

History of Residential School Litigation



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OVERVIEW

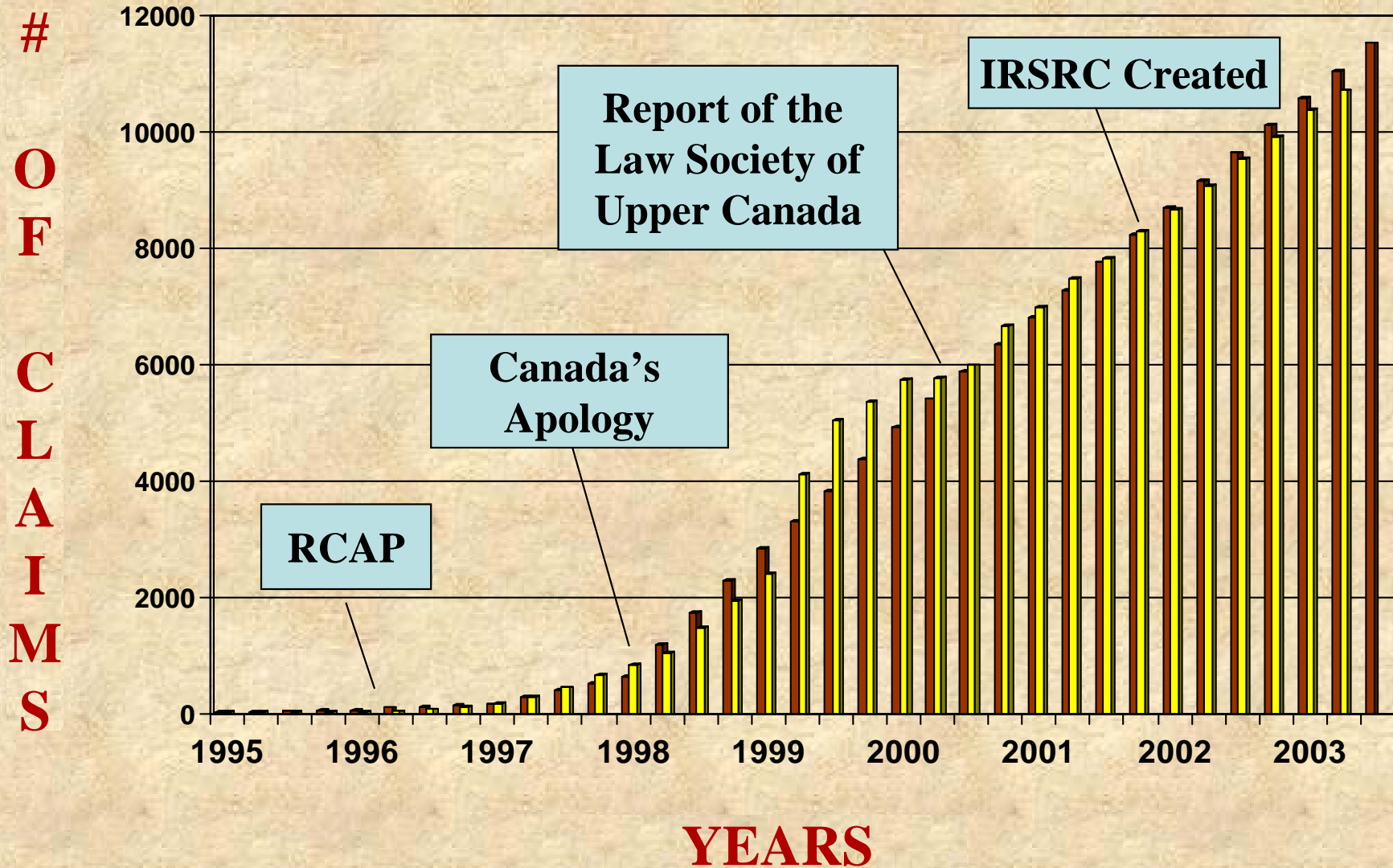
- RCAP (1996)
- Shubenacadie Representative Action (1996)
- Statement of Reconciliation (1998)
- Report of the Law Commission of Canada (2000)
- Individual Litigation and Pilot Projects (1988-2003)
- Baxter Class Action (2000)
- ADR (2003)
- Litigation or ADR? The Future.



