

1. Lawyers' Obligations in Representing Individuals for IAP Claims

1.1 Authorization to Practice Law in the Territory

In order to act on IAP claims, lawyers must be members of the Law Society of Nunavut. If they aren't, they must obtain a Restricted Appearance Certificate (RAC) and inform the Law Society of the names of their clients. As a RAC only allows lawyers to actively practice law on up to three (3) legal matters for the period of one year, if they wish to act on more than three (3) matters, lawyers must submit an application and obtain another RAC authorizing them to do so.

1.2 The Law Society of Nunavut's Duty of Vigilance

Reproduced below is the *Guidance for Lawyers Acting for Survivors of the Indian Residential Schools*¹ (The Guidelines). The Law Society of Nunavut endorses The Guidelines. It has and will continue to act with vigilance in matters involving the practice of law in IAP claims.

Guidance for Lawyers Acting for Survivors of Indian Residential Schools

WHEREAS former students of Indian residential schools need legal assistance that is sensitive to their vulnerability and the potential for further trauma when they address memories of abuse and neglect;

WHEREAS the identities of former students are publicly available without their consent;

WHEREAS Indian Residential Schools Resolution Canada, the Chief Adjudicator for the ADR process established to address abuse claims, and Canadian Bar Association members have raised concerns about the conduct of, and seemingly excessive fees charged by, a small minority of lawyers acting for former students, and the potential for that conduct to tarnish the reputation of the legal profession generally;

¹ Resolution 07-09-M, The Canadian Bar Association, February 2007.

WHEREAS in 2000, the Canadian Bar Association recognized the emerging problem and urged law societies in each province and territory to adopt guidelines for lawyers who act (or seek to act) for former students of Indian residential schools;

WHEREAS the law societies of Upper Canada, Northwest Territories and the Yukon have endorsed the Canadian Bar Association model guidelines;

WHEREAS in 2006, the Government of Canada designated at least \$1.9 billion for “common experience” payments to all former students;

WHEREAS many former students have claims in addition to the common experience payments for sexual and serious physical abuse suffered;

WHEREAS Courts in some jurisdictions that have considered the Settlement Agreement have remarked upon the conduct of counsel acting for former students in those approvals;

BE IT RESOLVED THAT the Canadian Bar Association:

1. renew its call for law societies to adopt model guidelines for lawyers acting for former students of Indian residential schools;
2. urge the law societies to be particularly vigilant in monitoring the conduct of those lawyers, given the imminent release of significant funds for common experience payments to address remaining claims of former students of Indian residential schools; and
3. inform the Assembly of First Nations, the Congress of Aboriginal Peoples, the Inuit Tapirisat of Canada and other national Aboriginal organizations of these initiatives.

1.3 Expectations of Legal Practice in the IAP

In his letter to Canadian lawyers dated August 30, 2012, Daniel Ish, Chief Adjudicator of the Indian Residential Schools Adjudication Secretariat, introduces a short document titled *Expectations of Legal Practice in the IAP* (reproduced below). He insists on our “*responsibility for ensuring that the Independent Assessment Process is conducted in a way that protects survivors of abuse at residential schools, does no further harm, and brings honour and integrity to the legal profession*”.

The Law Society of Nunavut endorses these *Expectations* and anticipates that all lawyers will act in compliance with them.

Expectations of Legal Practice in the IAP

Claimants in the Indian Residential Schools Independent Assessment Process depend upon seasoned, competent lawyers to successfully pursue their compensation claims and assist with their healing journey.

The Chief Adjudicator has established these Expectations to provide guidance to claimants on what they can expect from their lawyer, and to lawyers on the appropriate norms of practice in the IAP. These Expectations are intended to supplement the specific rules and guidelines of the IAP, as well as Law Society rules and the Canadian Bar Association guidelines for lawyers working on Indian Residential Schools claims.

For most IAP lawyers, these Expectations will reflect their existing practice. For others, they will provide useful guidance on the minimum acceptable standard of practice in the IAP.

As well, the Court-Appointed Transition Coordinator for Blott & Company claimants, the Honourable Ian H. Pitfield, requires an undertaking to adhere to these Expectations as a condition of receiving files from Blott & Company.

In these Expectations, “lawyer” includes the employees, associates, and agents of a lawyer, including any form-filling or other agency connected with a lawyer.

Competency

1. Lawyers must ensure they are competent to act prior to accepting clients for IAP claims.
2. Lawyers must restrict their IAP practice to the number of cases they can competently and responsibly take on at any one time.

Initial contact

3. Upon initial contact with the claimant, lawyers must ensure that:
 - a. communications offering legal services to survivors are welcomed and respectful. Lawyers should not initiate contact with individual survivors to solicit them as clients or inquire about whether they were sexually assaulted;
 - b. advertising is respectful, and is not false or misleading; and
 - c. unconscionable or exploitative means are not used in offering legal services to vulnerable persons, or persons who have suffered a traumatic experience and may not yet have had a chance to recover.
4. Lawyers should not enter into a contingency fee agreement until they have met in person with the client, unless it is not reasonable to do so for reasons such as remote location.
5. Lawyers should, when receiving a referral or inquiry:
 - a. make initial contact to arrange a meeting within 7 days; and
 - b. meet with the claimant in their home community, or in a mutually agreeable location, within 60 days of contact or referral.

