



Case in Brief: ***J.W. v. Canada (Attorney General)***

Judgment of April 12, 2019 | On appeal from the Court of Appeal of Manitoba
Neutral citation: 2019 SCC 20

A judge had the power to step in when a man's claim was wrongly denied under the Indian Residential Schools Settlement Agreement, the Supreme Court has ruled.

Canada is still coming to terms with a terrible part of its history. From the 1860s to the 1990s, over 150,000 First Nations, Inuit, and Métis children were taken from their homes. They were put in boarding schools called “Indian Residential Schools.” The schools were set up and run by the federal government and churches together. Many students were physically, sexually, and psychologically abused there.

Years later, many of these former students sued for the harms they suffered. They sued the federal government, churches, and others. The Indian Residential Schools Settlement Agreement, signed in 2006, settled the lawsuits. This agreement did many things. It set out a way toward national healing, education, and reconciliation through the Truth and Reconciliation Commission. It also set out ways for people who were harmed to ask for compensation. One of these ways was through the Independent Assessment Process (IAP).

The IAP decides what kind of compensation someone should get for specific harm that they suffered. IAP decisions are made by adjudicators (decision-makers who aren't judges). Each province and territory has a “supervising judge” to oversee how the Settlement Agreement is applied. This is to make sure people get the compensation and benefits they bargained for. The issue in this case was whether a judge was allowed to intervene in an adjudicator's decision.

JW went to a residential school as a young boy. While he was waiting to have a shower, a nun grabbed his private parts over his clothes. He asked for compensation for this harm through the IAP. But the decision-maker denied his claim. She said JW had to prove the nun meant her touch to be sexual. JW asked two IAP reviewers to look at the decision. They both agreed with the first decision-maker's conclusion.

JW asked the supervising judge in Manitoba to look at his case. The judge agreed with JW that the reviewers had failed to apply the agreement, and said the case should be heard again by a new decision-maker. This new decision-maker agreed with JW that he had been sexually abused and said he should be compensated. But before JW was paid, the federal government appealed the judge's decision. It said the judge didn't have the power to give his own interpretation of the Settlement Agreement. The Court of Appeal agreed, saying the judge only had the power to look at whether the IAP decision-maker considered the correct parts of the agreement. It restored the original decision, which denied JW's claim.

The seven judges who heard this case at the Supreme Court split three ways. Five judges came to the same conclusion, but for different reasons. They agreed that JW should get the benefits the Settlement Agreement promised him. They said that the new decision-maker's decision should stand, and JW should receive compensation.

The Settlement Agreement is meant to help Canada come to terms with the damage caused by the Indian Residential Schools policy. Resolving cases like JW's is an important part of this process.

Breakdown of the decision: *Reasons by:* Justice Rosalie Silberman **Abella** would have allowed the appeal because the decision-maker didn't properly apply the Settlement Agreement, which amounted to *changing* the agreement, so the supervising judge needed to step in to make sure that JW received the benefits he was promised by the agreement (Chief Justice **Wagner** and Justice **Karakatsanis** agreed) | ***Concurring:*** Justice Suzanne **Côté** would have also allowed the appeal, but she said courts could step in only when the decision-maker applied the wrong provision of the agreement or an issue came up that wasn't covered by it, exposing a gap in the agreement (as in JW's case) (Justice **Moldaver** agreed) | ***Dissenting:*** Justice Russell **Brown** agreed with Justice Côté that courts could intervene only if a relevant term wasn't considered or there was a gap in the agreement, but said there was no gap in JW's case, so he would have dismissed the appeal (Justice **Rowe** agreed)

More information (case # 37725): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: hearing, review, and re-review decisions (Indian Residential Schools Settlement Agreement Independent Assessment Process, not available online) | [supervising judge's decision](#) (Court of Queen's Bench of Manitoba) | reconsideration decision (Indian Residential Schools Settlement Agreement Independent Assessment Process, not available online) | [appeal](#) (Court of Appeal of Manitoba)
