

Special Report No. 27
February 2006

to the Legislative Assembly
of British Columbia

The Power of an Apology: Removing the Legal Barriers



The Power of an Apology: Removing the Legal Barriers

**A Special Report by the Ombudsman
of the Province of British Columbia**

Library and Archives Canada Cataloguing in Publication Data

British Columbia. Office of the Ombudsman.

The power of apology : removing the legal barriers

(Special report no. 27, February 2006, to the Legislative
Assembly of British Columbia)

ISBN 0-7726-5488-3

1. Government liability - British Columbia. 2. Dispute
resolution (Law) - British Columbia. 3. Compensation (Law)
-- British Columbia. 4. Apologizing. I. British Columbia.
Legislative Assembly. II. Title. III. Series: British
Columbia. Office of the Ombudsman. Special report ... to
the Legislative Assembly of British Columbia ; no. 27, Feb.
2006.

JL429.5.L52B74 2006

352.8'85'09711

C2006-960014-7

In more than six years as the Ombudsman for British Columbia, I have witnessed, again and again, how one action can make a difference in a small but meaningful way. I have observed that a sincerely offered apology will often satisfy a person who has a complaint. In her 1995 Annual Report, former Ombudsman, Dulcie McCallum made a similar observation that “Fairness may mean having to say you’re sorry.” I have heard repeatedly from individuals who needed to hear a public agency apologize so that they could stop being angry about what happened, forgive and move toward healing. I have also heard a range of reasons from senior public service officials why an apology is not possible. Most frequently public service officials inform me that they have received legal advice not to apologize, out of concern that an apology will be considered an acknowledgement of liability in any ensuing court action.

As Ombudsman, I may inform the public of my recommendations to a public agency in order to remedy unfairness on the part of that agency. If I conclude that a public agency has acted unfairly and is unwilling or unable to make amends, I will sometimes recommend that they apologize if I believe that this would settle the matter. That seems relatively simple and straightforward but the offer of a sincere apology can be challenging to achieve. Much has been said about the power of an apology and I recognize the expertise of the authors and speakers who have addressed the issue. The purpose of this report is not to detail acts of unfairness on the part of any public body, but rather to generate a discussion about the importance of an apology from the perspective of fairness. I want public agencies to be able to say, “I am sorry for what happened” without fear of the consequences.

In the 18th Century, Alexander Pope wrote *An Essay on Criticism* which cited “To err is human, to forgive divine.” In the delivery of public services, errors or mistakes happen. As one might expect, in the course of the Ombudsman’s investigations of complaints about unfairness, a public agency might recognize that its actions caused distress or unfairness to a person. Without attributing intent or blame, the Ombudsman’s investigators might suggest that an apology from the public agency would be an acceptable outcome. Public agency employees are often willing to express an apology to their clients for unreasonable delays, for actions perceived as being oppressive, unfair or unreasonable, or for a simple misunderstanding. When a person feels mistreated, having someone apologize for what took place often enables the person to forgive, to re-establish the relationship and move forward. The person who felt mistreated is not stuck in the past, feeling so aggrieved that they simply cannot move past the incident without “their pound of flesh.” This Office has had many examples of

situations where we have satisfactorily concluded our investigation on the basis of a genuine apology.

In some cases, the Ombudsman has made formal recommendations to government suggesting that it apologize for the effects its action had on individuals. In 1993, then Ombudsman Dulcie McCallum released a report on her investigation of complaints of the abuse of students attending a residential school for the Deaf. In that report, *The Abuse of Deaf Students at Jericho Hill School*, the Ombudsman recommended that:

Government should contact students who disclosed abuse in 1982 and students who were identified as victims of abuse in 1982 to offer appropriate compensation and an apology.

Then Attorney General, the Honourable Colin Gabelmann, responded in the Legislature on June 28, 1995, stating:

There is no excuse or justification for what happened. The victims bear no responsibility for events over which they had no control. We regret that they were exposed to these terrible experiences; we regret this especially because they were young and vulnerable children. It took great courage on their part to come forward and disclose the abuse they endured.

In response to the Ombudsman's recommendations, government established a non-confrontational, non-litigious process for providing compensation to former students. The Ombudsman suggested that a personal and formal apology should accompany any offer of compensation. Government decided that upon acceptance of a compensation package, a claimant would receive a written personal and formal apology for the harm done. Those who did not accept a compensation package would not receive an apology.

