

Residential Schools Update #16 -- April 2004

Archdeacon Jim Boyles, General Secretary

It is now well over a year since the Settlement Agreement was signed. Much has happened, and this report will attempt to summarize recent developments.

Settlement Fund

The Fund has received a total of \$10.1M, of which \$3M has been paid by General Synod, and \$7.1M by dioceses. We are well ahead of the payment schedule because six dioceses have paid their full share, and some others have paid a large portion up front. \$2.6M has been paid out as compensation to approximately 80 former students whose claims have been validated by the government. In each case the Fund contributes 30% of each settlement.

When payments are made, the church receives a full and final release. This has now become a controversial part of the Settlement Agreement since the government, in the fall of 2003, agreed to accept a partial release, thus allowing the claimant to file a new lawsuit seeking compensation for loss of language and culture. In November the Council of General Synod asked the Officers to consult and consider this issue. At the end of December the Officers decided not to take action. We continue to work on this issue. The Anglican Council of Indigenous Peoples continues to see the church's position as inappropriate and unjust. The Officers continue to monitor the situation.

The Blackwater Decision

In a unanimous decision, the BC Court of Appeal ruled in December that the government is responsible for 100% of the compensation for students abused in a United Church residential school in Port Alberni. I wrote to the Ministers of Justice and of the Office of Indian Residential Schools Resolution urging them not to appeal this decision. In early February, however, the government sought leave to appeal to the Supreme Court. It will be several months before it is known if the court will accept the appeal, and if it does, perhaps two years before a decision is handed down.

The decision and the publicity this has received have set in some Anglicans' minds the idea that we no longer need to contribute to the Settlement Fund. This is not the case. The church is under legal obligation to continue to support the Fund. We have reassured dioceses that if money remains in the Fund it will be returned to them proportionately. If the court upholds the Blackwater decision, we will seek to renegotiate our Agreement and will expect the government to cover 100% of similar claims.

The Blackwater decision, however, refers to vicarious liability – liability that accrues even though no fault was found. There are some claims where there may have been direct negligence.

The Anglican Church Healing Fund

The Fund, which was established in 1991, continues to make grants to community and church organizations that organize programs of healing. Grants are not made to individuals. General Synod contributes \$300,000 each year to the Fund, and contributions from dioceses, individuals and other groups are also received. The Healing Response Committee comprises an equal number of indigenous and non-indigenous people and meets twice a year to consider applications.

Recently, requests have far outstripped the Fund's capacity to respond. This is partly the result of the Fund becoming better known, and partly because the government's Aboriginal Healing Foundation is not funding any new programs. The Aboriginal Healing Foundation was established with a \$350M limit, and will wind down over the next few years. We continue to press the government to re-mandate the Foundation with a broader mandate that would include funding of programs for recovery of culture and language.

Alternative Dispute Resolution

The government has introduced an alternative dispute resolution (ADR) process to expedite the resolution of claims and to provide a more humane and sensitive setting for the hearing of the stories of the victims of abuse. While the church has no legal need to be present at such hearings— validation is entirely in the hands of the government – our hope is to be present in a supportive and pastoral way when requested by a claimant. To date no hearings have been held. All settlements so far have been pre-trial out of court settlements. It is hoped, however, that a large majority of claims will be heard through this alternative process.

There are still issues with the ADR process, and the Anglican Council of Indigenous Peoples continues to press its concerns about the complexity of the application form and the inequities of the compensation grid.

Former Staff of Indian Residential Schools

Archbishop John Clarke has gathered stories from former staff and a booklet has been prepared for distribution to members of General Synod. At the Synod meeting in May he will introduce a motion of acknowledgement of the work of former staff. Mrs. Bernice Logan of Nova Scotia, a former staff member, will attend and speak at the Synod.

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For further information, kindly contact Archdeacon Jim Boyles at jboyles@national.anglican.ca or 416-924-9199 ext 280