

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased,
MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM,
JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE,
BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT
BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE
McCULLUM, CORNELIUS McCOMBER, VERONICA MARTEN, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL,
ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN
YELLOWKNEE

Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE
ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE
WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH, THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES
OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES OF THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW
ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN
MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA,
THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (ALSO KNOWN
AS THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE ANGLICAN
CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD
OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE
DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINSTER, THE 2 SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE
PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S
MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST.
VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS
DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE
SAINT-HYANCITHE, LES SOEURS DE JESUSMARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE
VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUUVRES OBLATES DE L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC,
LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY), THE
CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES
SOEURS DE LA CHARITÉ DES T.N.O., HOTEL-DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS GRISES DU MANITOBA INC., LA
CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON - THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY,
MISSIONARY OBLATES - GRANDIN PROVINCE, LES OBLATS DE MARIE IMMACULEE DU MANITOBA, THE ARCHIEPISCOPAL CORPORATION OF REGINA, THE
SISTERS OF THE PRESENTATION, THE SISTERS OF ST. JOSEPH OF SAULT ST. MARIE, SISTERS OF CHARITY OF OTTAWA, OBLATES OF MARY IMMACULATE
-ST. PETER'S PROVINCE, THE SISTERS OF SAINT ANN, SISTERS OF INSTRUCTION OF THE CHILD JESUS, THE BENEDICTINE SISTERS OF MT. ANGEL
OREGON, LES PERES MONTFORTAINS, THE ROMAN CATHOLIC BISHOP OF KAMLOOPS CORPORATION SOLE, THE BISHOP OF VICTORIA, CORPORATION
SOLE, THE ROMAN CATHOLIC BISHOP OF NELSON, CORPORATION SOLE, ORDER OF THE OBLATES OF MARY IMMACULATE IN THE PROVINCE OF BRITISH
COLUMBIA, THE SISTERS OF CHARITY OF PROVIDENCE OF WESTERN CANADA, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE GROUARD,
ROMAN CATHOLIC EPISCOPAL CORPORATION OF KEEWATIN, LA CORPORATION ARCHIEPISCOPALE CATHOLIQUE ROMAINE DE ST. BONIFACE, LES
MISSIONNAIRES OBLATES SISTERS DE ST. BONIFACE-THE MISSIONARY OBLATES SISTERS OF ST. BONIFACE, ROMAN CATHOLIC ARCHIEPISCOPAL
CORPORATION OF WINNIPEG, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE PRINCE ALBERT, THE ROMAN CATHOLIC BISHOP OF THUNDER
BAY, IMMACULATE HEART COMMUNITY OF LOS ANGELES CA, ARCHDIOCESE OF VANCOUVER - THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER,
ROMAN CATHOLIC DIOCESE OF WHITEHORSE, THE CATHOLIC EPISCOPALE CORPORATION OF MACKENZIEFORT SMITH, THE ROMAN CATHOLIC
EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

Proceedings under the *Class Proceedings Act*, 1992, S.O. 1992. C.6

**REQUEST FOR DIRECTION
(re: IAP Records)**

1. PARTY REQUESTING DIRECTIONS

This request for directions is being brought by the Truth and Reconciliation Commission (the “Commission”).

2. THE MATTER IN ISSUE

By way of overview, the Commission seeks this Honourable Court's guidance through judicial interpretation of express terms set out in the Indian Residential Schools Settlement Agreement (the “Settlement Agreement”) on questions relating to the Commission's document collection mandate and the corresponding document production obligations of the Defendant Canada. In particular, the Commission seeks the Court’s guidance in respect of stated questions concerning the disposition of records submitted in the course of the IAP proceedings.

3. RELIEF REQUESTED

The Commission respectfully requests this Honourable Court determine the following questions:

1. Who has custody, possession and/or control of the records submitted in the course of the IAP process (“the records”), the Court or Canada?
 - (a) If the Court has custody, possession and/or control of the records, see paragraph 3 below.
 - (b) If Canada has custody, possession and/or control of the records, see paragraph 4 below.
2. If the Court has custody, possession and/or control of the records, does Canada also have custody, possession and/or control of the records by virtue of Schedule “D”, Appendix II (iv):

“...all copies other than those held by the Government will be destroyed on the conclusion of the matter...”. If yes, see paragraph 4 below.