One of the Jericho Hill School claimants reported to the Law Commission of Canada that the process of considering his application for compensation was respectful and supportive. He said, however, that the personal apology letter he received after agreeing to the amount of compensation was, in fact, a form letter sent to all claimants who had participated in the program and accepted a compensation package. It did not document his personal experience, nor did it acknowledge his efforts to overcome the effects of the abuse. The claimant indicated that the generic letter of apology was not

enough and did not bring the closure he hoped it would because it failed to recognize his individual experiences.

In her 1999 Ombudsman Public Report, *Righting the Wrong: The Confinement of the Sons of Freedom Doukhobor Children*, Ms. McCallum described her investigation into the harm caused by government actions toward the children of the Sons of Freedom Doukhobor community in the 1950s. She recommended that the Attorney General “make an unconditional, clear and public apology to the complainants on behalf of the government.”

Five years later, in the fall of 2004, the Attorney General stood in the Legislature and said:

I rise in the House with the honour of paying tribute to some very special guests who are joining us here today. They are representatives of a very special group of British Columbians known as the New Denver Sons of Freedom Doukhobor children. I would like to take a few moments to talk about a sad chapter in B.C. history that concerns them.

The provincial ombudsman brought this chapter to the attention of government and the public in her 1999 report entitled *Righting the Wrong: the Confinement of the Sons of Freedom Doukhobor Children*. This report details the events that occurred some 50 years ago, when 104 Sons of Freedom Doukhobor children were removed from their parents, who were arrested during a protest in the West Kootenays.

The Attorney General described the circumstances of the Sons of Freedom Doukhobor children and the challenge of governments in understanding actions taken in the past. He recognized the courage of the individuals in taking a path to healing. He then went on to say:

We recognize that as children, you were caught in this conflict through no fault of your own. On behalf of the government of British Columbia, I extend my sincere, complete and deep regret for the pain and suffering you experienced during the prolonged separation from your families. We recognize and regret that you were deprived of the day-to-day contact with your parents and the love and support of your families. We recognize and we regret the anguish that this must have caused. We will

continue to offer counselling to former residents and to your relatives — including your siblings, your offspring and your spouses — who wish to access this service.

We hope that this acknowledgment will enable you to work with us toward continued reconciliation and healing.

If you were seated in the Legislature's public gallery that day or reading the Attorney General's statement in a newspaper report, would you have heard an apology on behalf of the government? Many people did. However, many of those to whom the statement was directed did not hear what they needed to hear. They heard regrets, but they wanted more than regrets and so the eloquent words of the Attorney General did not meet their expectations nor satisfy their need of an apology for what happened to them so many years earlier. Many of the former children of Sons of Freedom Doukhobors indicated that they would have been able to move forward in their effort to heal, had they heard the Attorney General express "sincere, complete and deep apology for the pain and suffering you experienced." The Attorney General's statement was unacceptable to them because the word "regret" was used in place of "apology".

While in both cases, the Attorney General publicly expressed regret for the experiences of these individuals as children attending Jericho Hill School or confined in New Denver and acknowledged that their experience was not of their doing, the recipients remained unsatisfied. The now-adult Sons of Doukhobor children wanted to hear someone say, "I am sorry for what happened to you" or "I apologize for what happened to you." Regret was not enough.

What is it about the word apology that conveys greater meaning and significance than regret? When does an apology help to heal and when does it disappoint?

Empathy is expressed when a person expresses regret for harm to another and acknowledges the other's hurt. When a person apologizes for harm done to another, it is implied that the person acknowledges the wrongdoing and is taking responsibility for what happened. It is the combination of acknowledging the wrongdoing and accepting responsibility that seems to give strength to an apology.

As children many of us were told to say we were sorry when we did something that hurt another person. We were not taught to say, "I regret that I hurt your feelings." In our personal relationships we know the importance of admitting when we are wrong, of

saying we are sorry when we have hurt someone. Not unreasonably, the desire for a sincere apology extends beyond relationships.

