

CITATION: Fontaine v. Canada (Attorney General), 2018 ONSC 4179

COURT FILE NO.: 00-CV-192059

DATE: 20180704

**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, MICHELLE 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 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 JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUVRES 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 MACKENZIE-FORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

COUNSEL:

- *Catherine Boies Parker and David Wu*, for the Chief Adjudicator/Indian Residential Schools Adjudication Secretariat
- *Catherine A. Coughlan and Brent Thompson*, for the Attorney General of Canada
- *Stuart Wuttke and Jeremy Kolodziej*, for the Assembly of First Nations

- *Joanna Birenbaum*, for National Centre for Truth and Reconciliation
- *Hugo Prud'Homme*, for the Inuit Representatives
- *Diane Soroka* and *Sandra Staats*, for Independent Counsel

Heard on April 24 and May 23, 2018

PERELL, J.

DIRECTION – RECORDS NOTICE PROGRAM

A. Introduction

[1] The Chief Adjudicator of the Indian Residential Schools Independent Assessment Process (“IAP”) brings two Requests for Direction (“RFD”). There is a countering RFD by the National Centre for Truth and Reconciliation (“NCTR”).

[2] These RFDs are an epilogue to an RFD that began in 2014 and that was concluded by a decision of the Supreme Court of Canada in 2017. The Supreme Court endorsed a direction that the records of the IAP, a tribunal established under the Indian Residential Schools Settlement Agreement (“IRSSA”), be destroyed but the IAP Claimants had the choice to preserve the documents at the NCTR.¹

[3] The Chief Adjudicator, the NCTR, Canada, the Assembly of First Nations (“AFN”), the Inuit Representatives,² Independent Counsel,³ and Court Counsel⁴ participated in the RFD.

B. Factual and Procedural Background

[4] This direction is given in relation to the notice program for the disposition of certain records IAP, which was established pursuant to the Indian Residential Schools Settlement Agreement (“IRSSA”) and the Alternative Dispute Resolution (“ADR”) process that preceded the negotiation of the IRSSA. I make the direction in the capacity of a “Supervising Judge” for the purposes of the IRSSA’s ongoing implementation and administration.

[5] The IRSSA is the pan-Canadian class action settlement that was approved by nine provincial and territorial superior courts over a decade ago, on dates in December 2016 and

¹ *Fontaine v. Canada*, 2014 ONSC 485, varied 2016 ONCA 241, aff’d 2017 SCC 47.

² The Inuit Representatives are comprised of Inuvialuit Regional Corporation, which represents Inuit from the Northwest Territories, Makivik Corporation, which represents Inuit from Northern Quebec and Nunavut Tunngavik Incorporated, which represent Inuit from Nunavut. The Inuit Representatives represent all Inuit and Inuvialuit former residential school students. The Inuit Representatives were participants in the negotiations that resulted in the IRSSA. They are parties to the Agreement and they have a representative on the National Administration Committee (“NAC”) established under the Agreement.

³ Independent Counsel are defined in the IRSSA as follows: “Independent Counsel” means Plaintiffs’ Legal Counsel who have signed this Agreement, excluding Legal Counsel who have signed this Agreement in their capacity as counsel for the Assembly of First Nations or for the Inuit Representatives or Counsel who are members of the Merchant Law Group or members of any of the firms who are members of the National Consortium.”

⁴ Court Counsel is appointed under the Implementation Orders made by the nine provincial and territorial superior courts that approved the IRSSA (the “Courts”) as “legal counsel to and for the Courts to assist the Courts in their supervision over the implementation and administration of the Agreement”.

January 2017. Each of those courts has designated a judge to supervise its implementation and administration. The IRSSA is intended to bring about a “fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools”.⁵ It also aims to promote “healing, education, truth and reconciliation and commemoration”.⁶

[6] The IRSSA provides compensation to those who attended Indian Residential Schools through two means. Overseen by the Chief Adjudicator who is assisted by an administrative apparatus known as the Indian Residential Schools Adjudication Secretariat, the IAP provides the means through which former students, who suffered sexual abuse, serious physical abuse, and other wrongful acts resulting in serious psychological consequences are compensated. It is a claimant-centered, inquisitorial process. The other means of compensation is the Common Experience Payment, which provides compensation for those who prove that they attended an Indian Residential School. The IAP is a specialized inquisitorial process with adversarial aspects under the supervision of the Chief Adjudicator.

[7] The parties to the IRSSA also agreed to establish the Truth and Reconciliation Commission (“TRC”).⁷ One of the goals of the TRC was to create a historical record and ensure that memory of the deplorable history of that system was preserved and made accessible to the public for future study and use.⁸ The National Centre for Truth and Reconciliation (“NCTR”) was created to archive and store the records collected by the TRC, along with other historical records about residential schools.

[8] In an earlier RFD decision,⁹ this court addressed the issue of whether IAP Documents should be preserved or destroyed. The IAP documents fall into seven categories: (1) applications submitted by the IAP Claimants; (2) mandatory documents containing private personal information; (3) witness statements; (4) documentary evidence produced by the parties; (5) transcripts and audio recordings of the hearings; (6) expert and medical reports; and (7) decisions of the adjudicators and any appeals.¹⁰ I concluded that on balance, the court should exercise its jurisdiction to order destruction of the highly confidential, personal, and private IAP Documents.¹¹

[9] Three reasons animated my decision to order destruction of the IAP Documents. The IRSSA is a contract, and in my opinion, the parties contracted for destruction of the IAP Documents. Further, the IAP Documents are subject to an implied undertaking, which the court can enforce by ordering their destruction. Finally, I concluded that the IAP Documents are subject to the law governing breach of confidence, and that Canada’s agreement to transfer the IAP Documents to Library and Archives Canada amounted to a breach of confidence.

[10] However, I concluded that the destruction order should be made subject to a retention period.¹² This would allow for the development and implementation of a notice program,

⁵ IRSSA preamble, item B.

⁶ IRSSA preamble, item C.

⁷ IRSSA, section 7.01(1) and Schedule “N”.

⁸ Schedule “N”, item 1(e).

⁹ *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585 (“IAP Documents ONSC”)

¹⁰ IAP Documents ONSC, para. 205.

¹¹ IAP Documents ONSC, paras. 322-328.

¹² IAP Documents ONSC, paras. 327-328.

conducted by the TRC or the NCTR, to advise IAP claimants of the rights they have under the IRSSA to share their stories with the NCTR.¹³ I concluded that this retention period should be for 15 years.¹⁴

[11] The order resulting from IAP Documents ONSC was expressly made to apply *in rem* (and hence it is referred to below as the “*In Rem* Order”).¹⁵

[12] Several of the Catholic organizations or entities that had been involved in operation of some of the Indian Residential Schools appealed to the Ontario Court of Appeal, arguing that for IAP Documents to be archived with the NCTR, their consent was also required. Canada cross-appealed, arguing that it controlled the IAP Documents, which were therefore subject to federal privacy, access to information, and archiving legislation.

[13] The appeal and cross-appeal were dismissed.¹⁶ However, the majority (Strathy C.J.O. and MacFarland J.A.) held that the notice program should be conducted by the Chief Adjudicator, and not by either the TRC or the NCTR:

[237] I agree with the submissions of Independent Counsel, supported by the Chief Adjudicator, that it is unreasonable for either the TRC or the NCTR to conduct the notice program. The notice does not fall within the mandate of either entity and, most importantly, it would be a breach of confidence to provide them with the information necessary for a notice program.

