
Assembly of First Nations

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THE ASSEMBLY OF FIRST NATIONS

Human Rights Report to Non-Governmental Organizations

Redress for Cultural Genocide: Canadian Residential Schools November 21, 2002

The impact from Canada's Indian residential schools affects approximately 100,000 First Nation residential school survivors and their families. In spite of the staggering number of First Nation peoples affected by these government created residential schools, First Nations are left without adequate redress for the cultural abuse and suffering they continue to endure. First Nation families and community relationships have been detrimentally affected, and most languages are on the verge of extinction. The lack of adequate support from Canada is a continuing human rights violation by the Canadian government.

Canada's 1996, *Report of the Royal Commission on Aboriginal Peoples*¹ publicly acknowledged that **the objective of residential schools was to extinguish First Nation culture and language**. Then, in March 2000, the Law Commission of Canada's report on *Responding to Child Abuse in Canadian Institutions: Restoring Dignity*² recommended

¹ The Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back, Vols. 1 - 5 (Ottawa: Canada Communication Group, 1996).

² The report and briefing material is available from the Law Commission of Canada 473 Albert Street, Ottawa, Ontario, K1A 0H8 and via internet: <http://www.lcc.gc.ca>.

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that government support redress of residential school survivors for the sexual, physical, psychological and cultural abuse they suffered. Despite the fact that both reports reveal fundamental human rights violations as a result of the residential schools, such reports have been largely ignored.

In April 1999, the United Nations Human Rights Committee acknowledged, "*the situation of the aboriginal peoples remains the most pressing human rights issue facing Canadians*"³ and expressed concern over the lack of redress for violations of human rights such as the right to culture.

Human Rights Violations

First Nation children were removed from their homes and placed into residential schools in the late 1800's until the 1960's. Many children were confined to these schools from the age of six to sixteen years even though they had parents who cared for them and wanted them. In the residential school environment, most children were deprived of a healthy childhood. They were placed in unsafe environments **and the conditions were such that** many First Nation children were physically abused for speaking their language and were constantly made to feel ashamed of their First Nation identity. Accommodations were often crowded, cold, and sub-standard. They were underfed and malnourished and many children were often deprived of adequate care, love, affection, and subjected to corporal punishment, physical and sexual assaults.

The government has been aware that the vast majority of First Nation peoples living in Canada come from families that have been traumatized by the residential schools. The detrimental psychological and cultural impact is now inter-generational. Approximately three generations of First Nation peoples were raised in an environment of total institutionalization, abuse and racial discrimination that now affects the children of residential school survivors. First Nation youth are committing suicide, entering the child

³ Concluding observations of the Human Rights Committee: Canada 07/04/99, CCPR/C/79/Add.105.

welfare and criminal justice system at exceedingly high rates.⁴ The cultural survival of all First Nations is also in jeopardy. Many First Nation languages are in danger of becoming extinct.

Over the past 30 years, speakers of First Nation languages have been declining at a rapid pace as a result of shame and abuse associated with speaking their languages. The vast majority of First Nation peoples did not pass the language onto their children because of the abuse they endured for speaking their language in residential schools. First Nation cultural relationships have been severed. Elders cannot communicate stories, teachings or history because most First Nation youth cannot speak or understand their language. Many every day skills and cultural knowledge are not being passed onto the next generation because of their inability to understand First Nation languages. There is a communication gap amongst First Nation youth and Elders. The real danger is that within one or two generations, some languages will not be spoken at all. In fact, it has been predicted only 3 of the 53 First Nation languages in Canada will survive. Many efforts have been made to reverse this trend in communities and by organizations throughout Canada, but these efforts lack the financial and political support from the Canadian government.

Did the Residential School Constitute “Genocide?”

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as the forcible transfer of children from one racial group to another with the intent to destroy the group. The *Royal Commission on Aboriginal Peoples* and the Law Commission of Canada both concluded that the objective of the residential schools was to eliminate the culture of First Nation peoples.

⁴ Assembly of First Nations, *Breaking the Silence: An Interpretive Study of Residential School Impact and Healing as Illustrated by the Stories of First Nation Individuals* (Ottawa: Assembly of First Nations, 1994). Assembly of First Nations Health Secretariat, *Residential Schools Update* (Ottawa: Assembly of First Nations, March 1998). Roslyn Ing, “The Effects of Residential Schooling on Native Child-Rearing Practices,” University of British Columbia: Master’s Thesis, also published in *Canadian Journal of Native Education*, Vol: 18, 1991.

Canada's practice of removing First Nation children from their home and community involved both systemic racial discrimination and genocide as defined by international law. The practice of removing First Nation children and the abuse that continued to occur was clearly prohibited by treaties to which Canada had voluntarily subscribed: the UN Charter (1945), the Universal Declaration of Human Rights (1948), the Convention on the Prevention and the Punishment of the Crime of Genocide (1948) the International Convention on the Elimination of All Forms of Racial Discrimination (1965), and the International Covenant on Civil and Political Rights (1966).