When public agencies are asked to make a public apology, fear of publicly accepting responsibility or liability and the possibility of legal actions as a consequence tend to override any agreement that a public apology may be the most effective means of settling a dispute. Nonetheless, the public demand for an apology continues and covers a broad spectrum of situations.

In May 2005 CBC news reported an incident involving tense diplomatic relations between China and Japan. According to the news report, Chinese Vice-Premier Wu Yi planned an eight-day visit to Tokyo, aimed at improving relations between the two countries. However, when Japanese leaders included a visit to the Yakusni Shrine as part of the itinerary the Vice-Premier's visit was cancelled because Chinese officials were offended at the suggestion of paying tribute to Japan's military history. China demanded an apology for actions committed by the Japanese against Chinese citizens. Japanese officials denounced the abrupt cancellation of the Vice-Premier's tour, and demanded an apology from China.

Closer to home, a June 2, 2005 Canadian Press article reported that the Honourable Bill Graham, former federal Minister of Foreign Affairs, offered his sincere regrets to Maher Arar, a Canadian citizen sent by the United States to Syria where he was detained and tortured, agreeing that the Canadian government could have moved more quickly to secure Mr. Arar's release from a Syrian prison. Canadian Press quoted Mr. Graham as saying "Clearly we would have preferred that he be gotten out earlier. And I'm very sorry that he was not, for obvious reasons." The report indicated that this was not the full-fledged apology Mr. Arar hoped to hear, but that Mr. Graham was the first Canadian official of that stature who had expressed any form of regret and he was pleased with the acknowledgement.

Just prior to the recent federal election, the federal government had proposed a means of settlement to redress the 1880s policy of imposing a tax on each Chinese immigrant arriving in Canada. The tax, known as the Chinese Head Tax, remained in place until the 1920s when immigration law prevented new Chinese immigrants from coming to Canada. Initially the federal government stated that it would not issue an apology. However, during the recent federal election campaign, the Prime Minister and members of Cabinet reconsidered that position. Prime Minister Martin issued a personal apology

and Member of Parliament David Emerson said he planned to consult with lawyers about issuing a full and formal apology.

The importance of an apology in healing wounds is well documented throughout cultures and throughout history. In recent years, perhaps the most powerful and extensive application of apology came through South Africa's Truth and Reconciliation Commission, established in 1995 to address the conflict resulting from years of apartheid in that country.

British writer Marina Warner's powerful article, "Sorry", uses stories to capture the essence of the power of an apology and its increasing role in trying to heal social wounds. Warner also cites other examples of apologies intended to acknowledge past wrongdoing, including apologies from former President Bill Clinton to victims of civil conflict in Rwanda who might have been spared had the United States intervened and to people of El Salvador for policies of previous American administrations. Warner details apologies from Queen Elizabeth to the Maoris for their treatment by the British and to the people of India for the massacre of Amritsar in India in 1919. Warner describes Pope John Paul II's apology for centuries of injustices, including the Crusades and the Inquisition.

Warner's exploration of apologies also identifies languages in which an apology is inexorably linked to the word "forgiveness". For example, Warner writes that in Ibo, a language spoken in Nigeria, to apologize is to ask for a pardon. In Warner's words, "Apology adds to the sum of justice in the world."

In May 2000, in Australia's Western Territories, "National Sorry Day" was celebrated as a national day of healing as a gesture toward reconciliation with the Australian Aboriginal Community. From 1910 to 1970, thousands of Aboriginal children were forcibly removed from their families by the Australian government. These children are called the stolen generations. The European Network for Indigenous Australian Rights reported on the importance of apology in the healing process. "The journey towards healing for a stolen generations person can be lengthy. Many have not yet started, while others have only just begun upon their path," they wrote. One Aboriginal woman told of the impact in seeing a large white "sorry" created above the Sydney Harbour Bridge in May when nearly a quarter of a million people walked, in solidarity with Indigenous Australians, across the bridge. She said her "experience that day was the start of her personal journey of healing. That so many people cared overwhelmed her

and diminished her feelings of anger for her past treatment to an extent that she could begin to forgive and, in doing so, to heal.”

In “An Analysis of Formal Apologies by Canadian Churches to First Nations,” University of Victoria Professor Janet Bavelas wrote:

In order to achieve the potentially restorative and reconciling functions of apology, we need to reconsider both our assumptions and our practices regarding whether taking responsibility must always lead to increased liability.