[238] While I expect both could provide a meaningful contribution to the program, particularly since the NCTR would be housing the archived documents, in my opinion, the notice program should be carried out by the Chief Adjudicator, on such terms as may be approved by the Supervising Judge. As the Supervising Judge indicated, this should be determined after an evidence-based inquiry.¹⁷

[14] Accordingly, the *In Rem* Order was varied to provide that the Notice Program be conducted by the Chief Adjudicator. The majority also varied the order to include documents collected and generated for the purposes of the ADR process.¹⁸

[15] In dissent, Sharpe J.A. would have allowed Canada’s cross-appeal on the ground that the IAP Documents are government records and therefore cannot be destroyed.¹⁹

[16] A further appeal to the Supreme Court of Canada was dismissed.²⁰ Writing for a unanimous seven-member panel, Moldaver and Rowe JJ. stated as follows:

[62] Having concluded, without palpable and overriding error, that the IRSSA allowed for the destruction of the IAP Documents, the supervising judge then had to craft an appropriate order. In doing so, he had to strike a balance between competing concerns: preserving confidentiality and the need to memorialize and commemorate, all the while respecting the choice of survivors to share (or not share) their stories. The supervising judge’s order, as modified by the majority of the Court of Appeal, charts an appropriate course between the Scylla of potentially unwanted destruction and the Charybdis of potentially injurious preservation. The destruction order is subject to a 15-year retention period, during which claimants may

¹³ IAP Documents ONSC, paras. 361-367.

¹⁴ IAP Documents ONSC, para. 362.

¹⁵ See IAP Documents ONSC, paras. 331-338 for an analysis of the court’s jurisdiction to make the order *in rem*.

¹⁶ *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241 (“IAP Documents ONCA”).

¹⁷ IAP Documents ONCA, paras. 237-238.

¹⁸ IAP Documents ONCA, paras. 240-241, 247.

¹⁹ IAP Documents ONCA, para. 250.

²⁰ *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 (“IAP Documents SCC”).

choose to have their IAP Documents preserved and archived. That choice will be brought to the attention of claimants through a notice program administered by the Chief Adjudicator. We recognize that this order may be inconsistent with the wishes of deceased claimants who were never given the option to preserve their records. A perfect outcome here is, in these circumstances, simply not possible. In our view, however, the destruction of records that some claimants would have preferred to have preserved works a lesser injustice than the disclosure of records that most expected never to be shared. The supervising judge's order, as varied by the majority of the Court of Appeal, was an appropriate exercise of his discretion.

[63] That variation was, moreover, entirely appropriate in the circumstances of this case. The notice program should be carried out by the Chief Adjudicator, as it does not fall within the mandate of either the TRC or the NCTR, and as it would be inconsistent with a confidential process to provide them with the information necessary for the program. Further, we support the direction of the Court of Appeal that the orders should include documents developed in the ADR process. As the intent of the IRSSA was to consolidate existing litigation into the IAP, consistency and fairness require that the records resulting from that litigation should be treated in the same manner as the IAP Documents.²¹

[17] The Supreme Court of Canada stated that it “endorse[d] the entreaties of the courts below that the Chief Adjudicator conduct the notice program without delay and with full cooperation from the parties, in order to give effect to the express wishes of the greatest number of IAP claimants possible.”²²

[18] It is in this context that I directed counsel to attend meetings convened by Court Counsel on April 23 and May 22 and 23, 2018. In addition, counsel appeared before me on April 24, 2018 and again on May 23, 2018. On April 24, 2018, I endorsed counsels' agreement on several matters, including that the 15-year retention period should run from September 19, 2012 (the deadline for making an IAP claim) to September 19, 2027.²³ That and other items that were the subject of agreement were set out in my April 24, 2018 endorsement and are confirmed in the order appended to this direction.

[19] When counsel appeared before me on May 23, 2018, their submissions centered on a draft Order, and only a few matters remained in contention. The content of the “Records Disposition Notice Program”²⁴, the Secretariat's cost estimate,²⁵ and the consent form to be sent to IAP claimants and those whose claims were addressed through the ADR process²⁶ and were all agreed upon by the parties participating in the RFD.

[20] Counsel also agreed that Canada should be responsible for funding the Notice Program and the disposition process for records pursuant to the *In rem* Order, on the appointment of a records agent, and on the reporting and accounting requirements to be imposed upon the Secretariat, the AFN, and the Inuit Representatives. The disputed items included the extent of funding by Canada for the AFN's and Inuit Representatives' participation in the Notice Program and whether the NCTR's participation in it should be funded at all.

²¹ IAP Documents SCC, paras. 62-63.

²² IAP Documents SCC, para. 64.

²³ These matters are set out in para. 5 of the Order attached as Appendix “A” to this Direction.

²⁴ Appendix “A”, Schedule “B”.

²⁵ Appendix “A”, Schedule “C”.

²⁶ Appendix “A”, Schedule “A”.

[21] I am grateful to all concerned for the collaborative and focussed manner in which they addressed the notice products, the consent form, and other aspects of the Notice Program.

B. JURISDICTION

[22] The court's jurisdiction to set the terms of the Notice Program is not disputed, and no party takes issue with the court's authority to require Canada to fund the cost of paying the expenses for the involvement of the Chief Adjudicator and Secretariat in the Records Disposition Notice Program.

[23] What is in dispute, however, is the court's jurisdiction to require Canada to fund participation in the Notice Program by the AFN, the Inuit Representatives and the NCTR, each of which seeks funding.

[24] Ms. Coughlan submitted that although Canada has no obligation to fund the participation of the AFN, Inuit Representatives, or the NCTR in the Notice Program, it has chosen to fund the participation of the AFN and the Inuit Representatives (although not to the extent that each of them seeks). Canada has not chosen to underwrite the cost of the NCTR's participation in the notice program. It was Ms. Coughlan's submission that Schedule "N" to the IRSSA is spent, and that the IRSSA does not impose any obligation on Canada to fund the NCTR.

[25] On the basis of a 2015 decision of this court,²⁷ Ms. Coughlan submitted that the NCTR is not a successor to the TRC (which exhausted its jurisdiction when it reported in late 2015) and that the NCTR is merely an archive. There is force to that submission.²⁸

[26] The IRSSA's sole reference to the NCTR is contained in Schedule "N", item 12, which states:

12. National Research Centre

A research centre shall be established, in a manner and to an extent that the [TRC's] budget makes possible. It shall be accessible to former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula.

For the duration of its mandate, the [TRC] shall ensure that all materials created or received pursuant to its mandate shall be preserved and archived with a purpose and tradition in keeping with the objectives and spirit of the [TRC's] work.

The [TRC] shall use such methods and engage in such partnerships with experts, such as Library and Archives Canada, as are necessary to preserve and maintain the materials and documents. To the extent feasible and taking into account the relevant law and any recommendations by the [TRC] concerning the continued confidentiality of records, all materials collected through this process should be accessible to the public.

²⁷ *Fontaine v. Canada (Attorney General)*, 2015 ONSC 5522.

²⁸ See *Fontaine v. Canada (Attorney General)*, 2015 ONSC 5522 at para 21: "... Once the [TRC's] mandate expires, it will have no successor and the role it played in the IRSSA will not be passed on to the NCTR, whose role will continue on as an archive and research centre. Schedule "N" provides that the NCTR will continue to accept personal statements from those affected by the IRS legacy following the expiration of the Commission's mandate. Schedule "N" does not impose an obligation on the NCTR to collect statements."

[27] The IRSSA is a contract, and as a Supervising Judge, I have jurisdiction to administer the IRSSA including interpreting its provisions. However, Supervising Judges cannot amend or vary the IRSSA in the guise of administrating it,²⁹ and thus there is also strength to Ms. Coughlan's submission that as a matter of contract there is no obligation on Canada to fund the NCTR

[28] However, contract interpretation and enforcement does not end the matter. I have concluded that the court possesses jurisdiction to require Canada to fund the participation of the AFN, Inuit Representatives and NCTR in the Notice Program, and to establish the necessary level of that funding. This jurisdiction rests primarily in the court's inherent jurisdiction, but also in the class proceedings legislation. My reasons for reaching this conclusion are as follows.

