aboriginal organizations.

However, if you think that you may have a claim for sexual or severe physical abuse, then we suggest that you speak with a lawyer about your options.

Thank you

We would like to thank everyone who has been so patient with this process so far. It has been a very long, hard road for many of you. Many of you are still dealing with the effects of the abuse that you suffered as children at these schools, and for some people it has been difficult to be faced with it all over again. Thank you for the courage you have shown in coming forward with your stories. We sincerely hope that the legacy of this class action will be healing and hope, in addition to fair compensation, for everyone affected by this tragedy.

If you have any questions, please feel free to call Marcia Schmitt or Darcy Merkur toll-free at 1-888-223-0448, or Richard Courtis at 1-877-266-6646.