Bavelas’s analysis of the six major church apologies revealed that none used language that directly expressed their responsibility for legally culpable offenses. Professor Bavelas concluded that it was a concern about legal liability that prevented the churches from taking responsibility for their organizations’ actions. Although their concern is one that is widespread, Bavelas found that some organizations have actually lowered their liability costs by taking responsibility.¹

Sometimes a genuine apology is issued only after charges or court decisions are rendered. In response to charges resulting from the tainted blood scandal, the Red Cross offered the following:

The Canadian Red Cross Society is deeply sorry for the injury and death caused to those who were infected by blood or blood products it distributed, and for the suffering caused to families and loved ones of those who were harmed. We profoundly regret that the Canadian Red Cross Society did not develop and adopt more quickly measures to reduce the risks of infection, and we accept responsibility through our plea for having distributed harmful products to those who relied upon us for their health.

As recently as July 2005, we learned of an apology extended some 200 years after the event in question when the tall ships visited the west coast of Vancouver Island, B.C. When the *Lady Washington* sailed into the harbour at Mackenzie Beach near Tofino, the descendents of Captain Robert Gray, an American fur trader, offered an apology to the First Nations people of the area.

¹ This paragraph has been revised after this report was originally published in order to correct our understanding of the research undertaken by Professor Bavelas.

“We are sorry for the abduction and insult to your chief and his great family and for the burning of Opitsaht,” said William Twombly. “We have heard your words and accept,” was the response from the Tla-o-qui-aht Chief Councillor.

In his comprehensive book *On Apology*, Professor of Psychiatry at the University of Massachusetts Medical School, Aaron Lazare observes that the “concept of apology is basic to all human cultures — indeed, it is arguably basic to human nature and communities in general.” Lazare makes the observation that in North America, an apology is sometimes part of a negotiated process toward reconciliation. Lazare contrasts how cultural norms affect the likelihood of a genuine apology.

For example, Lazare notes that one is more likely to receive an apology in Japan than in North America. He observes that the Japanese language has several words that can be used for an apology. Lazare believes the Japanese consider apologizing to be a virtue in Japan and focus on restoring a relationship. In response to an apology and demonstration of remorse, Lazare notes that the Japanese are more willing to forgive. Lazare writes that there are far fewer litigation court cases in Japan compared to the United States.

In his article “The Art of Apology”, Patrick J. Kiger cites a situation involving the Ford Motor Company. He said that faulty tires on a Ford vehicle caused an accident that resulted in the paralysis of the driver. The lawyers representing Ford in the court action offered a bedside apology to the accident victim, after which she settled her suit against Ford out of court. Business leaders were informed that Ford’s actions “signalled a change in the management attitudes about the effectiveness of public apologies.” Kiger observed that suddenly a case was made that it makes good business sense to apologize for inadequate performance or service that results in harm to a person or group of persons.

Kiger writes that in one U.S. survey of customers of nation-wide consulting companies, the 60% who were not satisfied with service sought an apology but only 5% ever received one. Kiger also cautions on the hollow apology that lacks sincerity. A genuine apology, he says, clearly states, “I am sorry for the inconvenience and here is what I can do to remedy the situation.”

Kiger reviewed a number of large corporations that have a culture of enabling staff to apologize for errors. He cites outcomes of significant reductions in litigation and its

associated costs. Kiger suggests that sincerity, honesty, acknowledgement, assurance of corrective action and an offer of assistance are the key ingredients for a successful apology.

A January 11, 2006 article in the *Globe and Mail* newspaper by Judith Timson supports Kiger's observation that an apology can be good business. Timson indicated many of today's business leaders find it difficult to apologize because they perceive an apology as a sign of weakness and an invitation to lawsuits and liability. Timson cites a Queen's School of Business article that concluded the opposite. According to Timson, "If you are in the wrong, an immediate apology almost always helps. And even if it doesn't, it seldom, if ever, hurts."