[29] In my almost five years in overseeing the IRSSA's ongoing implementation and administration, I have described the sources of the court's jurisdiction on a number of occasions, most recently in a decision released earlier this year.³⁰ For present purposes, however, it is useful to return to the SCC's decision in the matter that is now before the court. At paragraphs 31 and 32, the Court described the jurisdiction of those tasked with overseeing the IRSSA's implementation and administration in the following way:

[31] As we have already noted, nine provincial and territorial superior courts certified the class action and approved the IRSSA (see, e.g., *Baxter*). Judges of these courts were designated as supervising judges, and play a vital role under the IRSSA. Supervising judges, significantly, have *administrative and supervisory jurisdiction* over the implementation and administration of the IRSSA and can, among other things, hear requests for directions. If, therefore, the proper administration and implementation of the IRSSA necessitates direction on the handling of the IAP Documents, supervising judges are empowered to give that direction.

[32] These broad powers are conferred upon supervising judges by the orders which approved and implemented the IRSSA (see, e.g., supervising judge's reasons, at paras. 157-59). They are also supported by class action legislation, which provides that courts must have generous discretion to make orders and impose terms as necessary to ensure a fair and expeditious resolution of class actions (see, e.g., *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 12; *Endean v. British Columbia*, 2016 SCC 42, [2016] 2 S.C.R. 162, at para. 38). It follows, particularly given the nature of the IAP and the IAP Documents, that the supervisory role in implementing the terms of the IRSSA included making directions regarding disposition of the IAP Documents at the conclusion of the IAP.

[33] ... Further, in any instance where the scope of superior courts' powers granted by class action legislation does not expressly contemplate certain supervisory functions, superior courts retain residual supervisory powers under their inherent jurisdiction. Removing the inherent jurisdiction of superior courts requires "clear and precise statutory language" (*R. v. Rose*, [1998] 3 S.C.R. 262, at para. 133; see also *Endean*, at paras. 24, 56 and 60) ...³¹

[30] The Ontario Court of Appeal also recognized that under class action legislation, this court possesses both a supervisory jurisdiction and a responsibility to promote access to justice and to protect the interests of class members.³² This supervisory jurisdiction provides the court with the most direct source of authority to remedy the IRSSA's administrative deficiency on the

²⁹ *Fontaine v. Canada (Attorney General)*, 2018 ONSC 103 at para. 150.

³⁰ *Fontaine v. Canada (Attorney General)*, 2018 ONSC 103 at paras. 151-162.

³¹ IAP Documents SCC, paras. 31-33.

³² IAP Documents ONCA, para. 201.

disposition of IAP Documents.³³

[31] Accepting that “[o]ften, the question is not whether the court has jurisdiction, but whether it should use it,”³⁴ I have also concluded that this is an appropriate case in which to exercise that jurisdiction. The goal of creating a historical record and ensuring the legacy of the Indian Residential School system is preserved and made accessible to the public for future study and use is an important one. For that reason, I have concluded that the while the default must remain destruction of these records, the Notice Program must be sufficiently robust to allow for IAP claimants to make informed choices about what should happen to their records. A robust notice program requires the funded participation of the NCTR.

[32] Of course, the NCTR is not a signatory to the IRSSA, but a creature of it. However, as noted above, the majority of the Court of Appeal accepted that the NCTR “could provide a meaningful contribution to the [Notice Program], particularly since the NCTR would be housing the archived documents”.³⁵ The record before me establishes that the NCTR can and will provide such a contribution.

[33] Ensuring the effectiveness of the Notice Program is an important aspect of the IRSSA’s administration. It involves striking an appropriate balance between the competing goals of respecting the privacy rights of individual abuse survivors and the collective interest in commemorating and memorializing the Indian Residential Schools legacy. It cannot be regarded as unrelated or somehow peripheral to the IRSSA or its implementation. To the contrary, this is one of the core responsibilities of the nine courts that approved the IRSSA and continue now, more than a decade later, to administer it. Accepting this responsibility honours the parties’ express intention to promote healing, education, truth and reconciliation and commemoration.

[34] The goal of creating a historical record and ensuring the legacy of the Indian Residential School system is preserved and made accessible to the public for future study and use is also important. For that reason, I have concluded that the while the default must always remain destruction of these records, the Notice Program must be sufficiently robust to allow for IAP claimants to make informed choices about what should happen to their records.

[35] The AFN and Inuit Representatives are signatories to the IRSSA. I am satisfied that they possess specialized expertise and credibility within Indigenous communities that can be put to work to optimize the Notice Program’s effectiveness.

[36] Overall, I am satisfied that with the involvement of the AFN, the Inuit Representatives and the NCTR, the Records Disposition Notice Program achieves the important objective of providing IAP and ADR claimants with the information essential to the choice that is theirs to make.

[37] I am also satisfied that to the extent legal advice is necessary, in combination with *pro bono* work by claimants’ counsel, arrangements can be made to provide legal advice to be given to ADR and IAP claimants concerning the options available to them in relation to their records.

³³ IAP Documents ONCA, para. 204.

³⁴ IAP Documents ONCA, para. 186.

³⁵ IAP Documents ONCA, para. 238.

C. Analysis of the Funding Requests

Funding Requests, Duration and Definitions

[38] The AFN, Inuit Representatives, and NCTR seek various amounts to fund their participation in the Notice Program, over \$2,000,000 in total. In each instance, the request is over two years, from September 1, 2018 to August 31, 2020.³⁶ For the purposes of these reasons, I refer to the first twelve months (September 1, 2018 to August 31, 2019) and the second twelve months (from September 1, 2019 to August 30, 2020) as “Year 1” and “Year 2”, respectively.

Constraints on Role(s) of AFN, Inuit Representatives and NCTR

[39] As a starting point regarding the involvement of the AFN, Inuit Representatives and the NCTR, the court must take into account the “Records Disposition Notice Program” as approved by the court and appended to the Order as Schedule “B”. It gives the Chief Adjudicator’s administrative apparatus, the Secretariat, a primary and an almost exclusive role in the Notice Program. The participation of the AFN, Inuit Representatives and NCTR is comprised of training the Resolution Health Support Workers (“RHSWs”) and staffing information lines – that is, to provide such information about the Notice Program as requested by IAP claimants and those who settled their claims through the ADR process.

[40] The Records Disposition Notice Program calls for the RHSWs – Indigenous people whose services are contracted for through First Nations and Inuit governments – to deal with people in their own communities. The RHSWs’ involvement is funded by Canada. They have been involved in assisting IAP claimants for as long as the IAP has been in operation. The Records Disposition Notice Program does not envision community or “town hall” meetings.

[41] By way of example of how the Records Disposition Notice Program circumscribes the roles of the AFN, Inuit Representatives and NCTR, consider the following excerpts:

[at pp. 4-5] Upon the receipt of the final Court Order, the Secretariat will finalize and produce all notice products. These products will be consistent with the Court-approved Consent Form, and will include a multi-media campaign, a pamphlet, a poster, a postcard, and videos about the IAP, the consent form, and the NCTR.

During the preparation phase, the Secretariat staff will also train the Indigenous organizations that provide services under the Resolution Health Support Program (“RHSP”), as well as other organizations, such as the NCTR, the Records Agent Crawford, the Assembly of First Nations (“AFN”), and members of the Inuit Representative, which will have roles in the Notice Program.

[. . .]

[at p. 6] The Secretariat staff will also work with the NCTR, Nunavut Tunngavik Incorporated (“NTI”), Makivik Corporation, Inuvialuit Regional Corporation (“IRC”), and the AFN, to arrange for the

³⁶ In the attached Order, “Year 1” and “Year 2” are defined terms, “refer[ring] refer to the twelve-month periods beginning on September 1, 2018 and ending on August 31, 2019, and beginning on September 1, 2019 and ending on August 31, 2020, respectively.”

Information Line Liaison (described further below) from each of the organizations to attend a training session. [A footnote inserted here reads, “*The NCTR, AFN and the Inuit Representatives for the 3 Inuit Corporations to provide submissions describing costing to attend session(s) for their representative to receive the training.*”] This will also help provide a framework to ensure consistent and clear messaging to claimants. It should be noted that like RHSP front-line workers, the role of the Resource Line Liaisons is not to provide any legal advice.