LITIGATION HISTORY



Individual Lawsuits



Shubenacadie Indian Residential School

- 1996: Shubenacadie Indian Residential School Survivors Association (SIRSSA) files Representative Action on behalf of all school survivors.
- Canada opposes SIRSSA's attempt to bring claim as a group.
- 2002: SIRSSA joins the Baxter National Class Action.

Individual Lawsuits

- Over 12,000 survivors have started lawsuits.
- 90% allege physical abuse.
- 60% allege sexual abuse.
- 90% allege loss of language and culture.
- Only 1,000 claims have been settled to date.
- Only a dozen cases have gone to trial.
- Canada continues to deny liability and raise all available limitation defences.

Blackwater

- British Columbia Trial judge held Canada 75% responsible and Churches 25% responsible.
- British Columbia Court of Appeal found Canada 100% responsible on the principle of vicarious liability.
- Canada is seeking leave to appeal to the Supreme Court of Canada.

Alberta Test Cases

- All claims in Alberta are under case management.
- Representative cases alleging sexual and physical abuse, wrongful confinement and cultural and language losses have been selected to be tried as test cases.
- Extensive discovery examinations and review of thousands of documents have been underway for some time and are continuing.
- Four test cases will go to trial in 2005.
- The objective of the Alberta test cases is to establish liability against Canada for the wrongs which Canada refuses to discuss.

Cloud Class Action

- Claims on behalf of all survivors of the Mohawk Institute in Brantford, Ontario.
- Certification motion in 2001 opposed by Canada and the Church.
- December 3, 2004 Ontario Court of Appeal certifies Class Action. Canada considers appeal to Supreme Court of Canada.

Baxter Class Action

- Started in June, 2000.
- Claims on behalf of all those who attended a Residential School in Canada since 1920.
- Claims on behalf of parents and children of survivors.
- Alleges loss of language and culture, breach of aboriginal and treaty rights, wrongful confinement, emotional/psychological/physical and sexual abuse.
- Canada has commenced third party actions against 81 religious organizations resulting in significant delay.

Baxter Compensation Plan

- Plaintiffs' Litigation Plan proposes a comprehensive compensation system for resolving all Residential School claims.
- Plaintiffs' Litigation Plan proposes an option for survivors to either:
 - accept fixed amounts of compensation based on the length of confinement in the residential schools; OR,
 - to proceed through an adjudication process that compensates victims for all alleged harms, including loss of language and culture.

Canada's Response to the Litigation

- Government study concludes:

“Arguments against certification will be strengthened by the establishment of an ADR model that is a ‘preferable procedure’ to class proceedings. *In this regard, creating a model that is more ‘preferable’ to class proceedings should be an overarching consideration in the building of the model.*”

Canada's ADR

- **Model A** offers compensation for claims of physical abuse with lasting physical injuries and/or sexual abuse.
- **Model B** offers compensation for claims of physical abuse with no lasting physical injury and/or claims of wrongful confinement (as defined by Canada).
- A hearing is required in all cases.
- For survivors of Catholic run schools, like the Shubenacadie Indian Residential School, only 70% of awarded compensation will be paid.

ADR/Litigation Comparison

Harms Addressed	ADR	Litigation
Sexual / Physical Abuse	Yes	Yes
Emotional / Psychological Abuse	Limited	Yes
Wrongful Confinement	Limited	Yes
Loss of Language and Culture	No	Yes
Intergenerational Impacts	No	Yes
Breach of Treaty / Aboriginal Rights	No	Yes

Litigation or ADR?

- Ontario Court of Appeal critical of ADR:
- **“It is a system unilaterally created by one of the respondents in this action and could be *unilaterally dismantled* without the consent of the appellants. It deals only with physical and sexual abuse. It caps the amount of possible recovery...*it does not compare favourably with a common trial.*”**

The Solution?

*A court supervised
resolution that provides
fair compensation for all
claims for all
Residential School
Survivors.*

THANK YOU

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