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# Correcting Past Wrongs: When Is It The Government's Responsibility?

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by Hon. Lois M. Moorcroft, MLA

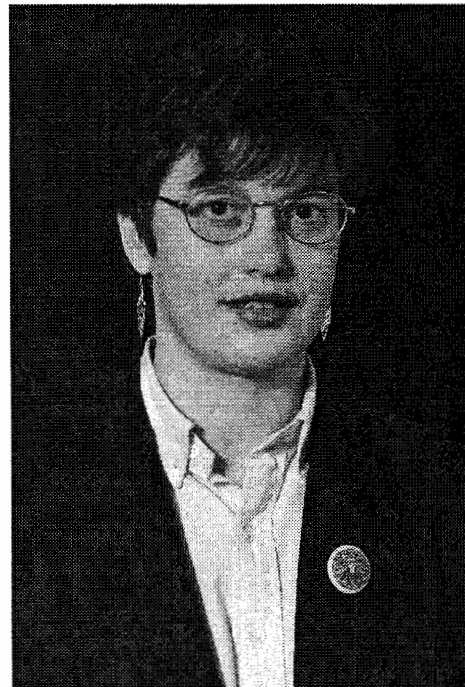
*There is no question that past government actions have caused harm to people. This article looks at some of the principles we need to consider in trying to correct the wrongs. Among other things it argues for open and accountable government. We also need to constantly ask if our response meets the standards of our Charter of Rights and Freedoms, which we accept as the basic framework of Canadian democracy? Where the damage still exists, how does the corrective action deal with that damage? The author concludes that we can only increase public confidence when we can ensure that the public has a voice in how the system changes.*

This question goes to the heart of governments' responsibilities to control and direct the making and administration of public policy that affects all members of society. In recent years many individuals and groups have sought redress for social wrongs or physical harm that took place long ago. The obvious answer is that it's governments' responsibility when governments make official decisions that seriously wrong segments of society. The topic raises many other questions that must be considered.

We live in a modern democratic state. People's rights are protected by the Canadian Constitution with its Charter of Rights and Freedoms. The framework of principles that guides our parliamentary democracy includes respect for human life, protection of the vulnerable and a balance of individual and collective rights. We believe in justice, the heart of the justice system being the rule of law, that the same law applies to each and every one of us

regardless of rank or privilege. Justice deals with fairness, equity and equality.

What should happen then when a wrong took place long ago at a time when the decision seemed reasonable



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according to the knowledge available at that time? The degree of government responsibility could be considered in relation to the level of government control. Was there a choice for people to participate in the policy or program? Was the power of the state being used to control citizens? If children were involved, did their parents willingly or knowingly consent? Did they have other options? To what degree do these past government actions stand in the way of unity and harmony today?

***We cannot undo all the wrongs of the past. We can accept the responsibility of acknowledging past wrongs, particularly when people today are still suffering the effects of those wrong decisions.***

Correcting past wrongs would become ruinously expensive if a government were to go back in history and make financial compensation to all wronged groups or their direct descendants. Should these decisions then be based on such practicalities as financial affordability, judicial rulings or facts established by independent commissions? If we are to learn from past mistakes, we need to consider how governments ensure they are making the right decisions for the right reasons.

A number of Canadian examples come to mind when considering this question of correcting past wrongs. During the First and Second World Wars the federal government forcibly confined thousands of citizens who were believed to pose a threat to Canadian security. In the Second World War the Defence of Canada Regulations authorized the internment of anyone who was acting in a manner "prejudicial to the public safety or the safety of the state." Although Canadians and foreign citizens who were considered sympathetic to Germany, Italy and Japan were locked up in war camps, only the Japanese-Canadians have been successful in seeking an official apology and financial compensation. What was special about their case?

In February 1942, the federal government ordered the evacuation of all Japanese-Canadians living on the BC coast to the interior as they might help in the event of a potential Japanese invasion. Neither the military nor the Royal Canadian Mounted Police recommended evacuation. The most real threat to public security on the west coast came from the deeply ingrained anti-Oriental racism that had existed for decades and had brought the threat of mob action. After more than 21,000 men, women and children were evacuated, their property was seized and sold by the government for a fraction of its

value. Those who were interned were required to pay for their keep and many Japanese-Canadians were forced to return to Japan.

A parliamentary committee took the lead in supporting the campaign for redress as early as 1947. The public accounts committee recommended a public inquiry. The James Henry Bird commission recommended repayment and of 1,434 claims for over \$7 million, \$2.5 million was repaid.

The issue resurfaced because, first, the US Congress established a commission on wartime relocation and civilian internment. Second, Japanese-Canadians continued to fight for a negotiated, honourable and meaningful settlement. Third, in March 1984, the House of Commons report *Equality Now* recommended a negotiated settlement to redress the mistreatment.

It is interesting that a March 1986 Environics poll indicated that 63% of Canadians favoured redress. The National Association of Japanese Canadians had embarked on an educational campaign to show that this was a human rights issue.