[. . .]

[at pp. 6-7]

b) Distribution Phase – disseminating information

After the preparation phase, the distribution phase will begin where information will be disseminated to claimants. The distribution phase is further broken down into four sub-phases, as detailed below. Phases 1 to 3 will be conducted within the first two years of the distribution phase. Phase 4 will extend until the end of the Record Retention Period.

Phase 1 – Multi-media Campaign: Notice information will be distributed through various print, television, radio and social media. A dedicated website (www.MyRecordsMyChoice.ca) will be launched, and the Secretariat’s toll-free IAP Information Line, which has been in use for the last 10 years, will continue to be maintained. There will also be the AFN, NTI, Makivik Corporation, IRC and NCTR resource lines.

[Note: NTI, Makivik Corporation and IRC are the three corporations that comprise the Inuit Representatives]

Phase 2 – Distribution of Posters and Information Packages: Information packages, posters, and postcards will be sent to First Nation, Metis & Inuit communities, Indigenous & Inuit Organizations, Friendship Centres, Correctional Centres, Tribal Councils, and other partners/stakeholders. Further mail-outs may occur throughout the distribution phase. To protect claimants’ confidentiality, these will be provided in bulk in a general-distribution approach.

Phase 3 – Community notices: The Secretariat staff will reach out and partner with Indigenous communities across Canada to provide notice on local radio stations, local newsletters and links on their websites. These notices will be in the language of the community media type.

...

[at pp. 9-10] For the initial two years of the distribution phase, the following resources will also be available to provide information regarding the Notice Program. First, Information Line Liaisons will be earmarked for the AFN, IRC, NTI, and Makivik Corporation, in order to respond to questions about the Notice Program that are directed to those organizations. Second, RHSP front line workers will be available to provide information, assistance and support. Third, the existing NCTR line will be enhanced by one resource person, an Information Line Liaison, to accommodate anticipated increase in information inquiries from claimants interested in learning more about the NCTR directly from the NCTR. [A footnote inserted here reads, “*The NCTR, AFN and 3 Inuit Corporations to provide submissions describing services along with a costing forecast.*”]

[42] While I direct Canada to fund the participation of each of the AFN, Inuit Representatives and NCTR in the Notice Program, the amount awarded to each of them has been significantly reduced from what they have sought, having regard to their relatively limited roles in the program.

AFN’s Funding Request

[43] In some important respects, the AFN's Statement of Work and Budget is inconsistent with the Records Disposition Notice Program. As noted above, the Records Disposition Notice Program assigns RHWs the task of dealing with people in their own communities and it does not envision community meetings. The AFN, however, anticipates a need for First Nations Liaisons ("FNLs") to "[travel] to remote First Nation communities to provide material and support, if necessary, to ensure that full awareness of the ... Notice Program is provided to First Nation IAP Claimants."³⁷ Its Statement of Work and Budget further states, "The three First Nation Liaisons will also attend a number of locations across Canada to make presentations on the Notice Plan. This will include setting up information booths and making presentations at Chief Assemblies or other gatherings."³⁸

[44] The AFN seeks a total of \$995,194 over two years. Canada's position was that it would fund the AFN's participation up to a total of \$252,000 for each year, for a total of \$504,000. I have determined that the appropriate and necessary level of funding is \$301,005 for Year 1 and \$268,805 for Year 2 (for a total of \$569,810 over two years).

[45] Because of the relatively narrow roles to be played by the FNLs and the fact that they will not be required to travel to remote communities, I am not persuaded that three FNLs are required. In my view, two will be sufficient during Year 1 and one FNL will be sufficient in Year 2. Also, the travel budget for Year 1 can be reduced to \$5K because the travelling will consist of going to the eight Train the Trainer sessions. No allocation for travel will be necessary in Year 2.

[46] The funding for Year 1 reflects a reduction from three to two full-time equivalents ("FTEs") for Year 1 (\$195,348, with benefits), and a reduction from \$75K to \$15K for travel expenses, as the travel will solely consist of attending the eight Train the Trainer sessions. Because the Secretariat is solely responsible for the notice products, the amount allocated within the "communication and outreach activities" category for "advertising, promo, publications" has been eliminated. Equipment purchase has been reduced by one-third, to \$8K, in line with the reduction in staffing. The amount allocated to rent (calculated at 13% of the aggregate of salary and benefits) is reduced accordingly, to \$25,395. The amount payable before the 15% administration fee is \$261,743. The administration fee of \$39,262 brings the total for Year 1 to \$301,005.

[47] The funding for Year 2 reflects funding for 2 FTEs (\$195,348, with benefits) and elimination of travel and meeting expenses, as the Train the Trainer sessions will have occurred in Year 1 and the Notice Program does not call for community meetings. Once again, no amount is allocated within the "communication and outreach activities" category for "advertising, promo, publications", because the Secretariat is solely responsible for the notice products. The amount allocated to rent (calculated at 13% of the aggregate of salary and benefits) remains at \$25,395. The amount payable before the 15% administration fee is \$233,743. The administration fee of 15% or \$35,062 brings the total for Year 2 to \$268,805.

Inuit Representatives' Funding Request

[48] I have taken the same approach with the Inuit Representatives, who represent only 5% of

³⁷ AFN's Statement of Work and Budget, at p. 2.

³⁸ AFN's Statement of Work and Budget, at p. 3.

IAP claimants, and, presumably, a similar proportion of claimants in the ADR process.

[49] The Inuit Representatives seek \$588,067 over two years. Canada's position was that it would fund the Inuit Representatives' participation up to a total of \$230,000 for each of the two years, for a total of \$460,000. In my view, Canada's offer was more generous than the evidence warrants, and because of the limited role that they will perform in relation to the Notice Program, I have reduced the amount Canada should fund the Inuit Representatives to a collective 1.0 FTE (.5 for NTI, and .25 each for IRC and Makivik). Consequently, I direct that the Inuit Representatives be funded to the extent of \$170,145.80 for Year 1 and \$148,144.70 for Year 2 (for a total of \$318,290.50 over the two years).

[50] The funding granted in relation to Year 1 reflects .5 FTE for NTI (Nunavut Tunngavik Incorporated, the most populous of the three groups comprising the Inuit Representatives) and .25 FTE for each of the Makivik Corporation and IRC (Inuvialuit Regional Corporation). Each of these three organizations sets its own base salary and for each, the amounts payable for "VTA" (vacation travel assistance) and "Benefits & Costs" are made proportional to the percentage of FTE (.5 or .25). For NTI, this amounts to \$40K (salary), plus \$7,875 (VTA) plus \$13,750 (benefits & costs), for a total of \$61,625. For IRC, this amounts to \$22,500 (salary), plus \$1,250 (VTA), plus \$5,500 (benefits & costs), for a total of \$29,250. For Makivik, this comes to \$15,000 (salary), plus \$3,750, for a total of \$18,750.

[51] The funding granted to the Inuit Representatives also reflects a reduction from \$75K to \$15K for travel expenses (\$5K for each of the three liaisons), as the travel will solely consist of attending the eight Train the Trainer sessions. The entry for "Training" is placed on the same footing as meeting expenses for the AFN and is funded at \$5K for one year (\$1,667 per organization). The amounts payable for "Rent" are also made proportional to the percentage of FTE (.5 or .25); \$6,000 for NTI, \$4,375 for IRC and \$3,750 for Makivik. I have accepted the insurance, equipment and audit costs as reflected in the Inuit Representatives' proposal. Because the AFN was allowed an administration fee, the Inuit Representatives were also granted a fee of this kind in accordance with their original proposal.

[52] The funding ordered for the Inuit Representatives for Year 2 reflects .5 FTE for NTI and .25 FTE for each of Makivik Corporation and IRC. No allocation is made for training or travel. Insurance, equipment and audit costs are again reflected, as is the 10% administration fee.

