



LEAF FAEJ WOMEN'S LEGAL EDUCATION AND ACTION FUND

FONDS D'ACTION ET D'ÉDUCATION JURIDIQUES POUR LES FEMMES

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## MEDIA RELEASE

### LEAF/NWAC/DAWN COALITION DISAPPOINTED BY SUPREME COURT'S DENIAL OF EQUITABLE AND COMPREHENSIVE COMPENSATION FOR ABORIGINAL RESIDENTIAL SCHOOL SURVIVORS

**(Toronto – October 21, 2005)** On Friday, October 21<sup>st</sup> the Supreme Court of Canada released its decision in *Barney v. Canada (Minister of Indian Affairs and Northern Development) and the United Church of Canada* in which the Women's Legal Education and Action Fund (LEAF), the Native Women's Association of Canada (NWAC), and the DisAbled Women's Network (DAWN) Canada intervened in coalition. At issue is whether Aboriginal residential school survivors subjected to multiple forms of abuse are entitled to fair compensation for the violence and forced loss of language and culture inflicted at Indian residential schools (IRS).

The Coalition is disappointed that the Court found that Mr. Barney is not entitled to compensation for the physical and mental abuse inflicted upon him because this abuse was statute barred. The Coalition argued that the wrongs inflicted are indivisible, and that therefore limitation periods cannot be found to apply to some of the wrongs and not others – an example of the overlap of the abuse was that following one sexual assault, Mr. Barney attempted to drown himself in the bathtub; his dormitory supervisor then punished him by strapping him naked in front of the other boys. These types of wrongs and their consequences can't be carved up.

The Court paid no attention to the racism informing IRS policy. The Coalition argued that to understand the injustice of carving up the wrongs and denying full compensation for the IRS survivors, it is necessary to understand that Canada's IRS system was an integral part of its policy of Aboriginal forced assimilation and cultural genocide.

The Coalition argued that if the wrongs are analysed from an equality perspective, taking into consideration the racist motivations that lead to the creation of the indivisible web of violence, it should be found that to apply the limitation periods would perpetuate the racism originally associated with IRS. It is an unconscionable abuse of power for governments to rely on limitations periods to defend claims of institutional abuse, and governments should be restrained from doing so.

There is a patent inequity in allowing defendants to carry on free from liability, while the victim continues to suffer the consequences of the abuse. Because of this inequity the limitation periods at issue should be waived, as the Court has found should happen with respect to the application of sexual assault limitation periods in other cases.

The LEAF/NWAC/DAWN coalition is relieved that the Court has at least recognized the entitlement to compensation for sexual assault for survivors of residential schools, and also has left the door open to future claims for forced loss of language and culture.

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