

Discipline case shows 'law society has a lot to learn' about indigenous issues

A discipline hearing involving a Kenora lawyer for residential school survivors was stopped this week when both sides came to an agreement.



The Law Society of Upper Canada says its only priority was "pursuing justice" in the case of Douglas Keshen, who faced allegations including mishandling residential school survivors' settlement funds. The allegations weren't proven. (DALE BRAZAO / TORONTO STAR FILE PHOTO)

By [JACQUES GALLANT](#) Legal Affairs Reporter
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Ontario's legal regulator is admitting it faces "serious systemic issues" when dealing with cases involving indigenous peoples, and is promising to do better.

The Law Society of Upper Canada said this week these issues were "exposed" in the discipline case of [Kenora lawyer Douglas Keshen](#), who faced a number of allegations pertaining to residential school survivors seeking compensation from the federal government for the years of abuse they suffered.

On Tuesday, after about 26 hearing days, the regulator announced that both sides had come to an agreement and that it was putting a stop to the discipline hearing. None of the allegations against Keshen were proven before the Law Society Tribunal.

Instead, Keshen participated in what is known as an "Invitation to Attend" before the tribunal to receive "corrective advice and guidance, so that past lapses and mistakes are not repeated," according to a law society statement. He'll attend another such closed-door meeting in Toronto "after he has time to reflect further on his actions."

Keshen also agreed to undergo practice reviews, and participate in up to three healing circles funded by the law society, if invited to do so by elders.

"We had evidentiary issues that arose, as can arise in any case, which led us to reassess where the case was going, and to decide that the best resolution was the one that we achieved yesterday," law society treasurer Paul Schabas, the elected head of the regulator, told the Star on Wednesday.

"I think the law society has a lot to learn about how to prosecute these kinds of cases. Cases involving indigenous people, cases involving residential school survivors. They present unique cultural challenges because of lack of familiarity with our process."

He said the law society has reached out to elders and other community leaders "in the spirit of reconciliation, to learn as much as we can, so that we can do better next time and do things differently."

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Schabas, who has represented the Star on legal matters, acknowledged that some survivors were troubled by the adversarial nature of a discipline hearing, where they were cross-examined on the stand.

“We all have to understand that different cultures have different ways of communicating and they may not be receptive to adversarial attacks, and would rather work and discuss things in a manner in which people can tell their stories fully and have that opportunity without being challenged,” he said.

Keshen faced allegations including mishandling of settlement funds and failing to communicate with some clients at all stages of the residential school compensation process.

“There was a not single finding against me amongst all of the allegations,” Keshen told the Star. “I have welcomed the opportunity to attend circles, if invited . . . I look forward to re-establishing my relationship with First Nations that were waiting for the outcome of this hearing.”

Grand Chief Alvin Fiddler of Nishnawbe Aski Nation, which represents 49 First Nations communities in northern Ontario, told the Star he was very disappointed with the outcome in the Keshen case, saying survivors have told him that they feel “like they’ve been left hanging.”

“I would say the law society was more interested in protecting the interests of Doug Keshen, rather than the survivors,” he said.

“We need to find out how we can bring some resolution to (the survivors’) issues and their concerns because they’re still very much there, and the law society, with their statement (Tuesday), admitted that they were not in a position to do it on behalf of the survivors and that we need to find another avenue to make that happen.”

He also said the mention of healing circles in the law society statement was “inappropriate,” saying he wasn’t aware of consultation on the issue.

The law society said survivors and chiefs were advised about the components of Tuesday’s resolution, including the circles, but they weren’t consulted per se.

“I would say that Grand Chief Fiddler is right to be disappointed in the outcome, but I would say that at all times, the law society had as its only priority the interest in pursuing justice in this case,” Schabas said.