NCTR's Funding Request

[53] The NCTR seeks \$252,241 for Year 1 and \$213,658.50 for Year 2, for a total of \$465,899.50. I grant the NCTR \$117,766.90 for Year 1 and \$87,664.50 for Year 2 (for a total of \$205,431.40 over two years).

[54] I note that the NCTR's funding request extended beyond matters related to the Notice Program. In fact, it was entitled "NCTR Budget for IAP/ADR Notice Program and Records Administration: 9 Years (2018/19 - 2026/27)". To meet one of the TRC's calls to action,³⁹

³⁹ Truth and Reconciliation Commission of Canada: Calls to Action, Call to Action #54:

54. We call upon the Government of Canada to provide multi-year funding for the National Council for Reconciliation to ensure that it has the financial, human, and technical resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation.

Canada gifted the NCTR \$10 million for core funding in February 2018. In my analysis, I have taken this into account and have endeavoured to ensure that the funding directed here relates to the Notice Program, and not to the NCTR's regular operations such as records administration.

[55] The \$117,766.90 that Canada is ordered to pay for Year 1 is the aggregate of Items 1 and 3 from the NCTR's request. In relation to Item 1 (Notice Program), I have included that amount for the Notice Program that is referable to "Information Line Liaison Staff". However, I have not included the amounts sought for the "NCTR resource for processing records" and "Elder/cultural support for NCTR staff & external clients" on the bases that neither is related to the Notice Program *per se* and each was provided for in core funding (such that the amount subtracted is \$95,106). In relation to Item 3 (Train the Trainer Sessions), I have granted funding for the NCTR's involvement in the eight Train the Trainer Sessions, (\$26,176), plus the requested 15% for "Project Administration" (\$19,701.09).

[56] Because notice products are within the sole purview of the Chief Adjudicator/Secretariat, the amount Canada is ordered to pay does not include any amount in relation to Item 2 ("Materials", for which \$10,058.60 was sought). The amount Canada is ordered to pay the NCTR does not include any amount in respect of Item 4 ("in-person follow-up with Crawford, AFN, RHSWs and Inuit Representatives, as this is unrelated to the Notice Program").

[57] The amount granted to the NCTR for Year 2 (\$87,664.50) includes the "Information Line Liaison Staff" (\$76,230 per annum for 9 years; \$63,000 plus 21% benefits) from Item 1 ("Notice Program"). Once again, it does not include the amounts that had been sought for the "NCTR resource for processing records" and the "Elder/cultural support for NCTR staff & external clients" on the bases that neither is related to the Notice Program *per se* and each was provided for in core funding. To the amount attributable to the "Information Line Liaison Staff" salary and benefits I have added the for "Project Administration" fee of 15% (\$11,434.50). The amount Canada is directed to pay for the NCTR's involvement in Year 2 of the Notice Program does not include funding in relation to Item 2 ("Materials") because the Chief Adjudicator/Secretariat are responsible for the Notice Products. It does not include funding in relation to Item 3 (Train the Trainer Sessions), because those costs will be incurred solely in Year 1.

Leave to Seek Further Funding

[58] Should the funding that Canada is directed to pay to the AFN and the Inuit Representatives prove to be insufficient at the conclusion of Year 1, the Assembly of First Nations and the Inuit Representatives are given leave to return to the court in order to seek further funding.

Revision to Order to Address Acquisition of Records Agent

[59] Court Counsel has informed me that it will be necessary for the draft order submitted by the parties to be amended to take into account the acquisition of the corporate entity that was to be the Records Agent. Paragraph 18 of the draft Order attached as Appendix "A" has been revised accordingly to include the phrase, "or such successor entity to Crawford & Company (Canada) Inc. as the court may designate at a later date".

D. CONCLUSION

[60] For the reasons set out above, I have instructed Court Counsel to attend to the issuance of the Order attached as Appendix “A” to this direction.

PERELL J.

Released: July 4, 2018

Appendix “A”

Court File No. 00-CV-192059

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE PERELL

WEDNESDAY, THE 4th
DAY OF JULY, 2018

B E T W E E N:

LARRY PHILIP FONTAINE, et al.

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA, et al.

Defendants

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

ORDER

THE REQUESTS FOR DIRECTION of the Chief Adjudicator of the Independent Assessment Process (the “Chief Adjudicator”) respecting:

- (1) the notice program to notify Claimants, that, with their consent, and subject to required redaction, their IAP Retained Documents may be preserved at the National Centre for Truth and Reconciliation (“NCTR”) (the “Notice Program”) pursuant to the Order of the Court pronounced on August 6, 2014 and as varied by the Court of Appeal for Ontario and the Supreme Court of Canada (the “*In rem* Order”);

(2) the disposition process for records pursuant to the *In rem* Order after the expiry of the mandate of the Chief Adjudicator and wind-up of the Indian Residential Schools Adjudication Secretariat (the “Secretariat”); and,

having come on for hearing on April 24, 2018 and May 23, 2018, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Requests for Direction of the Chief Adjudicator, the submissions of the Chief Adjudicator and the Attorney General of Canada, the Independent Counsel, the NCTR, the Assembly of First Nations, and the Inuit Representatives, and the materials filed;

AND ON HEARING the submissions of counsel for the Chief Adjudicator, the Attorney General of Canada, the Independent Counsel, the NCTR, the Assembly of First Nations, and the Inuit Representatives;

THIS COURT ORDERS that:

Definitions

1. The defined terms in Schedule “A” to the *In rem* Order apply for the purposes of this Order.

IAP Sunset

2. The IAP Sunset refers to the expiry of the Chief Adjudicator’s mandate and the wind-up of the Secretariat.

3. This Court will determine the date or dates for the IAP Sunset at a future time.

Year 1 and Year 2

4. “Year 1” and “Year 2” refer to the twelve-month periods beginning on September 1, 2018 and ending on August 31, 2019, and beginning on September 1, 2019 and ending on August 31, 2020, respectively.

Confirmation of Interim Orders

5. This Court confirms the following Orders made by endorsement on April 24, 2018:
- a. the 15-year Retention Period for IAP Retained Documents in the *In rem* Order shall be from September 19, 2012 until September 19, 2027;
 - b. the destruction component of the *In rem* Order is suspended for Canada until the IAP Sunset or until further order of this Court, whichever occurs first;
 - c. the destruction component of the *In rem* Order is suspended for the Chief Adjudicator and the Secretariat in respect of the Secretariat’s SADRE case management system data, IAP Decision database and the Master List of Admissions, until the IAP Sunset or until further order of this Court, whichever occurs first;
 - d. Canada is authorized to transfer to the Secretariat the IAP and ADR documents and personal information needed to give effect to the *In rem* Order; and
 - e. the Crisis Line telephone service shall remain in place until September 19, 2027 under the operation of a service provider or service providers provided by Canada.

Retention of Releases and Proof of Payment of Claims

6. Canada may retain its copies of executed releases of claimants in the ADR process that preceded the IAP and records of proof of payment for ADR and IAP claims, provided that they shall be used solely as evidence of the releases of liability and payment of claims.

Notice Program

7. The form of consent in Schedule “A” to this Order is approved for use in the notice program.

8. For greater clarity, the form of consent in Schedule “A” constitutes a written agreement pursuant to ss. 6(1) and (2) of *The National Centre for Truth and Reconciliation Act*, SM 2015, c. 2, and the terms of such written agreement are to be interpreted to override the family access provisions of s. 11(4)(b) thereof.

9. The Chief Adjudicator shall develop information products for the notice program that are consistent with the content of Schedule “A” to this Order.

10. Any information products developed by the NCTR or others in respect of the archiving of records pursuant to the *In rem* Order shall also be consistent with the content of Schedule “A” to this Order.

11. The Records Disposition Notice Program in Schedule “B” to this Order is approved.

Funding and Costing

12. Canada shall be responsible for funding the notice program and the disposition process for records pursuant to the *In rem* Order.