Working with claimants

6. Lawyers should routinely inform clients, consult with them, obtain instructions, and give them as much control as possible on the direction of their case. When working with claimants, lawyers should:
 - a. explain the process to the claimant in a way that is understandable and helps the claimant prepare for the IAP experience;

- b. provide realistic expectations of the length of time required to resolve the claim;
 - c. avoid unnecessary delay, particularly for ill or aging claimants;
 - d. recognize claimants' special communication needs, including language barriers, cultural expectations, and limited access to telephone and internet service;
 - e. return calls from claimants within 72 hours of receipt; and
 - f. be prepared to deal with claimants' progressive disclosure of issues related to the claim, and ensure that any new information arising from such disclosure is communicated to the Secretariat and other parties as soon as practicable.
7. Lawyers should facilitate their client's healing process through:
- a. identifying and providing referrals to appropriate community resources, including counselling resources;
 - b. referring their client to treatment programs, if appropriate;
 - c. recognizing and respecting the need for the client to develop a personal support network;
 - d. cooperating fully with the Adjudication Secretariat to ensure that a health support worker is present at the hearing and any other time the claimant is asked to give evidence;
 - e. making every effort to ensure that their client has an opportunity to meet with the health support worker before their hearing;
 - f. working with their client to ensure that an appropriate future care plan has been developed (where applicable) for presentation at the hearing;
 - g. considering having support people available at other meetings; and
 - h. being aware of available and appropriate referrals in times of crisis.

Hearings

8. Lawyers should obtain the claimant's preference for the location of their hearing and communicate it to the Adjudication Secretariat. Lawyers must be prepared to travel to the hearing location determined by the Secretariat in accordance with the Settlement Agreement.
9. Lawyers must fully prepare claimants for the hearing. In particular, lawyers should ensure that claimants:
 - a. understand the nature and purpose of the hearing, and what will be expected of them;
 - b. have an opportunity to review (with assistance, where required) pertinent documents such as the application form that may be referred to during the hearing;
 - c. are comfortable with the travel and accommodation arrangements made for them;
 - d. are aware of their right to have a traditional or religious ceremony before and/or after their hearing, such as a smudge, prayer, drum, or song;
 - e. are aware of their right to have support persons attend the hearing with them, and that the Adjudication Secretariat will pay for up to two support persons, as well as an elder or religious person;
 - f. are aware of the health support options available to them, including the opportunity to meet with the health support worker before the hearing;
 - g. are aware of their right to indicate their non-binding preference of whether a representative of the church organization attend their hearing; and
 - h. are asked about any special requirements, such as interpreters, special dietary needs, mobility requirements, or health concerns, and are informed that these needs should be communicated to the Adjudication Secretariat in sufficient time for arrangements to be made.
10. Lawyers must advise the parties, the adjudicator, and the Adjudication Secretariat of any health issues or security concerns that might obstruct the safe conduct of the hearing.

Legal fees

11. Lawyers must:

- a. ensure that all fees and disbursements are clearly communicated to the claimant in a way that is understandable;
- b. explain the unique rules that govern legal fees in the IAP, including the government's contribution toward legal fees/disbursements and the right to have legal fees reviewed by an adjudicator;
- c. release compensation funds to claimants immediately upon receipt, other than legal fees specified in a contingency fee agreement which must remain in a lawyer's trust account until legal fee review decision is issued;
- d. pay any remaining compensation funds over and above the approved fees to the claimant immediately upon receipt of the legal fee review decision (or the decision of a reviewing adjudicator where a review has been sought pursuant to paragraph 19 of the Implementation Orders); and
- e. withdraw fees from the trust account only once authorized by a legal fee review decision (or the decision of a reviewing adjudicator where a review has been sought pursuant to paragraph 19 of the Implementation Orders).

12. Lawyers must not:

- a. charge any disbursements to a claimant. The IAP provides that Canada will pay all reasonable and necessary disbursements upon resolution of the claim, and that adjudicators will resolve any disputes about disbursements; or
- b. withdraw legal fees from their trust account until they have received an adjudicator's legal fee review decision, and any appeal period has elapsed.

Financial arrangements

13. Lawyers must not make, recommend, or participate in arrangements:
- a. to advance or loan compensation funds to claimants;
 - b. to charge the claimant directly for services normally provided by a lawyer, including but not limited to form-filling and document collection; or
 - c. to assign or direct any part of a claimant's IAP compensation to a third party.

Changing counsel

14. Lawyers must respect their clients' right to change counsel, and must assist in the orderly transition of the file to new counsel. Legal fees are only collectible at the successful conclusion of the matter.

Other rules and guidelines

15. In addition to these Expectations, lawyers must comply with rules and guidelines issued by the Chief Adjudicator, the applicable Law Society, and the Canadian Bar Association's guidelines for lawyers working on IRS claims.