



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Jody Wilson-Raybould
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Dec 7th 2015

RE: IRSSA Settlement Process for St. Anne's Residential School Survivors

Minister Wilson-Raybould,

At the outset, let me congratulate you on your electoral win. I was so pleased to learn that Prime Minister Trudeau has appointed you as Justice Minister for Canada. I am also reassured by the Prime Minister's call for true reconciliation between Canada and Indigenous people. To this end, I am asking you to investigate the repeated breaches of legal obligation by Justice Department officials in regards to survivors from St. Anne's Residential school.

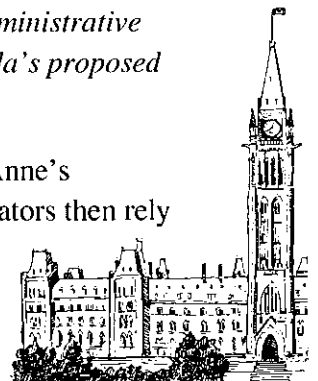
The deliberate undermining of their legal rights during the Independent Assessment Process (IAP) has put a stain on the credibility of the historic apology issued by Prime Minister Harper in 2008. We now find that because of the department's legal breaches some of these survivors have asked that their cases be reopened.

The IAP was established under the terms of the Indian Residential School Settlement Agreement to adjudicate claims of sexual and physical abuse against children in residential schools. The federal government, through the Justice Department, played a dual role serving as lawyers for the defendant (Canada) while also taking on an administrative role in the gathering of evidence.

As the IAP was being established, concerns were raised about the potential conflict of interest on the part of the federal government that could undermine the process. I refer you to the warning issued by Justice Winkler in *Baxter v. Canada*:

"The court has a general concern whenever a defendant proposed to change roles and become the administrator of a settlement... one deficiency in the proposed administrative scheme that had to be addressed was the potential for conflict between Canada's proposed role as administrator and its role as continuing litigant."

The IAP was set up to be "non-adversarial." The survivors of the brutal abuse at St. Anne's Residential School were told they could simply come and tell their story. The adjudicators then rely



on the evidence narrative provided by the Justice Department to judge the credibility of their testimony. But the evidence narrative introduced by the federal government lawyers was a lie. The evidence narrative falsely claimed that there was no history or documentation of abuse at St. Anne's Residential School. Numerous cases were adjudicated on the basis of this falsehood,

Government lawyers did not inform the adjudicators and the claimant lawyers that they were sitting on the names of nearly 200 perpetrators of abuse identified during a five-year police investigation by the Ontario Provincial Police. The OPP gathered over 7,000 pages of documented evidence and hundreds of witness statements. In 1999, the Crown prosecuted and obtained convictions against a number of former staff.

I am told that without access to this validating evidence, the claimants found their testimony repeatedly brought into question by Justice Department lawyers. When some claimant lawyers became aware of the existence of this evidence, Justice Department officials refused to provide the evidence to the IAP.

In 2013, I was approached by representatives of claimants who had had lost faith in the hearings and were deeply concerned that their cases had been compromised.

As a result of their concerns I wrote to then Minister Bernard Valcourt. In his response Minister Valcourt admitted that Canada had known all along about the evidence of crimes at St. Anne's but claimed that, as the evidence had been gathered by provincial police, Canada was under no obligation to obtain or disclose knowledge of this evidence. It wasn't until an Ontario Superior Court hearing later that year that we learned that the reason the government did not need to seek this evidence out was because it had obtained full access to the evidence back in 2004 in order to prepare for the defense of the defendant Canada.

Even the most narrow reading of the legal obligations set out in the in terms of the Independent Assessment Process (Schedule D, Appendix 8) would have recognized the obligation to inform the claimants and the adjudicators of the knowledge that the government lawyers had access to such a trove of evidence.

Justice Perrell of the Ontario Superior Court agreed when he found that this failure to disclose and share evidence "*compromised the IAP and denied the claimant's access to justice.*"

Unfortunately, in the wake of that decision, government lawyers continued to obstruct and defy the Ontario Superior Court. They delayed the release of evidence and then dumped thousands of pages of disorganized and blacked out documents. The federal government's combative approach has put the onus on the marginalized survivors of St. Anne's to return to Ontario court three times in order to force the department to comply with the most basic standards of legal obligation.

I am disturbed to learn that there are claimants who had their claims denied because they were adjudicated in hearings that relied on the false evidence narrative.

The credibility of the IAP as a vehicle for reconciliation has been put in question by this sustained pattern of obstruction. I have written to every person with authority over this process including the

former Minister of Aboriginal Affairs, the former Minister of Justice, Chief Adjudicator, the Oversight Committee Chair and the National Administration Committee of the IRSSA. Unfortunately, no one appears willing to address the fact that legal hearings were obstructed through the suppression of evidence and the use of a false evidence narrative.

The procedural and substantive rights of all Canadians must be protected but there is a special duty in the case of survivors of residential schools. They were brutally victimized as children as a result of a deliberate government policy to erase their identity as Indigenous people. We cannot allow the Defendant Canada to rev-victimize them as adults in hearings that were meant to bring reconciliation.

If we take the promise of reconciliation seriously then the breaches of the legal rights of these survivors by the federal government must be addressed. To achieve this end, I am asking you to support the recent request by some of the Survivors to the Ontario Superior Court to re-open their cases, which, were adjudicated under a false evidentiary narrative, and this would include supporting the potential opening of other cases not given proper or full hearings.

Instead of continuing to fight the claimants in the courts, I ask that you work with the Survivors of St. Anne's to fix what has gone terribly wrong in this judicial process to provide real reconciliation and healing. I am asking you to investigate the operating culture within the Justice Department. How is it possible in 2015 for government lawyers to exempt themselves from the most basic legal, moral and professional obligations in the disclosure of evidence and obligation to abide by Superior Court rulings?

I have attached some of my previous correspondence and documentation on the matter. I would be more than happy to provide any additional information and look forward to meeting with you as you investigate these unacceptable breaches of rights of the survivors of St. Anne's.

Sincerely,



MP Charlie Angus
Timmins-James Bay

cc: Edmund Metatawabin, Peetabeck Keway Keykaywin Association
Perry Bellegarde, National Chief Assembly of First Nations
Isadore Day, Chief of Ontario
Daniel Shapiro, Chief Adjudicator Independent Assessment Process
Zeynep Onen, Law Society of Upper Canada
Mayo Moran, Chair of IAP Oversight Committee
Justice Murray Sinclair, Truth and Reconciliation Commission
Alvin Fiddler, Grand Chief Nishnawbe Aski Nation
Grand Chief Jonathon Solomon, Mushkegowuk Council
Andrew Solomon, Chief of Fort Albany First Nation
Bruce Shisheesh, Chief of Attawapiskat First Nation
Leo Friday, Chief of Kashechewan First Nation
Edmund Hunter, Chief of Peawanuck First Nation
Norm Hardisty, Chief of Moose Cree First Nation