Others have observed that an apology may prevent the pursuit of legal action as those who are harmed seek acknowledgement and an expression of remorse rather than court processes. In 2001, the Ombudsman of New South Wales, Australia proposed to the state government that legislation be introduced to make apologies or expressions of regret given by public sector officials to help resolve a complaint inadmissible in any civil proceedings. Ombudsman Bruce Barbour wrote, "Public sector officials should be encouraged, where appropriate, to try to resolve complaints by giving a clear, sincere and timely apology." The Ombudsman further observed that, "the reason why such apologies are not forthcoming is the issue of legal liability. A common view is that an apology equates with an admission of legal responsibility." The Ombudsman observed that legislation often protects staff from liability if their actions are in good faith and that legislation should be enacted to extend protection to those who offer apology.

This would not be detrimental to the rights or interests of members of the public who have legitimate legal claims against an agency as in practice, without legislation of this kind, an aggrieved person would probably receive no apology – and consequently, no admission of responsibility – at all.

In contrast, the practical consequence of introducing legislation of this kind should be that more public sector officials would be encouraged to say 'sorry' and more members of the public are more likely to feel satisfied that their grievance has been taken seriously. An apology shows an agency taking moral, if not legal, responsibility for their actions and the research shows that most people would be satisfied with that.

In 2002, the government of New South Wales enacted such legislation and subsequently every other state and territory in Australia has enacted legislation that provides some protection for those making apologies. The New South Wales legislation goes a step further than most and offers protection for apologies that acknowledges responsibility or fault.

Ombudsman Jan O'Grady, of Tasmania, conducted an investigation as a result of complaints from adults who alleged that, as children in the care of the state, they had been abused. More than three hundred individuals came forward to report childhood abuse while in state care. She published the findings of her investigation in November 2004. Ms. O'Grady wrote:

It was the fervent hope of the late Premier of Tasmania, the Honourable Jim Bacon, that the Review would provide victims of past child abuse with an opportunity for healing and closure. In our view this objective has already been met in large part. While the individual reparations have still to be finalised and there are claimants still seeking assistance and support and anxious to know if they will receive an *ex gratia* payment, feedback to both the Ombudsman and the Department's Review Teams has been positive. Claimants have appreciated being able to tell their stories in confidence to someone non judgemental and they have expressed gratitude for the Government's offer of professional psychological counselling, the opportunity to be guided through their personal files, and other forms of personal assistance. The Government has also made a commitment to offer an apology to abuse victims and it is evident that, for many, final closure will not be achieved until they receive one.

During each interview, claimants were asked what outcomes they were seeking. In addition to counselling, information, and acknowledgement that abuse occurred, most people requested an apology.

Similar to the recommendation of the British Columbia Ombudsman, in *Righting the Wrong*, Tasmanian Ombudsman Jan O'Grady made the following recommendation in her 2004 report:

It is recommended that the Government liaise with church authorities to seek an apology for claimants who allege that they had been abused

while in Approved Children's Homes run by the churches and who have specifically stated that they desire an apology.

In May 2005, the Tasmanian government issued an apology to children who were abused while in state care. Paul Lennon, the Premier of Tasmania issued a statement in Parliament that said, "The Tasmanian Government acknowledges and accepts that many children in the care of state were abused by those who were meant to care for them by those who were charged with providing them with a safe and secure homelife. We apologise to the victims and we express our deep regret at the hurt and distress caused."

The apology was possible because of amendments to the *Civil Liability Act (2002)*. In Tasmania, saying, "I'm sorry" for an action is not an admission of legal liability. Specifically, section 7 of the *Civil Liability Act (2002)* is similar to that of other Australian States. Section 7 states:

Effect of apology on liability

7. (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person
 - a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and
 - b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.
- (3) In this section, "apology" means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, which does not contain an admission of fault in connection with the matter.

The protection afforded under such legislation may not apply in all civil litigation matters. For example, exceptions to legislation prohibit legal protection for an apology for an intentionally violent act such as sexual assault.

The New South Wales *Civil Liability Act (2002)* provides even broader protection. It enables public officials to include an admission of fault within the concept of an apology and still be protected from having the apology be used as an acknowledgement of liability or negligence by a court.

Part 10 of the New South Wales *Civil Liabilities Act (2002)* states:

Part 10 Apologies

67 Application of Part

- (1) This Part applies to civil liability of any kind.
- (2) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B or civil liability for defamation.

Note. Section 20 of the *Defamation Act 2005* makes similar provision to this Part about the effect of apologies in defamation proceedings.

