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Regina law firm wins \$25M for residential school cases

Federal government ordered to pay Merchant Law Group \$25 million

Barb Pacholik, Leader-Post

Published: Tuesday, August 12, 2008

REGINA -- The federal government has been ordered to pay a Regina-based law firm \$25 million of a potential \$40-million payout for work on Indian residential school claims.

A judge said the Merchant Law Group (MLG) should immediately be paid the minimum amount owing for legal fees. But the firm's wait may not be over, despite the court's ruling.

According to a government spokesperson, the money had yet to be paid as of Tuesday, more than a month after the July 2 decision was rendered.



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Tony Merchant

Don Healy, Leader-Post files



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Patricia Valladao, speaking on behalf of Indian Residential School Resolution Canada, said the government is still reviewing the decision. "We will not be paying any funds pursuant to this decision until it's complete," she said, adding that the government is awaiting a further court order.

Lawyer Tony Merchant, head of MLG, could not be reached for comment Tuesday afternoon.

Any payouts beyond the \$25 million hinge on a verification process that hit an impasse. In his decision, Court of Queen's Bench Justice Neil Gabrielson directed the government and MLG to try to iron out their differences so the process of verifying the amount of legal fees owed can be completed.

The Indian Residential Schools Settlement Agreement not only provided compensation for former students, but approved terms of payment to law firms who represented them. Money began flowing to former students last fall, with 66,495 payments to individuals as of mid-July.

But MLG has been stymied in its efforts to collect for its work. The agreement, later approved by a judge, set out that if the two sides couldn't agree on an amount, MLG would get a minimum of \$25 million and a maximum of \$40 million, as determined by court action. The order added that it was incumbent on MLG to provide evidence verifying its fee claim, but "if MLG does not do so, it cannot expect to receive payment of more than \$25 million." The federal government appealed, arguing it didn't have to pay out any money until the firm opened its records to auditors. The appeal was dismissed in March last year.

But that didn't end the legal wrangling. The two sides were back in court this spring. Ottawa didn't dispute the \$25-million amount but the timing of payment, saying nothing had to be paid until verification was complete. The law firm wanted an order forcing Ottawa to hand over the cash. It argued that if Ottawa's interpretation of the verification agreement is correct, "Canada can, and is holding MLG hostage over the \$25 million that is guaranteed."

According to Gabrielson's written ruling, when seven auditors, hired by the federal government, arrived at MLG's Regina offices in 2006, the firm refused to provide certain information on the basis that it would violate solicitor-client privilege. MLG did provide copies of agreements showing more than 6,000 residential school clients had retained MLG, an electronic listing of 8,560 clients, and a summary of work in progress and fee disbursements. MLG also hired its own accounting firm, which, according to an affidavit from an MLG employee, verified class action work totalling more than \$27 million and work on individual files totalling almost \$44 million. The federal bean-counters want more than summaries, saying they need to review MLG's fees, billing system, and transaction data.

Gabrielson found the \$25 million is payable regardless of verification. He also directed that the verification process be completed to determine if any further money is owing. If they can't determine how that process can be done without breaching solicitor-client privilege, either side can return to the court within 90 days.

bpacholik@leaderpost.canwest.com

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