Prime Minister Trudeau said at the time that it was "not the purpose of government to right the past. It cannot rewrite history. Our purpose is to be just in our time and that is what we have done by bringing in the Charter of Rights." Prime Minister Mulroney, a few years later, in announcing a not easily reached settlement, said again: "We cannot change the past. But we must face up to these historical facts...put things right...ease the burden of past wrongs." The formal acknowledgement which the Prime Minister signed in 1986 said, "As a people, Canadians commit themselves to the creation of a society that ensures equality and justice for all, regardless of race or ethnic origin."

The settlement included granting Canadian citizenship to those who had been expelled or had their citizenship revoked, and financial compensation for the property which had been seized and sold under value.

Residential schools is the second area I would like to discuss. In the Yukon, we are quite familiar with "mission school syndrome," which does indeed affect society today.

The recent Royal Commission on Aboriginal Peoples was established in 1991 and reported in 1995. It dealt with aspects of the lives of first nations peoples and communities and their relationship to Canada. Public attention to aboriginal issues had been heightened by the constitutional reform process, the residential schools issue and the Oka crisis.

From the late 1800s through to 1969, residential aboriginal schools were operated by several Christian churches together with the federal government to "civilize the savages" and "teach them a more Christian stan-

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dard of cleanliness." From 1969 to the 1980s, the federal government continued to administer those residential schools without the involvement of churches. Children were removed from their families and communities, and some never saw their families again.

As the Royal Commission on Aboriginal Peoples documented, the damage of the residential schools included a poor quality of education; damage to the family structure, which for the Athapaskan people in the Yukon was a matrilineal clan system; the repression of language and culture. Children were punished for speaking their own language and there was physical and emotional damage, not just to students who were physically and sexually abused but to their family members inside and outside the residential school environment.

The federal government response to RCAP was issued in January 1998 with a statement of reconciliation which acknowledged the contribution of aboriginal peoples to Canadian society. It expressed "profound regret for past actions of the federal government which contributed to these difficult pages in the history of our relationship together."

The present federal government announced simultaneously a \$350-million healing fund to aid victims of abuse. The Aboriginal Healing Foundation is headed by Georges Erasmus, who had been co-chair of the Royal Commission on Aboriginal Peoples. It will fund holistic and community-based healing initiatives to complement existing programs and to meet currently unsupported needs.

The question of financial compensation to individual victims of physical and sexual abuse is still before the courts. In June 1998, the Supreme Court of BC held the federal government and the United Church of Canada "vicariously liable" for the sexual assaults committed by a residential school dorm supervisor between 1943 and 1970.

The Canadian Conference of Catholic Bishops and the United Church have urged the federal government to take a leadership role in establishing formal talks to find an out-of-court settlement to the numerous lawsuits related to residential schools.

Finally, another current example: rape in the military. Recent public debate following public disclosures of rape in the military seems to be repeating old patterns. Disbelief and denial are being met with demands for change.

Lieutenant General Bill Leach of the Canadian Forces told the media he would no longer tolerate the continued abuse of women in the military. "Times have changed. And attitudes and behaviour must change. But if attitudes cannot change quickly enough, behaviour has got to change immediately."<sup>1</sup> Further *Maclean's* reports of

July 1 questioned how Leach himself responded to a sexual harassment complaint he received in 1996.

Many Canadians are now questioning the validity of a military justice system which reports to the Minister of National Defence rather than the Attorney General. The fundamental principle of our judicial system is that the rule of law means that all members of society can expect the same law, the same potential consequences for wrongdoing, and the same right to a fair and impartial hearing to establish innocence or guilt to apply.

What all three of these examples have in common is that women, immigrants, racial minorities and aboriginal peoples have historically not been well represented in the legislatures and other decision-making roles in society. Historically, government decision-making has been dominated by a narrow segment of the population. Most legislators are male; wealth, privilege, education and Euro-Canadian ethnicity still are advantages to getting elected in Canada.

When a minority or disadvantaged group is culturally different from the larger society, its view and experience of law and justice will often be different. Our challenge in our daily work is to use a framework of consistent principles to guide our future decisions. Today we can discuss and help develop a framework of principles to guide the decisions that seek to correct past wrongs.

I expect that most of us were taught to say, "I made a mistake," when we had done something wrong as a child. As people elected to serve the public interest, I believe we have a responsibility to acknowledge wrongdoing when governments have imposed programs that have harmed first nations, Japanese Canadians, women who have been systematically intimidated and dominated by sexual violence, people with Hepatitis C that they have received from tainted blood, Inuit who were relocated to hostile environments on the Arctic coast and who starved, or the mentally ill who were forcibly sterilized. We must seek ways to help rectify the damage done and engage in dialogue with the people affected.

As another principle, we must provide open and accountable government through such mechanisms as access to information and protection of privacy legislation, which allows greater knowledge of government actions and discourages secret files.

Resolving such debates is complex. Legal, scientific, historical, ethical and financial considerations all play a role in reaching decisions about governments' responsibility. If we were afraid of such difficult decision-making, we would not be in political life.

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1. *Maclean's*, July 1, 1998.