

Interview given by Ches Crosbie to CBC Radio Noon with Ramona Deering on June 8, 2010 regarding “Residential School Lawsuit Certified”

Ms. Deering: Good afternoon Mr. Crosbie.

Crosbie, QC: Hi.

Ms. Deering: Why did Judge Fowler determine that this lawsuit should go ahead?

Crosbie, QC: Well, he was convinced that we satisfied the various criteria for being constituted as a class action. There are five criteria set out in the *Class Actions Act*. The one that gave him the most trouble was whether there was a relationship between the federal crown, which is who we’re suing over this, and what the nature of the relationship was from 1949 onward. Obviously having entered Confederation so late, aboriginals in Newfoundland and Labrador are in a different position or in different circumstances from those elsewhere.

Ms. Deering: How long did it take to get it certified; this has been going on for a while, hasn’t it?

Crosbie, QC: Yes, the judge worked hard on it I’m sure and it took, he had it on reserve for a year and there were other motions taken by the federal government which resulted in delays in getting the case up for certification, which is what determines whether you have a class action or you don’t have a class action, so yeah, there have been delays, and one of concerns is the age of many class members and the desire, our desire to see them obtain some redress while they’re still living.

Ms. Deering: Well remind us again who the plaintiffs are, how many are there, and how old are they?

Crosbie, QC: Yes, well of course there’s a distribution, but we’re talking about people who attended five different residential schools in Labrador, two run by the Moravians and three run by the Grenfell Association, in the period roughly between 1949 and 1979, so it spans a number of decades, and involves around 5,000 people who attended the schools. So some would be quite aged and many are already deceased, and you know, others not quite so aged, but you are talking about schools that stopped functioning back in ’79, so that’s what 25, 30 years ago.

Ms. Deering: And you’re just suing the federal government?

Crosbie, QC: Yes, there’s not much point in suing the Moravians.

Ms. Deering: Why wouldn’t you go after the Moravians?

Crosbie, QC: It's a matter of whether they would have assets to pay a judgment, a judgment that probably will be significant. It's up to the federal government whether they want to third party entities like the Moravians and like the Grenfell Association.

Ms. Deering: Does this class action lawsuit have anything to do with the apology that the federal government made to victims of residential schools, that was a couple of years back I think, and it specifically left out residential school victims in this province?

Crosbie, QC: Yes, it's all connected in the sense that the nature of the allegations in these residential schools are substantially similar to those made in the other residential school cases elsewhere in the country. In other words, physical abuse and mental and cultural abuse, so you could even argue cultural genocide, and so the nature of the grievance is virtually identical. The difference here is the federal government has decided to it appears fight the claim very adamantly against aboriginals in Newfoundland and Labrador. So we're being treated here in this province, you could say accurately on an unequal basis with the aboriginals who reside in other provinces. The federal government has kind of red circled aboriginals resident here and dug their heels in and decided that they're going to fight.

Ms. Deering: And you expect a hard fight?

Crosbie, QC: So far there's every indication of this being hard fought, yes.

Ms. Deering: What's your next step?

Crosbie, QC: Well the next step is to gather in the information we need to prove the case. We now have rights of discovery and so we'll go about that information gathering process and then, unless there's a will to settle, there will have to be a common issues trial. The issues being common to everybody in the class, the 5,000 people who attended these schools, roughly 5,000, and the idea being that once those issues are determined by a court, then they're binding on everyone in the class and the defendant and it advances the claim much closer to resolution.

Ms. Deering: Do you expect the federal government to settle on this?

Crosbie, QC: Ah, you know, parties usually settle. Right now, I mean, at the outset of a litigation people may have entrenched positions, there appears to be an entrenched position on the part of the federal crown right now, but you know everyone reacts to new information as what you understand about the case evolves, rational people react to that and change their positions as indicated. So, you know, I don't see any reason why the federal government won't do

that assuming the information favors the position of the Newfoundland and Labrador aboriginals that we represent. I believe it will.

Ms. Deering: How long is it going to take to resolve this?

Crosbie, QC: Ah, you know, that's the problem with the court system and litigation, it takes almost always far too long. I think I heard in the news in the last day or two criminal charges in the Bhopal disaster in India, which occurred 25 years ago, have only just, you know, been tried in India, and people found guilty. That's an extreme example but civil litigation and criminal for that matter, criminal but civil for sure takes far too long. What I will say is, you know, our team is resolved to put our shoulder to the wheel and given the age of the members of the class, to move this forward with all necessary haste to a resolution.

Ms. Deering: Alright, we'll leave it there. Thanks so much for this.

Crosbie, QC: You're very welcome.