68 Definition

In this Part *apology* means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter.

69 Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
 - (b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

Since 2001, every Annual Report of the New South Wales Ombudsman reports on apologies. In the 2003/04 Annual Report, the Ombudsman for New South Wales noted that every other state and territory in Australia had adopted legislation to enable government to say, "I am sorry." However, the Ombudsman expressed regrets that a person who goes on to say, "and it was my fault" will only be protected from litigation in New South Wales. This is important, given Lazare's conclusions that an effective apology is accompanied by acknowledgement or responsibility for the harm done.

What differences does such protection make? Steven Keeva, a Chicago lawyer with many years of experience in civil litigation, suggests that a simple apology might eliminate the costly and frustrating experience of a trial. Keeva believes that the significant impact of an apology is an often-overlooked means of settling a matter without involving a trial. Keeva poses that those who have become attuned to the role of an apology become aware of the human side of a case, something often overlooked in the course of litigation. He reports that at least two states (Massachusetts and Georgia) have statutes that encourage what they term as "benevolent gestures." Keeva cites research in the United States that indicates 30% of medical malpractice lawsuits would not have gone to court if the doctors had apologized to the plaintiffs.

It appears that the State of California was influenced by this research when it added section 1160 to the *Evidence Code* in 2002. Section 1160 provides:

The portion of statements, writing or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action.

According to an article by Daniel Carobini in the summer 2003 issue of *Med-Legal Bulletin*, the state legislature "clearly contemplated medical malpractice litigation when considering this law." Carobini references research that supports Keeva's findings on the effect of apology on the frequency of medical malpractice lawsuits. With recognition of its healing impact, the art of apology is now part of the curriculum for some American medical schools.

As part of the course "Communication Plus", the Faculty of Medicine at McGill University offers a 1 1/2 hour session on truth telling that helps students understand how to respond when they make a mistake or error. Although we were unable to determine the degree to which medical schools offer comparable training for physicians, the impact of apology in health care issues is subject of numerous articles in the periodicals, *Medical Post* and *Canadian Medical Association Journal*. The March 18, 2003 issue of the *Canadian Medical Association Journal* cited a situation in which a hospital issued an apology after the death of a child occurred in the hospital. The apology, issued by the Hamilton Health Sciences Centre following the death of an 11 year old child, stated, "We have identified serious care and system issues and have

concluded that her death could have been avoided. For that, we offer our profound apologies.” The hospital went on to say that it had learned from the tragedy and had started implementing changes to prevent recurrence. Although the family continues to pursue litigation, the hospital’s chief of staff reported that, “The general feeling is that it is the right thing to do.” He went on to suggest it is sometimes better to say you know things happened that should not have happened and you will be responsible.

Patrick J. Kiger elaborates on the success of California’s experience with new legislation that allows medical practitioners to apologize to patients and their families without fear of malpractice lawsuits. Enabling physicians to personally apologize to patients was a step encouraged by health insurance providers in an effort to control the rising cost of litigation.

The idea of apologizing for harm done is not new, although it is cited in the news and in publications more frequently than in the past. In May of 1999, the Law Commission of Canada released a research paper *Apologizing for Serious Wrongdoing: Social, Psychological and Legal Considerations*. The Report details several instances in which apology is warranted and in some cases, offered. The author, Susan Alter, writes that the purpose of apology is primarily to help an injured party heal. Noting that in matters of litigation, it is monetary awards that compensate for harm or injury and that courts do not often instruct an apology to be awarded. Alter believes that providing an apology indicates a show of remorse for harm done and she suggests that the offer of an apology should be considered by the courts as a factor when determining the amount of monetary award. In this sense, Alter suggests that an apology could in fact benefit the defendant in litigation, as the courts would take the acknowledgement of remorse into consideration when determining the outcome.

In *On Apology* Lazare explores how apologies heal broken or damaged relationships. From his own research and experience, Lazare concludes that an apology has the power to heal because it satisfies a human need. An apology can restore self-respect and dignity. An apology acknowledges that a mistake has been made and that the offending party will not repeat the action in question. It can help re-establish trust and assurance that the offending action was not the person’s fault. Lazare’s research also led him to consider the power bestowed upon the recipient of an apology who is able to forgive. He writes “We experience forgiveness as a gift that releases us from the twin burdens of guilt and shame.”

