

Kingsford Legal Centre – hearing date 10 February 2016

Question on notice 1

The Hon Shaoquett Moselmane: Professor Cody mentioned the Canadian experience. Can we draw any information from the Canadian experience about the success of the tribunal in assessing reparations? Would you tell the Committee about that?

The Canadian national government made an agreement in 2006 with churches and Aboriginal groups representing former students of the schools which provided for reparations for former students of Indian Residential Schools (the Indian Residential Schools Settlement Agreement).

The agreement was a response by the Canadian national government to a number of court claims brought by former students who experienced abuse at the schools.

The settlement agreement provided for:

- common experience payments for former students;
- individualised financial compensation for survivors of serious sexual, physical or psychological abuse, and in some cases compensation for loss of income;
- health and healing projects;
- a truth and reconciliation commission;
- community events and a research centre; and
- memorials and commemorative events.

Former residents who had not opted out of the settlement agreement could make an application (those survivors who opted out preserved their right to take independent legal action) for common purpose payments or individualised compensation.

The common experience payment was based on \$10 000 for the first year at a school and \$3000 for every subsequent year and was available to all former students. An applicant did not have to prove harm for a common experience payment. A common purpose payment was intended to recognise collective harm, as well as loss of culture and family life.

An applicant for the individual payments for serious sexual, physical or psychological abuse was required to submit a written application, and most claims were determined at a hearing. The maximum available was \$275 000, with an additional \$250 000 available for actual income loss. The assessment of compensation was based on a points system with points allocated according to the type of abuse experienced by the applicant, and the impact of the abuse on the applicant.

One significant limitation of the agreement is that it did not cover former students who attended schools that were funded by the provinces.

The strength of the approach taken in Canada is that it provided a range of individual and group benefits, not limited to individual financial compensation.

Another lesson that can be drawn from the Indian Residential Schools Settlement Agreement is that assessment criteria for financial compensation should be developed in consultation with Aboriginal people, and that information about assessment criteria should be presented clearly and sensitively.

Kingsford Legal Centre – hearing date 10 February 2016

Question on notice 2

The Hon Natasha Maclaren-Jones: I have a question which I am happy for you to take on notice in relation to placements. I am interested to know more about the current principles under the care Act and the placement of Aboriginal and Torres Strait Islander children. The Committee has heard evidence that although the principle is that priority should go to extended family that is not actually the case on the ground. I am interested to know more about what is causing that but also what recommendations you would have to remedy that issue – if it is particular barriers on the ground or if it is a bigger problem.

Kingsford Legal Centre does not provide legal advice or casework on family law or child protection law.

However the KLC Aboriginal Access Worker works with Grandmothers Against Removals (GMAR) on a voluntary basis. GMAR was established because of concerns about FACS' communication with extended family members whose children were at risk of being removed under the Children and Young Persons (Care and Protection) Act 1998, or whose children had been removed under the Act, and the failure by FACS to adequately engage with Aboriginal and Torres Strait Islander families regarding placement and other significant decisions about children. GMAR members identified a tendency by FACS to vilify family members, rather than respecting the support and advice that family members can offer. Such an attitude affects the ability of FACS to communicate with families as intended as intended by the placement principles.

Lack of resources for early intervention may be another reason why families are not consulted about children at risk of removal under the legislation. GMAR is concerned about a gross imbalance between resources that are put into surveillance of families, and removal of children, and the resources that are earmarked for early intervention.

KLC supports the recommendations made by the Aboriginal Child Family and Community Care State Secretariat (AbSec) to this inquiry (submission number 14) regarding the application of the placement principles. In particular KLC supports the recommendations made by AbSec to improve transparency of data about interactions between FACS and Aboriginal families and children, to review compliance with the placement principles and to develop decision making framework for the application of the principles.

The principles contained in the Act also provide for participation by Aboriginal and Torres Strait Islander families in decision making by FACS about children.

Under section 12 of the Act Aboriginal and Torres Strait Islander families must be given an opportunity to participate in decisions about placement of children and other significant decisions by *means approved by the Minister.*

Section 11 of the Act allows the Minister to *approve opportunities* for Aboriginal families to participate in decision making about placement of children and other significant decisions.

KLC submits that the Committee could consider ways in which the Minister for Community Services reports on matters in section 11 and 12 of the Children and Young Persons (Care and Protection) Act 1998 to encourage greater focus by FACS on participation by Aboriginal and Torres Strait Islander families in decision making about their children.