HOUSE OF COMMONS
OTTAWA, CANADA
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38th Parliament, 1st Session

The Standing Committee on Aboriginal Affairs and Northern Development has the honour to present its

FOURTH REPORT

Study on the Effectiveness of the Government Alternative Dispute Resolution Process for the Resolution of Indian Residential School Claims

Pursuant to Standing Order 108. (2) the Committee undertook a study on the effectiveness of the government's alternative dispute resolution (ADR) process for the resolution of Indian residential school claims.

The Committee considered the written and oral evidence presented by witnesses including:

1. former residential school students, some appearing as individuals and others as spokespersons for the Aboriginal Healing Foundation, the National Residential School Survivor Society, Children of the Shingwauk Alumni Association, the Indian Residential School Survivor Society, Spirit Wind and the Association for the Survivors of the Shubenacadie Indian Residential School;
2. the National Consortium of Residential School Survivors' Counsel;
3. Hon. Ted Hughes, Chief Adjudicator, Indian Residential Schools Resolution Canada;
4. Hon. Anne McLellan, Deputy Prime Minister and Minister Responsible for Indian Residential Schools Resolution Canada;
5. Mario Dion, Deputy Minister, Indian Residential Schools Resolution Canada;
6. the Assembly of First Nations (AFN);
7. the Canadian Bar Association (CBA).

The Committee took particular note, in formulating the recommendations below, of the AFN report entitled "Assembly of First Nations Report on Canada's Dispute Resolutions Plan to Compensate for Abuses in Indian Residential Schools", first released in November 2004, and of the Canadian Bar Association February 2005 report entitled "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors".

The Committee took particular note, in formulating the recommendations below, of the written and oral evidence of the former students and the representatives of former students and survivors' organizations regarding their personal experiences in the residential schools and in the Indian Residential Schools Resolution Canada ADR process. The witnesses were compelling for their candour and integrity about their experience as inmates in the residential school system and fair, frank and persuasive on matters of public policy.

The Committee took particular note, in formulating the recommendations below, of the written and oral evidence of the Minister, the Deputy Minister and the Chief Adjudicator. The evidence was contradictory with respect to financial and case-resolution performance numbers of the Indian Residential Schools Resolutions Canada ADR process and failed to resolve discrepancies between the evidence in chief of the witnesses and the numbers obtained from other government sources. This is troubling because it speaks of fiscal mismanagement and an absence of administrative control. More disconcerting, however, the Minister's evidence was unapologetic and self-congratulatory with respect to both the underlying framework and the results of the ADR process. It disclosed her apparent disconnectedness from the experience of the survivor witnesses, for whom she has a particular duty of care and to whom she is not listening.

The Committee is drawn to the inescapable conclusion that the ADR process is an excessively costly and inappropriately applied failure, for which the Minister and her officials are unable to raise a convincing defence. Specifically the ADR process is a failure because:

1. It is strikingly disconnected from the so-called pilot projects that preceded it.
2. The consultative mechanisms that informed its development did not include a sufficiently broad range of participation by former residential school students and other relevant professionals – legal, cultural, psychological and healing.
3. It is failing to provide impartial and even-handed due process.
4. It is not attracting former students to apply in credible numbers.
5. It is structured to compensate too narrow a population of former students.
6. It provides grossly inadequate compensation when, grudgingly, it does so.
7. It excludes too many of the some 87,000 remaining former students from eligibility.
8. It is proceeding too slowly, allowing too many former students to die uncompensated.
9. It is using a model of dispute resolution that is disrespectful, humiliating and unfeeling and re-victimizes former students, who are now elderly and vulnerable.
10. It is an arbitrary administrative solution that is vulnerable to political whim.
11. Its high structural costs are fixed and will always be disproportionate to the size of compensation granted.
12. Its so-called verification process imposes an egregious burden of proof on the applicants that programs failure into the resolutions process, requires irrelevant data and imposes a cost on the applicant that can exceed the size of an award.
13. Former students do not trust the process.
14. There is no satisfactory evidence in the numbers that the program is working.

The Committee took note of the consistency of the former students, the AFN, the CBA and the National Consortium of Residential School Survivors Counsel on five points:

1. the necessity of compensation for those former students who are able to establish a cause of action and a lawful entitlement to compensation process;
2. the necessity of keeping the compensation referred to in item 1 above separate and apart from compensation for sexual and severe physical abuse;
3. the absolute necessity for a settlement process that includes direct negotiations with the former students and the vigorous protection of their legal rights during the negotiations;
4. the wisdom of a court-approved, court-supervised settlement that is transparent, is arrived at in a neutral manner and cannot be tampered with politically;
5. The necessity of a settlement that is comprehensive and final and relieves the Government of future

liability.

The Committee took note of three recommendations by former students and their groups:

1. the need for continued financial support of healing processes, with a greater degree of local direction and personal self-direction on how that healing is to be achieved;
2. the need for a respectful, thoughtful, national forum in which the truth is told about the residential school experience by former students so that Canadians will know and never forget;
3. the urgency for prompt compensation, reconciliation and healing because former students are elderly; on average some 30 to 50 former students die each week uncompensated and bearing the grief of their experience to the grave

The Committee took note of the sweeping, thoughtful and constructive analysis and recommendations contained in the AFN and CBA reports it received and believes they are seminal documents that can assist in the compensation and healing processes.

The Committee took note of the Canadian Bar Association's recommendation, in its report "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors", for a restorative reconciliation payment that would "recognize a person as a survivor of an injurious program for which the Government of Canada is responsible". This recommendation is consistent with the Assembly of First Nations' call for a "lump sum award granted to any person who attended an Indian Residential School". The Committee further took note of the Canadian Bar Association's recommendation on payment details, including the following as to amount, as a reference point for court-supervised, -approved and -enforced negotiations and settlement:

1. the reconciliation payment should start with a base amount for any time spent at a school (for example, $10,000) and add an amount for each year at a school (for example $3,000).

The Committee regrets the manner with which the Government has administered the Indian Residential Schools Claims program and recommends that the Government give consideration to the advisability of Government taking the following steps:

1. **That the Government take all the actions recommended below on an urgent basis, with consideration for the frailty and short life expectancy of the former students.**
2. **That the Government terminate the Indian Residential Schools Resolutions Canada Alternative Dispute Resolutions Process.**
3. **That the Government engage in court-supervised negotiations with former students to achieve a court-approved, court-enforced settlement for compensation that relieves the Government of its liability for those former students who are able to establish a cause of action and a lawful entitlement to compensation.**
4. **That the Government ensure that the courts have full and final discretion with respect to limitations on legal fees.**
5. **That the Government expedite the settlement of those claims involving aggravated circumstances, including those involving sexual and severe physical abuse, in a separate restorative judicial process.**
6. **That the Government , to ensure that former students have the opportunity to tell their stories to all Canadians in a process characterized by dignity and respect, cause a national truth and reconciliation process to take place in a forum that validates the worth of the former students and honours the memory of all children who attended the schools.**

7. **That the Government ask the Auditor General to conduct an audit of the Indian Residential Schools Canada Dispute Resolution Process from its creation to its winding down.**

8. **That the Government respond publicly in writing to the Assembly of First Nations report "Assembly of First Nations Report on Canada's Dispute Resolutions Plan to Compensate for Abuses in Indian Residential Schools" and the Canadian Bar Association report "The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors".**

Copies of the relevant *Minutes of Proceedings* (Meetings Nos. 18, 19, 20 and 25) are tabled.

Respectfully submitted,

Nancy Karetak-Lindell, M.P.
Chair

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