On Apology also identifies the increase in public apologies as a dispute resolution or mediation tool, suggesting that publicly reported apologies in the United States have nearly doubled in the past decade. Lazare increasingly receives requests from law schools, law enforcement agencies, religious organizations, medical schools, and journalists to give presentations on the research and work he has done about the power and importance of apology. He has even given presentations to a group of pensioners who wanted to be able to make peace over old grudges with their friends and relatives.

If legislation similar to New South Wales *Civil Liability Act* (2002) had been in place by the fall of 2004 when the Honourable Attorney General expressed regret to the Sons of Freedom Doukhobor children, would the Honourable Attorney General's statement have been different? We can only speculate. Might he have said to the former Sons of Freedom Doukhobor children: "On behalf of the government of British Columbia, I extend my sincere, complete and deep **apology** for the pain and suffering you experienced during the prolonged separation from your families"?

Apology is but one word, but it is the one word that can make all the difference for those who need to hear it.

Again, to quote Dr. Lazare:

Apology is more than an acknowledgement of an offence together with an expression of remorse. It is an ongoing commitment by the offending party to change his or her behaviour. It is a particular way of resolving conflicts other than arguing over who is bigger and better. It is a powerful and constructive form of conflict resolution, embedded, in modified form, in religion and in the judicial system. It is a method of social healing that has grown in importance as our way of living together on our planet undergoes radical change. It is a social act in which the person, group, or nation apologizing has historically been viewed as weak, but more than ever is now regarded as strong. It is a behaviour that requires of both parties attitudes of honesty, generosity, humility, commitment, and courage.

There has been much said and written about the subject of an apology and this report recognizes the expertise of those involved in these studies. My focus regards the impact of expressing an apology in the context of administrative fairness. The

Ombudsman for New South Wales wrote in his 2001 Annual Report that, "The absence of an apology undermines good relations, trust and confidence between the body and the client and is detrimental to good public administration." The observation of my colleague Bruce Barbour in New South Wales resonates with me. I believe that fairness sometimes requires the words "I apologize" or "I am sorry" for a mistake that was made. I believe that a sincere apology ought not to be withheld because of fear of litigation.

In the recently formed government, the Premier established a Ministry of Aboriginal Relations and Reconciliation. This suggests that government is familiar with the experiences of other jurisdictions that found the importance of apology. I ask the Attorney General to consider the experiences of those individuals who have found that a sincere apology can heal wounds, restore dignity, and encourage forgiveness. Often, providing an apology is simply the right thing to do. I also ask the Attorney General to consider the New South Wales *Civil Liability Act (2002)* as a model for legislative debate in British Columbia and I urge the Attorney General to introduce legislation to protect public officials so that they can apologize without fear of litigation on the grounds that an apology is an admission of negligence.

The experience of acknowledging responsibility and expressing a sincere apology for what happened to a person without fear of consequences is a fair response to wrongdoing. Providing apologies may not completely replace the option of seeking justice through litigation, but might offer an alternative to the adversarial process for those who seek recognition and remorse in order to feel justice is served. In recognition of the power behind the words of apology, this Office will continue to seek and to recommend apologies to those who have been treated unfairly and to trust that one day soon, those who are waiting to hear public officials say "I am sorry for what happened to you", will not be disappointed.