13. The Secretariat's cost estimate in Schedule "C" to this Order is approved for the planning, administration, and implementation of the notice program and the processing of consents, record retention, transcription, redaction, transfer, destruction, and other necessary related activities under the *In rem* Order, by the Secretariat, Hilsoft Notifications, Crawford & Company (Canada) Inc., exclusive of the participation of the Assembly of First Nations, Inuit Representatives and NCTR, and continued funding by Canada of the role of Indigenous Services Canada Resolution Health Support Program Services in the delivery of the notice program.

14. Canada will fund:

a. The Assembly of First Nations up to a total of \$301,005 for Year 1 and \$268,805 for Year 2 (for a total of \$569,810 over two years); and

b. The Inuit Representatives up to a total of \$170,145.80 for Year 1 and \$2148,144.70 for Year 2 (for a total of \$318,290.50 over two years),

in order to provide liaison services for members of the public, in accordance with their respective Statements of Work set out at Schedule "D" and "E" to this Order.

15. Should the funding set out in subparagraphs 14a or 14b prove to be insufficient, the Assembly of First Nations and the Inuit Representatives are given leave to return to the court at the conclusion of Year 1 in order to seek further funding.

16. Canada will fund the NCTR's participation in the implementation of the notice program in the amount of \$117,766.90 for Year 1 and \$87,664.50 for Year 2 (for a total of \$205,431.40 over two years).

Reporting and Accounting Requirements

17. As recipients of funding under this Order, the Secretariat, the NCTR, Assembly of First Nations, and Inuit Representatives shall each:

- a. Log the aggregate volume of inquiries received in respect of the notice program and provide a report of same on a semiannual basis to Canada and the Secretariat; and,
- b. Provide annual financial reports to this Court and to the other parties of record herein on each of March 31, 2019, March 31, 2020, and March 31, 2021, including an accounting of monies received from Canada under the terms of this Order in the preceding year (taking into account their respective statements of work or work objectives).

Appointment and Reporting Requirements of the Records Agent

18. Crawford & Company (Canada) Inc. or such successor entity to Crawford & Company (Canada) Inc. as the court may designate at a later date is appointed as Records Agent pursuant to the terms of the proposed contract in "Schedule G" to this Order, as of the IAP Sunset or on such other date and on such other terms as this Court may determine.

19. The Records Agent is required to carry out the Chief Adjudicator's continuing responsibilities under the *In rem* Order and in so doing must:

- a. provide annual work plans and budgets relating to its implementation of the *In rem* Order, delineating specific work tasks, for the approval of the Court;
- b. report annually to the Court by way of a progress report, commencing one year after the IAP Sunset;
- c. deliver its reports to Canada and the NCTR;
- d. publish its reports on the internet; and,
- e. in delivering invoices to Canada for payment in relation to work tasks, provide necessary supporting information and materials.

Further Applications

20. Applications respecting the implementation of this Order must be made under the Court Administration Protocol attached as Schedule "A" to the Implementation Orders dated March 8, 2007 and include notice to parties of record to these Requests for Direction and the National Administration Committee, or pursuant to such further or other directions of the Supervising Courts.

Costs

21. As per the File Direction read in court on May 23, 2018, those seeking costs will have thirty (30) days from that date in which to serve and file their brief costs submissions, following which Canada shall have thirty (30) days in which to serve and file its responding submissions.

The Honourable Justice Perell

Reference
in his personal capacity and in his capacity as the Executor of the
Estate of Agnes Mary Fontaine, deceased et al.
Plaintiffs

LARRY PHILIP FONTAINE,

-and-

THE ATTORNEY GENERAL OF CANADA et al.

Defendants

Court File No. 00-CV-192059

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER

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Email: cboiesparker@arvayfinlay.ca

Lawyers for the Chief Adjudicator of the Indian
Residential Schools Adjudication Secretariat



If you made an IAP or ADR claim for compensation for residential school abuse, the Indian Residential Schools Settlement Agreement says that you can save your IAP or ADR records for history, public education and research at the National Centre for Truth and Reconciliation (NCTR).

The IAP is the Independent Assessment Process for compensation for claims of abuse at residential schools. The ADR was the earlier Alternative Dispute Resolution process.

What are my choices for my IAP or ADR records?

You can:

- Do nothing: your records will remain confidential and will then be destroyed on September 19, 2027
- Get a copy for yourself to keep or share with others
- Preserve them for history, public education and research at the NCTR
- Get a copy for yourself *and* preserve them for history, public education and research at the NCTR

The choice is yours and yours alone.

Sign this form only if you want to preserve your IAP or ADR records at the NCTR.

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences
please call the free 24-hour crisis line: 1-866-925-4419

What records are we talking about?

- Your application form
- The printed record of your testimony (transcript)
- The voice recording of your testimony
- The decision on your claim

Your records include your name, the information you provided in your IAP or ADR claim, everything you said at your hearing, what the adjudicator said about you in their decision, and the compensation you received. Your records describe the abuse you suffered and how it affected your life. They may include information about your health, employment and criminal history, and other sensitive information.

Can I get a copy of my own records?

Yes. You can request a copy of your IAP or ADR records from the IAP Secretariat. There is a separate form for that. You have until September 19, 2027 to request a copy of your records for yourself, to keep or share with others.

If you want a copy of your records, contact IAP Information toll-free at 1-877-635-2648.

Why am I being asked about my records?

In 2017 the Supreme Court of Canada said that because your IAP or ADR records are confidential, they will be automatically destroyed, unless you choose to preserve them for yourself or for history, research and public education at the NCTR.

What is the NCTR?

The NCTR was created by the Indian Residential Schools Settlement Agreement to preserve the history and legacy of the residential schools. It has the responsibility to promote truth, understanding, reconciliation and healing. The NCTR is advised by a Survivors' Circle and Governing Circle of Indigenous people. It is hosted at the University of Manitoba and is the permanent home for the records of the Truth and Reconciliation Commission.

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences
please call the free 24-hour crisis line: 1-866-925-4419

How would my records be used at the NCTR?

If you **decide** to preserve your records at the NCTR, you have a choice of two ways to do that: restricted access or open access. In either case the NCTR will use and share your records for public education and research to promote reconciliation. The NCTR is committed to the respectful and dignified use of your records and of doing no harm.

- **Restricted access** means the NCTR may use and share your records with the public for purposes such as education, but only if the NCTR removes your personal information. Personal information means information that identifies you or could be used to identify you. Your personal information will be held by the NCTR and may be made available to researchers, but only under strict confidentiality conditions. Your personal information will not be available to the public and will not be published. Your family will not be allowed to see your records.
- **Open access** means the NCTR may use your records and personal information, including your name, for education and research to promote reconciliation, including by sharing with the public (which may include your family). However, the NCTR will not disclose certain personal information, such as your address, phone number, band or disc number to the public.

For both restricted or open access, all information that identifies **other** people will be removed before your records are transferred to the NCTR, to protect their privacy.

Benefits and risks

The benefit of preserving your records is that they will help future generations understand the history and impacts of the residential schools on First Nation, Inuit and Métis peoples and communities.

For restricted access, your personal information will be kept confidential but there will always be the chance that you are identified by mistake. You will not control which researchers may be allowed to see your records. The NCTR will decide how much access researchers will be given and the confidentiality conditions they must follow.

For open access, you will not control who sees your records or how they are used.

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences
please call the free 24-hour crisis line: 1-866-925-4419

The NCTR will decide whether to make your records, including your personal information, available to the public. You will not be able to control how people react to that information and what they do with it.

For both restricted and open access, the NCTR will keep your records in a highly secure database that is managed by carefully trained staff. However, there will always be a risk of unauthorized access to the database.

The restrictions in this agreement are permanent

Records archived at the NCTR are managed according to Manitoba laws, including *The National Centre for Truth and Reconciliation Act*. Your records will not be disclosed through access requests under *The Freedom of Information and Protection of Privacy Act*. Your records will ONLY be made available as permitted by this agreement. This agreement is made under section 6 of *The National Centre for Truth and Reconciliation Act* and confirmed by court order.

What if I change my mind about preserving my records?

