Redress transgressions:
Misconduct by legal practitioners in redress schemes

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Overview

This paper examines:

1. The good that lawyers can do for redress
2. The harm that lawyers can cause in redress
3. Potential safeguards against bad legal actors

(1) The good that lawyers can do

Lawyers can support and advance survivors’ justice interests as:

• transformation agents (Felstiner, Abel, and Surat, 1980-81)
• policy drivers
• advisors
Davis & Daly, Redress transgressions: 
Misconduct by legal practitioners in redress schemes, Law and Society Association of Australia and New Zealand, Gold Coast, 6-7 December 2019

Comparing schemes

<table>
<thead>
<tr>
<th></th>
<th>Maximum payment (AUD)</th>
<th>Average payment (AUD)</th>
<th>Claimants</th>
<th>Treatment of legal costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland (RIRB)</td>
<td>$441,000</td>
<td>$91,508</td>
<td>15,579 (validated)</td>
<td>paid by scheme</td>
</tr>
<tr>
<td>Canada (IRS-IAP)</td>
<td>$430,000</td>
<td>$96,802</td>
<td>31,186 (validated)</td>
<td>15% of claim paid by scheme + up to 15% paid by claimant</td>
</tr>
<tr>
<td>Australia (NRS)</td>
<td>$150,000</td>
<td>$80,466</td>
<td>60,000 (eligible)</td>
<td>free legal service</td>
</tr>
</tbody>
</table>

(2) The harm that lawyers can cause

- Redress honeypot can raise ‘the spectre of inadequate representation’ *(Fontaine v Canada (Attorney-General) 2015 BCSC 717)*

- Misconduct by legal practitioners
  - overcharging
  - inappropriate solicitation and disclosure
  - unfair loans
  - application manipulation
(3) Potential safeguards

- Increase in regulation of the legal profession
  - Clear practice standards
  - Professional oversight, including a complaints mechanism
- Reduce legalism
  - Simplify redress procedures
  - Increase scheme transparency

Implications

- Entry of private lawyers into Australia’s national redress scheme may result in the exploitation of survivors
- Australia can learn lessons from the Irish and Canadian experiences
- Steps to deter and detect bad legal actors include:
  - Improve the regulation of the legal profession
  - Reform the scheme to reduce complexity
References

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- Fontaine v Canada (Attorney-General) 2012 BCSC 839
- Fontaine v Canada (Attorney-General) 2015 BCSC 717
- Ireland, Comptroller and Auditor General, Special Report: Cost of Child Abuse Inquiry and Redress (December 2016) report number 96.