

In response to a variety of media inquiries in relation to concerns surrounding the IAP process raised by Doug Racine, we wish to provide the following statement.

MEDIA RELEASE: October 24, 2017

Mr. Racine has raised concerns surrounding the Independent Assessment Process for residential school claims. Generally, Mr. Racine is concerned about the fees charged by some lawyers involved in this unique process.

The Independent Assessment Process is a closed process that is governed entirely by the Indian Residential Schools Settlement Agreement (the "Settlement Agreement") reached between the parties and by the Orders of 9 provincial superior courts implementing the Settlement Agreement (the "Implementation Orders"). Senior Management of the Law Society of Saskatchewan (the "Law Society") have had extensive telephone communications with Mr. Racine (dating back to July 2017) in response to his concerns about the Independent Assessment Process. We have explained the limitations on the Law Society's jurisdiction to deal with fee issues arising out of the Independent Assessment Process. Mr. Racine has acknowledged the jurisdictional limitations of the Law Society in relation to the Independent Assessment Process.

The fees collected by lawyers in the context of the Independent Assessment Process are entirely controlled by the Settlement Agreement and the Implementation Orders of the applicable superior courts. Those courts have maintained a supervisory role in relation to the entire process. Pursuant to the Settlement Agreement, lawyers receive fees directly from the federal government, over and above the award paid to the claimant, in an amount equal to 15% of the total award.

The Settlement Agreement allowed up to an additional 15% to be charged to the claimant in cases that warranted it. In every case where a lawyer claimed fees in excess of the 15% government portion, the adjudicator presiding over the matter was required to review the basis for the charges, as well as the retainer agreement, and provide their approval of the additional charges. If an adjudicator viewed the claim for excess fees as being unwarranted, he or she was entitled to deny the lawyer's excess fee claim. The Settlement Agreement and Implementation Orders governing fees provided further safeguards for claimants in the form of an appeal process for claimants to use if they felt that additional charges approved by the adjudicator were unwarranted. A Court Monitor and Independent Special Advisor are also in place to address ethics and integrity issues that arise within the Independent Assessment Process generally. The parties agreed to this process and the superior courts supervising the process have endorsed it. We are uncertain as to the extent that Mr. Racine has availed himself of the remedial measures built into the Independent Assessment Process to share his concerns.

The Law Society does not have a window into the Independent Assessment Process because it is a closed process intended to create a safe and private environment within which the claims of residential school survivors are assessed. Because of the closed nature of the process, the Law Society only has the ability to become involved upon the receipt of a complaint from one of the parties involved (a lawyer, claimant or adjudicator). Where the Law Society has received complaints regarding lawyer conduct in the Independent Assessment Process, it has investigated those complaints as it would any other and, where appropriate, has initiated discipline proceedings against those lawyers. We have encouraged Mr. Racine to report to the Law Society any information of a specific lawyer's misconduct of which he is aware and is at liberty to divulge.

The Law Society is not a party to the Independent Assessment Process. It has no jurisdiction to intervene to overturn or modify the existing Settlement Agreement or the Implementation Orders governing the process, nor does it have the jurisdiction to conduct its own self-initiated review of the confidential Independent Assessment files of claimants.

The Law Society remains deeply committed to act in the public interest. This core mandate applies equally to all citizens. To that end the Law Society is responding to the Truth and Reconciliation Commission calls to action on both a provincial and federal level including call to action #27 requiring increased cultural competency for all lawyers.