3. Assuming the Court has custody, possession and/or control of the records:

- (a) What, if any, legislation governs the records?
- (b) Can the records be legally destroyed?
- (c) Can a copy of the records be provided to the Truth and Reconciliation Commission in respect of its preparation of its final Report? If so, what restrictions apply to the Commission’s use of the records?
- (d) Can a copy of the records be archived with the National Research Centre (“NRC”)?
- (e) If so, what legal regime (statutory or otherwise) should govern the records held by the NRC?
- (f) If the records are not archived with the NRC, who should retain the records after the closure of the Adjudication Secretariat? What legal regime (statutory or otherwise) should govern the records held by this institution?

4. If the records are in the custody, possession and/or control of Canada (either jointly with the Court, or exclusively):

- (a) Are the records subject to the *Library and Archives Canada Act*?
- (b) Are the records considered to be of enduring historical value?
- (c) Can the records be destroyed?
- (d) Can a copy of the records be archived with the NRC?

- (e) If so, what legal regime (statutory or otherwise) should govern the records held by NRC?

4. RELIEF IS OPPOSED

The Commission's understanding is that Canada opposes the relief sought.

5. THE POSITION OF THE PARTIES

The Commission's Position

The Commission takes the position that it is required to collect all records gathered in the course of the IAP process in order to fulfill its mandate as outlined in Schedule "N" of the Settlement Agreement. Schedule "N" of the Settlement Agreement provided for the creation of the Truth and Reconciliation Commission of Canada. The mandate of the Commission is *inter alia* as follows:

- (a) To guide a process of reconciliation, including the conduct of national events, the support of community events and commemoration projects;
- (b) The creation of a legacy, including the collection of all relevant records and the conduct of statement taking, and other truth sharing activities, the classification of such documentation, and the preservation of these records.
- (c) To establish a National Research Centre, to ensure preservation of the Commission's archives, with access for former students, their families and communities, the general public, researchers and educators.
- (d) To conduct research and to produce a report to the Parties of the Settlement Agreement of the Commission's historic findings and recommendations.

Schedule “N” imposes document production obligations on the defendants (including Canada) to “provide all relevant documents in their possession or control” to the Commission. Schedule “N” provides the following with respect to the defendants’ document production obligations:

In order to ensure the efficacy of the truth and reconciliation process, Canada and the churches will provide all relevant documents in their possession or control to and for the use of the Truth and Reconciliation Commission, subject to the privacy interests of an individual as provided by applicable privacy legislation, and subject to and in compliance with applicable privacy and access to information legislation, and except for those documents for which solicitor-client privilege applies and is asserted.

In cases where privacy interests of an individual exist, and subject to and in compliance with applicable privacy legislation and access to information legislation, researchers for the Commission shall have access to the documents, provided privacy is protected. In cases where solicitor-client privilege is asserted, the asserting party will provide a list of all documents for which the privilege is claimed.

Canada and the churches are not required to give up possession of their original documents to the Commission. They are required to compile all relevant documents in an organized manner for review by the Commission and to provide access to their archives for the Commission to carry out its mandate. Provision of documents does not require provision of original documents. Originals or true copies may be provided or originals may be provided temporarily for copying purposes if the original documents are not to be housed with the Commission.

Insofar as agreed to by the individuals affected and as permitted by process requirements, information from the Independent Assessment Process (IAP) existing litigation and Dispute Resolution processes may be transferred to the Commission for research and archiving purposes.

The Commission has a serious interest in the resolution of these issues, as the Commission is required to complete its mandate by July 1, 2014. The Commission seeks judicial interpretations and guidance in respect of the disposition of IAP records in order that it may complete its mandate in an expeditious and efficient manner.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th DAY OF AUGUST, 2013

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And To: **Registrar of this Honourable Court**

LARRY PHILIP FONTAINE et al.
Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA et al.
Defendants

Court File No. 00-CV-192059

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

REQUEST FOR DIRECTION

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