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**CANADA TELLS COURT: RESIDENTIAL SCHOOL SURVIVORS
DON'T DESERVE FAIRNESS**

Montréal, 1 October 2017 – The federal government has asked for a court to declare that former Indian residential school students have no right to a fair hearing when their claims are heard for the physical and sexual abuse they suffered. The result would be that even if their claims were denied because Canada had not made full disclosure of the evidence, residential school survivors would not be entitled to a new hearing.

The 2006 Settlement Agreement gives those who attended Indian residential schools as children a right have their claims heard before an adjudicator (if they applied by 2012) and to be compensated for physical and sexual abuse. But in a “Request for Directions” government lawyers filed last month in British Columbia Supreme Court, they argue that a hearing under the Indian Residential School Settlement Agreement does not include a right to “procedural fairness.” Canada argues the only thing that “fairness requires (is) adherence to the rules of the IRSSA.”

In law, procedural fairness means that in a dispute, parties have a right to notice of the issues, disclosure of the evidence, and the opportunity to present their case, while the decision-maker must be impartial and consider all the evidence. The courts apply the rules of procedural fairness to everything from prison discipline to ending a teacher’s employment.

Concretely, the federal government is objecting to the Chief Adjudicator’s reasoning in seven different re-review decisions where he sent claims back for a new hearing because Canada had not made full disclosure of the evidence in its possession, including about when alleged abusers were at the schools.

Federal government lawyers have not challenged any of those individual decisions, two of which concern the notorious St. Anne's school in Fort Albany, Ontario. In at least one of those cases, the initial adjudicator doubted that the claimant attended the residential school at the time when the priest – referred to by the Ontario Superior Court as “a serial sexual abuser of children at St. Anne's IRS” – was working there. However, after a rehearing based on 96 pages of new documents about the priest, an adjudicator concluded in August 2017 that he had abused the claimant, who had suffered a high level of harm.

Nevertheless, Canada has asked the B.C. Supreme Court to rule that the basis for the St. Anne's claimant's re-hearing was wrong in law, so that a similar result could not happen in any future case. Currently, almost 1,000 claims are still in progress and the adjudications are expected to be completed by 2020.

The BC Supreme Court will hear Canada's application in early December. A group of lawyers and firms that represent claimants under the Settlement Agreement, known as Independent Counsel, will oppose Canada's Request for Directions.

“What Canada is arguing goes against the spirit and intent of the Settlement Agreement,” said David Schulze, who will argue the case on behalf of Independent Counsel.

“Last month Prime Minister Trudeau admitted to the UN General Assembly that Canada believes in ‘an approach that emphasizes fairness for everyone,’ but that the historic experience of Aboriginal peoples ‘was mostly one of humiliation, neglect, and abuse.’ Why are his lawyers arguing that victims of that abuse still don't deserve fairness?”

“As lawyers who together have represented thousands of claimants, Independent Counsel are calling on the Minister of Justice and her client the Minister of Indian Affairs to withdraw this application,” Schulze added.

“The courts said even former Prime Minister Jean Chrétien deserved procedural fairness when his government's sponsorship scandal was before the Gomery commission – why should residential school survivors get any less?”

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Attachments:

Canada's Request for Directions (RFD) in British Columbia Supreme Court

Appellants' factum in Ontario Court of Appeal on RFD by IAP Claimant H-15019, Edmund Metatawabin and K-10106

Note: Canada's RFD in BC challenges the reasoning in the Chief Adjudicator's re-review decision in H-15019, but not the result, while H-15019's RFD in Ontario challenged the review decision in court, but before the re-review decision was issued that ultimately ordered a rehearing

Background:

Federal government's description of what "procedural fairness" means in immigration law: <http://www.cic.gc.ca/english/resources/tools/cit/admin/decision/natural.asp>

Independent Adjudication Process statistics: <http://iap-pei.ca/stats-eng.php>

Ontario Superior Court's decision on Canada's duty to disclose documents about "persons of interest" (abusers) at St. Anne's IRS: <http://canlii.ca/t/qjnv>

Prime Minister's speech to the UN General Assembly:
<http://pm.gc.ca/eng/news/2017/09/21/prime-minister-justin-trudeaus-address-72th-session-united-nations-general-assembly>

Jean Chrétien's right to procedural fairness: <http://canlii.ca/t/1z93k> (appeal dismissed <http://canlii.ca/t/2d2z1>)