



October 8, 2003

The Honourable Ralph Goodale, P.C., M.P.
Minister Responsible for Indian Residential Schools Resolution Canada
and Minister of Public Works and Government Services
House of Commons
Wellington Street, Centre Block, Room 435-S
Ottawa, Ontario
K1A 0A6

Dear Minister:

Re: Indian Residential Schools Resolution Canada (IRSRC) Program

The Canadian Bar Association is committed to supporting a justice system for all Canadians that achieves fair and independent resolution of claims. The CBA has noted the Government of Canada's efforts to develop a fair, equitable alternative to litigation for Indian residential schools claimants. We support the government's commitment to develop a process aimed at resolving these important and sensitive matters.

That said, the CBA has identified a number of serious concerns with the IRSRC program. I am writing to bring these to your attention, and to request a meeting at your earliest convenience to discuss our concerns in greater detail.

Alternate Dispute Resolution is relatively new to the Canadian legal system. A number of principles have emerged which are common to all ADR approaches; others evolve to meet the circumstances of the particular dispute to be resolved. Nonetheless, it is important to the integrity of the process that it be fair, balanced and respectful of the needs of all of the participants.

Our concerns about the proposed IRSRC process include:

- the need to involve all stakeholders in developing the process;
- the independence of the adjudicators;
- the narrow scope of the subject matter (limited to sexual and physical assault);
- the low maximum limits on damages;
- the absence of a national damages standard;
- limitations on joint and several liability of defendants;
- the requirement that claimants sign releases at the application stage; and
- issues regarding natural justice and fairness in the process.

In our view, all of these issues must be addressed in order to achieve the required balance and fairness. Accordingly, we request an opportunity to meet with you to discuss these matters and explore possible remedies. We understand that the government intends to begin to operate the program by November 2003, so time is of the essence to be able to address these concerns effectively. Representatives of the CBA's Aboriginal Law and ADR Sections will be in Ottawa on October 24, and could meet at your convenience on that day.

We look forward to hearing from you soon.

Yours very truly,

Original copy signed by Tamra L. Thomson for Jeffery F. Harris and Barry C. Effler

Jeffery F. Harris
Chair
National Aboriginal Law Section

Barry C. Effler
Past Chair
National Alternative Dispute Resolution Section

cc
The Honourable Martin Cauchon
Minister of Justice and Attorney General of Canada

The Honourable Robert Nault
Minister of Indian Affairs and Northern Development