Howard Kushner
Acting Ombudsman
Province of British Columbia

Bibliography

- Alter, Susan. *Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations*, Law Commission of Canada Reports, May 1999
- Australian: New South Wales. Ombudsman *Annual Report, 2002-03*, and *Annual Report 2001-02*. Sydney, AU: The Office of the Ombudsman of New South Wales.
- Australia: New South Wales. Parliament. *Civil Liability Act, 2002 no 22*
- Australia. Tasmania. Ombudsman. *Listen to the Children – Review of Claims of Abuse From Adults in State Care as Children: Report by the Tasmanian Ombudsman*. Hobart AU: Office of the Ombudsman of Tasmania, November 2004
- Australia: Tasmania. Parliament. *Civil Liability Act, 2002 no. 54*
- Bavelas, Janet. *An Analysis of Formal Apologies by Canadian Churches to First Nations*. Victoria BC: The Centre for Studies in Religion and Society, University of Victoria, Department of Psychology, July 2004
- California. Legislative Assembly. *2000 Bill Number AB 2804 to amend the Evidence Code, State of California* (February 2000)
- Canada: British Columbia. Ombudsman. Annual Report 1995. The Office of the Ombudsman, Victoria BC
- Carobini, Daniel. "Expression of Sympathy: Wisdom or Weakness?" *Med-Legal Bulletin* 4, no.1 (Summer 2003):
http://www.engleandbride.com/news_summer03/news_summer03_sympathy.html
- European Network for Indigenous Australian Rights (ENIAR), "Reconciliation, social justice, the constitution and a treaty", (August 30, 2004):
<http://www.eniar.org/recon.html>
- Frieswick, Kris. "Say You're Sorry: In Some Lawsuits, Falling on Your Sword May be Smarter Than Wielding it," *CFO Magazine* 17, o.6 (May 2001): 99-101.
- Gallagher, Thomas H. MD. "Content of Medical Error Disclosures", *American Medical Association Policy Forum*, March 2004.
<http://www.ama-assn.org/ama/pub/category/print/12053.html>
- Govier, Trudy. "The Ethics of Forgiveness," *Interaction* 6, no. 3 (Fall 1994): 10
- Grace, Robyn. "Apology to Child-Abuse Victims," *Herald Sun* [Melbourne AU] (May 17, 2005)
http://hearaldsun.news.com.au/common/story_page/0,5478,15316623%255E1702,00.html
-

- Guadagnino, Christopher. "Effects of Medical Error Disclosure and Apology." *Physician's News Digest* (February 2005)
- Hugi, Maria. "Why is it So Hard for MDs to Say We're 'Sorry?'" *Medical Post* 39, no 10 (March 11, 2003):13
- Kalantri, S.P. "Medical Errors and Ethics." *Indian Journal of Anaesthetologists* 47 no.3 (2003):174-175
- Keeva, Steven "Apology and the Law." *ABA Journal* 90 (August 2004) n.p.
- Kerr, Martha. "Medical Error Disclosure: Easier Said Than Done." *Caring for the Ages*,4, no.5 (May 2003): 6-10
- Kilpatrick, Ken, "Apology Marks New Era in Response to Medical Error, Hospital Says." *Canadian Medical Association Journal* 168 (March 18, 2003): 757
- Kiger, Patrick J. *The Art of Apology*, Irvine CA: Workforce Management, (October 2004)
- LaMendola, Jonathan. "Sorry is Hard to Say, But it May be the Best Medicine." *Fort Worth Business Press* (July 2, 2004): 25
- Lauer, Charles S. "To Err is Human: And a Heartfelt Apology Might be Just What the Doctor Ordered to Head Off Lawsuits." *Modern Healthcare* 34, no. 21 (May 24, 2004): 20
- Lazare, Aaron. *On Apology*. New York: Oxford University Press, Inc. 2004.
- Lennon, Paul, "Ministerial Statement: Apology to Victims of Abuse in State Care." Tasmania AU (May 17, 2005) <http://www.premier.tas.gov.au/speeches/apology/html>
- O'Brien, Vicki. "I Screwed Up – They're the Three Most Dreaded Words in the Male Vocabulary, and That's Too Bad Because Saying Sorry Can Save a Whole Heap of Trouble Down the Road." *BC Business*,(June 2005): 65-77
- Timson, Judith. "Smart Leadership means having to say you're sorry." *The Globe and Mail*, (January 11, 2006): C3
- Wansbrough, Gillian. "What to Tell – and Not Tell – Your Patients About an Error." *Medical Post* 39, no.12 (March 25, 2003):.8
- Warner, Marina. "Sorry", *Open Democracy* (November 7, 2002):1-17
- Zimmerman, Rachel. "Doctors' New Tool to Fight Lawsuits: Saying 'I'm Sorry.'" *The Wall Street Journal*, (May 18, 2004): A1

Mailing Address:

Office of the Ombudsman
756 Fort Street, 2nd Floor
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Telephone:

General Inquiries: (250) 387-5855
Toll Free: 1-800-567-3247

Fax:

Fax: (250) 387-0198

Or visit our website at:

<http://www.ombudsman.bc.ca>