On January 7, 1998, the government of Canada publicly acknowledged its role in the development and administration of residential schools.⁵ A former Minister of Indian and Northern Affairs publicly stated that the government was wrong to forcibly remove First Nation children from their communities. There was also acknowledgement that the government was responsible for their actions that resulted in weakening the identity of First Nation peoples by suppressing language and culture, and outlawing spiritual practices. The government concluded that their actions led to the erosion of the political, economic and social systems of First Nation peoples.⁶ In a related content, the Australian Human Rights and Equal Opportunity Commission concluded that the ... *(r)emoval of children with this objective in mind is genocidal because it aims to destroy 'the cultural unit' which the Convention [on Prevention and Punishment of the Crime of Genocide] is concerned to preserve.*⁷

In situations of human rights violations, international standards establish a duty on governments to investigate allegations of human rights violation, take action against the violator if the allegations are confirmed, prevent against further violations and provide

⁵ "Gathering Strength: Canada's Aboriginal Action Plan," which calls for a renewed partnership with First Nations based on recognizing past mistakes and injustices, the advancement of reconciliation, healing and renewal.

⁶ Canada, Minister of Indian Affairs and Northern Development, "Notes for an Address by The Honourable Jane Stewart, Minister of Indian Affairs and Northern Development" (Ottawa, 7 January 1998) <http://www.cccb.ca>.

⁷ Generally known as the "stolen children" report. The report is available from the Human Rights and Equal Opportunity Commission, GPO Box 5218, Sydney 2001, and on the internet: [http:// hrec.gov.au](http://hrec.gov.au).

redress to the victims. To date, the Canadian government has not fully addressed the residential school issue as a human rights issue that requires redress. In summary:

- (a) Canada has publicly acknowledged responsibility for genocide but has not treated the residential school as a human rights issue.
- (b) Canada has not taken appropriate action to resolve the residential school issue that continues to adversely affect the health, safety and well being of First Nation peoples and culture.
- (c) Canada has not ensured preventative measures are in place to prevent further violations of First Nation cultural rights.
- (d) Canada has not ensured that there is an adequate redress process that is inclusive of First Nation survivors and their families.

The Need for National Redress⁸

The need for national redress is critical and calls for an immediate response. There are approximately 11,000 claims slowly proceeding through the courts. Elders are dying without ever receiving any redress. Most First Nation languages are on the verge of extinction

First Nations have not been provided an adequate opportunity to talk about their residential school experiences. In order for healing and reconciliation to occur, testimonies must be received across Canada and recorded. Giving of testimony, while painful, is often the beginning of a healing process that is important in properly dealing with the residential school experience.

Alternative dispute resolution processes are being developed and put into place without adequate input from First Nation survivors and families. Lengthy delays in arriving at a settlement process, restricting governments responsibility to 70% in terms of settlement, and the violations are restricted to sexual and physical abuse.

⁸ Law Commission of Canada, Needs and Expectations for Redress Victims of Abuse at Residential Schools, by Claes, R., and Clifton, D. (SAGE), (Ottawa: Law Commission of Canada, 1999).

Moreover, the processes will produce individual court cases or alternative dispute resolution processes that do not address the issue of racial discrimination and genocide will fail to provide adequate redress to First Nation survivors and their families across Canada.

Canada's response to the residential school issue will continue to serve an injustice unless redress is provided for the following:

- The forcible removal of First Nation children from their families and communities.
- The discriminatory cultural, physical and sexual abuse that First Nation peoples endured in the residential schools; and
- The intergenerational impact on First Nation survivors' families and communities.

Recommendations

The Assembly of First Nations recommends that **First Nation peoples have to be included in the development, design and implementation of redress** and supports the following recommendations of the Law Commission of Canada:

- The needs of survivors, their families and First Nation communities must be as a starting point. Survivors, their families and First Nation communities are best able to articulate the harm suffered.
- Survivors should have the option of choosing which particular mix of benefits or compensation best meets their needs.
- Canada should not impose confidentiality provisions on settlements with survivors or on awards granted pursuant to any alternative dispute resolution process.

- Establish programs of public education. Canadians need to know more about why children were placed in institutions, what happened to them there and how abuse was allowed to occur. First Nations need to be able to talk about the history of the residential schools and the effects that remains a problem to which all First Nation peoples are affected.

The Assembly of First Nations supports the recommendation of the United Nations Human Rights Committee that domestic **human rights legislation** be enacted and that there is guaranteed access to a competent tribunal and to an effective remedy in all case human rights abuses such as cultural harm.