If you decide to preserve your records at the NCTR, you have the right to change your mind later. You may change the type of access or you may withdraw your consent altogether and have your records removed from the NCTR. It is important to understand that if you choose open access and want to change or withdraw your consent, your personal information may already have been made public.

If you change your mind, contact IAP Information toll-free at 1-877-635-2648 or the NCTR toll-free at 1-855-415-4534.

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences
please call the free 24-hour crisis line: 1-866-925-4419

Do you have questions?

If you want more information about your choices or assistance with this form, contact:

- **IAP Information** toll-free at 1-877-635-2648, or email IAPRecords_DocumentsSAPI@irsad-sap.gc.ca, or online at www.MyRecordsMyChoice.ca
- **Assembly of First Nations** toll free at 1-866-869-6789, or email [EMAIL]
- **Inuit Representatives** toll-free at [NUMBER], or email [EMAIL]

If you want to learn more about the NCTR, contact the NCTR toll-free at 1-855-415-4534, or email NCTRrecords@umanitoba.ca, or online at www.NCTR.ca

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences please call the free 24-hour crisis line: 1-866-925-4419

My Records, My Choice

Consent to preserve IAP or ADR records for restricted or open access at the National Centre for Truth and Reconciliation

If you choose to preserve your records at the NCTR, sign the Consent below, give us your Contact Information on the next page, and return both completed pages to the IAP Secretariat.

My Consent		
<p>I HAVE READ THIS FORM (7 pages) or had it read to me.</p> <p>I UNDERSTAND THAT I do not need to sign this form unless I want to preserve my records at the NCTR. If I do not sign this form my records will be kept confidential until September 19, 2027. Then they will be destroyed.</p> <p>I CHOOSE to preserve some or all of my IAP or ADR records at the NCTR for restricted or open access, as indicated:</p>		
<i>Please check ONE level of access you choose to give to each type of record</i>		
My application for compensation	<input type="checkbox"/> restricted access	<input type="checkbox"/> open access
The transcript of my testimony	<input type="checkbox"/> restricted access	<input type="checkbox"/> open access
The recording of my testimony	<input type="checkbox"/> restricted access	<input type="checkbox"/> open access
My compensation decision	<input type="checkbox"/> restricted access	<input type="checkbox"/> open access
<p style="text-align: center;"><i>[If this form is signed with a mark, a witness must complete this part.]</i></p> <p>I HAVE READ this form to the person who made the mark above in my presence and who confirmed to me that he/she understands this Consent.</p>		
Signature	Name	Date month/day/year

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences
please call the free 24-hour crisis line: 1-866-925-4419

If you choose to preserve your records at the NCTR, we also need your Contact Information below so we can identify your records. If we need to contact you by mail we will use a plain envelope.

My Information	
First name	Last name
Name at residential school, maiden name, and other names you are known by	
Birthdate month /day /year	File number (if you know it)
Mailing address	Province/Territory
Email address (optional)	
Phone number (you may give more than one)	May we leave messages? <input type="checkbox"/> Yes <input type="checkbox"/> No

Send by mail: Mail and Records,
Indian Residential Schools Adjudication Secretariat
900 – 2010 12th Avenue, Regina, SK S4P 0M3

Or email: IAPRecords_DocumentsSAPI@irsad-sap.gc.ca

Or fax: (306)790-4800

Residential Schools Crisis Line

If you are feeling pain or distress because of your residential school experiences
please call the free 24-hour crisis line: 1-866-925-4419

Indian Residential Schools

Adjudication Secretariat

Secrétariat d'adjudication

des pensionnats indiens

**Independent Assessment Process &
Alternate Dispute Resolution**

Records Disposition Notice Program

Revised May 2018

Table of Contents

Introduction	2
Key Messages	2
Background.....	2
Methodology for the Development of the Notice Program	3
Notice Program Summary	4
Objective:	4
Notice Program Phases:.....	4
a) Preparation Phase - finalizing products and training	4
b) Distribution Phase – disseminating information.....	6
Geographical Scope:	7
Language:	8
Delivery:	8
Responding to Inquiries:	9
Notice Schedule.....	10
Preparation Phase Schedule:	10
Distribution Phase Schedule:.....	11
Phase 1 – Multi-Media Campaign (January 2019 to April 2019):	11
a) Indigenous Television Notice	11
b) Radio Notice	12
c) Radio PSAs	12
d) Print Publication Notices	13
e) Online Notice	15
f) Videos.....	15
g) “Earned Media” Activities	16
Phase 2 – Mail-outs of Information Packages (January 2019 to April 2019):	16
Phase 3 – Community Radio stations, local newsletters and websites (April 2019 to December 2020):.....	17
Phase 4 – Ongoing Information for the Duration of the Record Retention Period (January 2021 to December 2027):	17

SCHEDULE "B"

INTRODUCTION

The Notice Program that follows is designed to notify Independent Assessment Process ("IAP") and Alternate Dispute Resolution ("ADR") claimants of the options available to them for the disposition of their individual claim records, specifically: applications, hearing transcripts and audio recordings of claimant testimony and records of compensation decisions.

KEY MESSAGES

The key messages of the Notice Program are to ensure that claimants are aware that their IAP/ADR records are safe and secure at the Indian Residential Schools Adjudication Secretariat and that each claimant can choose what will happen with his/her own records.

BACKGROUND

Indian Residential Schools were operated by religious organizations and funded by the Government of Canada from the 1860s to the 1990s. During this time, more than 150,000 First Nations, Inuit, and Métis children were required to attend these schools. While at Residential schools, thousands of children were physically, emotionally, and sexually abused. An agreement was reached in 2006 to consolidate several class action lawsuits, which in turn led to the Indian Residential Schools Settlement Agreement ("IRSSA"). The IRSSA, which began in September 2007, was intended to achieve a fair, comprehensive, and lasting resolution of the legacy of Residential Schools through the promotion of healing, education, truth and reconciliation, commemoration, and financial compensation for former students. The IRSSA established the Independent Assessment Process as the means for providing financial reparation to those former students who were victims of specified physical and sexual abuse and other wrongful acts.

A considerable amount of personal and confidential information was provided by claimants and recorded in various documents throughout the IAP process. In 2013, the Truth & Reconciliation Commission ("TRC") and the Chief Adjudicator of the IAP asked the Court for direction about what should happen to the IAP records once claims were resolved.

On August 6, 2014, after hearing the parties' submissions, the Honourable Justice Perell of the Ontario Superior Court of Justice Court declared that IAP Documents and IAP Personal Information are private and confidential. The decision set out four categories of IAP Documents

SCHEDULE "B"

– applications, transcripts and audio recordings of the claimant’s evidence, and adjudicators’ compensation decisions – that are to be retained for a 15-year period, after which the documents would be destroyed. Before the end of that “Retention Period”, a Claimant could consent to any of those documents being archived at the National Centre for Truth and Reconciliation (“NCTR”). The decision further stipulated that a program be developed to give Claimants notice of the option to archive their “IAP Retained Documents” – subject to redaction – at the NCTR.

This decision was appealed to the Ontario Court of Appeal, which rendered a decision on April 4th, 2016. The Ontario Court of Appeal ruled that documents from the ADR process should be included and treated in the same fashion as IAP records.¹ It also ruled that the Notice Program should be developed and administered by the Chief Adjudicator of the IAP. This decision was then appealed to and upheld by the Supreme Court of Canada in a ruling in October 2017.

METHODOLOGY FOR THE DEVELOPMENT OF THE NOTICE PROGRAM

Following the decision of the Ontario Court of Appeal, the Chief Adjudicator began the conceptualization and development of the Records Disposition Notice Program. This process involved seeking input and advice from a variety of sources through a range of activities. A number of All-Party meetings addressed the messaging and approach of the Notice Program. Representatives of the Secretariat met with numerous claimants, Indigenous organizations, and government departments that work directly with claimants from most regions across Canada. These consultations were held both in individual meetings and in focus group formats that allowed for discussion amongst the participants. Understandably, these activities provided a wide range of helpful albeit sometimes competing ideas and suggestions, which were considered by the Chief Adjudicator and influenced the development of the Notice Program and related Notice products.

