

remedies for the collective harms that residential schools caused to Aboriginal nations and communities.

Residential school litigation has been extremely complex, expensive, and lengthy. It has been especially difficult for the Survivors, many of whom were revictimized through explicit questioning and adversarial treatment by the Government of Canada, the churches, and even their own lawyers.

Limitation periods

Within the Canadian justice system, complainants in civil proceedings have a limited period of time in which to file suit. If they wait too long after the harm they have suffered, they may not be allowed to pursue their claim because of a provincial statute of limitation. Although statutes of limitation can protect defendants in civil lawsuits, they can also have the effect of denying plaintiffs the opportunity to have the truth of their allegation determined in court. This is most dramatically true for child victims, who have neither the means nor the knowledge to pursue claims of harm until much later, when the time period for a claim may very well have run out.

A statute of limitation defence has to be raised by the defendant. In its 2000 report on responding to child abuse in institutions, the Law Commission of Canada recommended that the federal government should not rely solely on statute of limitation defences.¹²⁵ Nevertheless, the Government of Canada and the churches have frequently and successfully raised these defences in residential school litigation. The Commission believes that the federal government's successful use of statute of limitation defences has meant that Canadian courts and Canadians in general have considered only a small part of the harms of residential schools, mostly those caused by sexual abuse. Some provinces have amended their limitation statutes to enable civil prosecutions for a wider range of offences. We urge others to follow suit.

Call to Action

- 26) We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform with the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.