

Lessons from the Indian Residential Schools Tragedy

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HISTORY



Indian Residential Schools

- i. Class Period – 1920-1986

- ii. Abuses:
 - a) Inadequate Budgets
 - b) Unqualified Staff and Teachers
 - c) Isolation
 - d) Safe Haven for Pedophiles

Indian Residential Schools Litigation

- i. Merchant
- ii. Alberta Test Cases
- iii. Cloud Class Action
- iv. Baxter National Class Action

Canada's Response

- i. Apology
- ii. Dispute Resolution Project

National Consortium

- i. Twenty Firms from across Canada
- ii. Lead Counsel in Blackwater, Alberta Test Cases, Cloud, Baxter and Maritime Representative Action
- iii. Formed in Spring 2003

Consortium Strategy

- i. National Litigation Plan
- ii. Political Action Campaign
 - a) Public Relations
 - b) Commons Committee Hearings
 - c) AFN Relations

Baxter Common Issues

- i. See Handout
- ii. Novel Causes of Action

The Road to Resolution

- i. Commons Committee Report and House Vote
- ii. AFN Report
- iii. Cloud
- iv. Baxter Procedural Struggle

The Negotiations

- i. Five Parties:
 - a) Government of Canada
 - b) Assembly of First Nations
 - c) National Consortium
 - d) Tony Merchant
 - e) BC Lawyers

The Settlement

- i. Common Experience Payment
- ii. Individual Assessment Process
- iii. Commemoration
- iv. Truth and Reconciliation Commission
- v. Community Based Healing
- vi. Formal Apology in the House of Commons

LESSONS

Power of the Internet

- i. Organizational – Law Firm Coordination
- ii. Communication with Constituents
- iii. Levelling the Playing Field

Power of the Class Action Process

- i. Creation of Risk
- ii. Resolution and Release

Mass Claims Resolution – Process Design

- i. Goals
 - a) Equal Treatment of Claimants
 - b) Efficiency in Decision Making

- ii. Competing Influences (Canada's DR v. NC Proposal)
 - a) Verification (DR)
 - 'Inquisitorial Approach' rather than 'Investigative Approach'

 - b) Speed and Cost Efficiency (NC Proposal)