

Residential Schools Update—September 29, 1999

Archdeacon Jim Boyles, General Secretary

Lytton judgment

In my [last update](#) I reported on the decision of the British Columbia Supreme Court in a case arising from sexual abuse which took place at St. George's Residential School in Lytton B.C. The Government of Canada, the General Synod and the Diocese of Cariboo were found jointly liable for the abuse. I want now to report to you on further developments in this case and some other matters.

Payment to the Lytton Plaintiff

Recently, after the judgment in this case was released, we were contacted by the plaintiff's lawyer and asked to pay a specific proportion of the settlement, and we have now done so. The amount of the settlement is confidential, by agreement. Still to be negotiated are the plaintiff's legal expenses which the General Synod and the Diocese of Cariboo will share with the Government of Canada.

This payment acknowledges that the abuse occurred and that there has been agreement as to the amount of damages. It is in keeping with a commitment I made immediately after the judgement was released, that even if the church were to appeal the decision, we would still provide prompt payment to the plaintiff. If an appeal is launched, its purpose will be to challenge those elements of the decision that affect the proportion payable between the General Synod, the Diocese and the Crown. If we are successful, any overpayment would be recoverable from the Crown and will not affect the plaintiff.

With the payment, the major legal issue comes to an end for the plaintiff in this case. I ask your prayers for him, that he may be restored to wholeness and peace. There are other former Lytton students who suffered similar abuse. Please pray for them also.

Consideration of appeal in the Lytton judgement

We want to make a very careful assessment before deciding whether to appeal this case. However, the rules of the court require that a notice of appeal must be filed within 30 days of the decision. Accordingly, we have filed a notice of appeal, and our assessment continues. Filing the notice preserves our ability to pursue an appeal later if we decide to do so, but does not bind the church to actually proceeding with an appeal.

The Officers of General Synod, meeting by teleconference on September 24 decided to take this action on the advice of George Cadman, the counsel who has represented both General Synod and the Diocese of Cariboo from the beginning, and after consultation with other counsel who have been involved in residential schools cases in other parts of the country. This decision is

supported by Bishop Jim Cruickshank of the Diocese of Cariboo. The Diocese will likewise be filing a notice of appeal.

The Officers asked that an independent counsel be engaged to review the judgement and supporting documents and advise us on whether or not to proceed with an appeal. The insurance company which has been paying General Synod's legal expenses in this case has also urged us to take this step. It is hoped that such a review could be completed within the next eight weeks. Costs of an actual appeal, if we proceed, could approach \$50,000, and we are negotiating with the General Synod insurer to have these costs covered. The Diocese of Cariboo, however, has no insurance.

One of the factors that must be considered is the rather confusing approach in the judgment in lumping together the General Synod and the Diocese of Cariboo as "the church". Since this is one of the first decisions affecting residential schools, and since it may serve as an important precedent, it seems important that we ask the Court of Appeal to review this part of the decision.

The Diocese of Cariboo

Financial reserves of the Diocese of Cariboo are almost exhausted. The Diocese has been paying 50 percent of the combined legal defense and will share likewise in the settlement. The Diocese has appointed a committee to review its situation and expects to hear a report at its Executive Council meeting in early November.

Please hold Bishop Jim Cruickshank and all the people of Cariboo in your prayers.

Alternative Dispute Resolution Processes (ADR)

We continue working with the Departments of Justice and Indian Affairs to enable our participation in possibly two ADR processes (they hope to establish 12 such processes, involving ourselves and other churches). For the Anglican Church, information meetings have been held with former students at Walpole Island and the Mohawk Institute, in Ontario; St. Paul's, Cardston, Alberta; and Gordons, Saskatchewan. The latter two groups seem to have an interest in pursuing this course.

ADR sessions would involve a group of approximately 50 people who have been sexually or physically abused and are seeking compensation. It is an alternative to the rather harsh and adversarial setting of the courtroom. Participants will begin by working with the church and government to develop a process that is humane, compassionate, mindful of aboriginal cultural traditions and yet has safeguards to ensure that claims are sufficiently validated and damages properly assessed. The end result would be individual settlements for those claims that have been validated, and possibly some community programs for healing and reconciliation. The Council of General Synod has authorized participation in two such projects and has allocated some funds to begin the process.

Some have asked if ADR processes are seen as a less expensive alternative than litigation. Our view is that the costs may not be significantly different. Individual ADR settlements are intended

to reflect the amount that would have been given by a court, and the ADR process itself has a significant element of cost. The primary reason for entering ADR, we believe, is that it is less traumatic for the victim, and that it may offer some hope of restorative justice.

Our long-term vision

Our relationship with aboriginal Canadians has always been an important part of our mission. Our goal, when all is said and done, is to be able to continue in ministry and partnership with the aboriginal members of our church, and with the broader Canadian society. We think our best long-term interests -- exemplified by a genuine commitment to ongoing ministry, reconciliation, and fundamental respect for aboriginal peoples -- will equally serve the best long-term interests of the aboriginal community and the Canadian public.

And so:

- we continue to add funding to the healing and reconciliation work that is overseen by the Anglican Council of Indigenous Peoples, supporting many community-based efforts to overcome the harmful legacy of the residential schools. This work will be featured in the Anglican Appeal this fall, and I urge you to give it your strong support;
- we seek to participate in ADR processes where possible, to avoid litigation that might cause greater harm;
- we are continuing to negotiate with the Government of Canada on a broader approach to the cases in which we are jointly named. This includes identifying the assets of the General Synod that may be available to contribute to settlements over the next several years, and determining the extent to which we can participate before our resources are exhausted. We believe that the government would prefer to have us (the General Synod and those dioceses directly affected by law suits) as a continuing participant in ADR processes, rather than to see us exhaust our financial resources on the first few lawsuits and then disappear from subsequent processes.

As events unfold I will continue to produce these Updates to keep you as informed as possible. You will appreciate that this is a time of stress for a great many people: the victims of abuse, the former students and staff of the residential schools, the current church staff, at the national office and in the dioceses, and among the ordinary families who are concerned about the future of their church. Please keep all in your prayers.

Distributed to members of:

- Council of General Synod
- House of Bishops
- Anglican Council of Indigenous Peoples
- Financial Management and Development Committee