The Chief Adjudicator also sought and obtained expert advice as approved by the IAP Oversight Committee from Dr. Ingrid Söchting, Director of the University of British Columbia Psychology Clinic and an expert psychological assessor specifically experienced working with IAP and ADR

¹ The ADR process was implemented in 2003, prior to the Settlement Agreement, to resolve claims for physical and sexual abuse, outside of the litigation process.

claimants, to ensure that the Notice Program would be as sensitive to the needs and circumstances of the claimants as possible. (An affidavit from Dr. Söchting is included with the Request for Directions.)

In addition, Hilsoft Notifications, which has conducted five comprehensive Notice Programs related to the Indian Residential Schools Settlement Agreement, was consulted on the overall design of this Records Disposition Notice Program. (An affidavit from Hilsoft is included with the Request for Directions.)

The Notice Program also takes into account the input of stakeholders in the Court-directed mediation on April 23, 2018, and matters raised by the Court directly at the hearing of the Request for Directions on April 24, 2018.

NOTICE PROGRAM SUMMARY

Objective:

The overall objective of the Notice Program is to notify all IAP and ADR Claimants about their options regarding their IAP & ADR records. The intent is not specifically to obtain requests for copies of records or for archiving of those records - which ultimately will be the choice of each claimant - but rather to ensure that all claimants are informed of their right to determine what is done with their records.

Notice Program Phases:

The Notice Program is divided into two main phases: the Preparation Phase and the Distribution Phase.

a) Preparation Phase - finalizing products and training

Upon the receipt of the final Court Order, the Secretariat will finalize and produce all notice products. These products will be consistent with the Court-approved Consent Form, and will include a multi-media campaign, a pamphlet, a poster, a postcard, and videos about the IAP, the consent form, and the NCTR.

SCHEDULE "B"

During the preparation phase, the Secretariat staff will also train the Indigenous organizations that provide services under the Resolution Health Support Program ("RHSP"),² as well as other organizations, such as the NCTR, the Records Agent Crawford, the Assembly of First Nations ("AFN"), and members of the Inuit Representative, which will have roles in the Notice Program.

The training will occur at the Annual Regional Meetings for RHSP workers in the Fall of 2018. There are eight of these annual meetings, one in each region of the country. Based on past attendance, it is anticipated that approximately 700 to 800 RHSP workers will attend, with approximately 100 workers at each meeting. Two staff from the Secretariat will attend each of these eight meetings. Two representatives of the NCTR will also be invited to attend to provide the relevant training on the NCTR that is specific to the Notice Program.³ It is expected that each training session will take approximately four to five hours.

The training will focus on educating Resolution Health Support Workers and Cultural Support workers on the notice materials. These front-line workers, as a part of their current role, provide mental emotional and traditional support and provide neutral information to claimants and their families who were a part of the Common Experience Payment and the IAP. The support workers are located in or visit the communities, to provide support services and answer questions from claimants, most times in the Indigenous language of the community. They have been responsible for this type of support and information sharing for the last 10 years, and therefore have formulated relationships with claimants based on trust and truth. They will be "trusted intermediaries" that Dr. Söchting described in her expert affidavit to whom claimants can turn with questions about their options, and such intermediaries will provide the information in a neutral and private manner.

The training will entail a detailed review of the Notice Program information, including the Court-approved Consent Form. Scripted training products will be provided to the trainees. This will help ensure consistent messaging of information will be delivered on the ground, that the RHSP workers have an accurate and clear understanding of the information, including the details of the Consent Form, and that they know where claimants can go to seek further information about

² RHSP's are managed by Indigenous Services Canada, except in British Columbia where it is managed by the First Nation Health Authority.

³ The NCTR to provide submissions describing services along with a costing forecast.

making a decision on their records. RHSP front-line workers will be trained that their role is to provide information, to refer to other resources where appropriate, to assist with reading of materials or completion of forms where appropriate, and health support. They will be alerted that it is not the role of RHSP workers to provide legal advice.

The Secretariat staff will also work with the NCTR, Nunavut Tunngavik Incorporated ("NTI"), Makivik Corporation, Inuvialuit Regional Corporation ("IRC"), and the AFN, to arrange for the Information Line Liaison (described further below) from each of the organizations to attend a training session.⁴ This will also help provide a framework to ensure consistent and clear messaging to claimants. It should be noted that like RHSP front-line workers, the role of the Resource Line Liaisons is not to provide any legal advice.

b) Distribution Phase – disseminating information

After the preparation phase, the distribution phase will begin where information will be disseminated to claimants. The distribution phase is further broken down into four sub-phases, as detailed below. Phases 1 to 3 will be conducted within the first two years of the distribution phase. Phase 4 will extend until the end of the Record Retention Period.

Phase 1 – Multi-media Campaign: Notice information will be distributed through various print, television, radio and social media. A dedicated website (www.MyRecordsMyChoice.ca) will be launched, and the Secretariat's toll-free IAP Information Line, which has been in use for the last 10 years, will continue to be maintained. There will also be the AFN, NTI, Makivik Corporation, IRC and NCTR resource lines.

Phase 2 – Distribution of Posters and Information Packages: Information packages, posters, and postcards will be sent to First Nation, Metis & Inuit communities, Indigenous & Inuit Organizations, Friendship Centres, Correctional Centres, Tribal Councils, and other partners/stakeholders. Further mail-outs may occur throughout the distribution phase. To protect claimants' confidentiality, these will be provided in bulk in a general-distribution approach.

⁴ The NCTR, AFN and Inuit Representative for the 3 Inuit Corporations to provide submissions describing costing to attend session(s) for their representative to receive the training.

SCHEDULE "B"

Phase 3 – Community notices: The Secretariat staff will reach out and partner with Indigenous communities across Canada to provide notice on local radio stations, local newsletters and links on their websites. These notices will be in the language of the community media type.

Phase 4 – Ongoing Information for the Duration of the Record Retention Period: The dedicated website and information line will be maintained throughout the Record Retention Period, to continue to provide information to claimants. In addition, following the anticipated sunset of the Secretariat, all Notice Program information products will be updated to remove Secretariat contact information. The mailing address for Consent Forms will be updated to include the processing centre of the Records Agent – Crawford. (An affidavit from Crawford is included with the Request for Directions.)

Geographical Scope:

Former students reside in urban, rural, northern and remote/isolated communities across Canada. Furthermore, some claimants may be located in health care facilities, are homeless, or incarcerated. The Notice Program is designed to reach all former students regardless of geographic location.

The following table contains information on the number of ADR and IAP claimants at the time they were pursuing their claim. Some will since have moved to other provinces or passed away.

Province/Territory	Claimants
British Columbia	6,972
Alberta	8,372
Saskatchewan	9,101
Manitoba	5,970
Ontario	3,493
Quebec	2,291
Atlantic Provinces	307
Yukon	607
Northwest Territories	1,561
Nunavut	519
Outside of Canada	34
Unknown	294
Total	39,521⁵

⁵ The total number of claimants is drawn from the Secretariat's SADRE data base as of November 14, 2017, and includes IAP, ADR to IAP transfers, and ADR re-openers, as well as information provided by Canada

SCHEDULE "B"

As noted on the table, there are some 34 Claimants that reside outside of Canada, who may not be exposed to or be able to access the Notice Program information via Canadian media or Canadian Indigenous and/or Inuit organizations. Accordingly, an unmarked registered letter requiring the addressee's signature to ensure confidentiality of the contents will be sent to these international claimants, providing them with information about their IAP or ADR records.

Language:

Based on the experience of IAP hearings, Notice Program material will be created in a variety of languages appropriate to the media source and location.⁶ All elements of the mailing packages (described below), including the form providing consent to have records archived at the NCTR, will be produced in English, French and Inuktitut. The dedicated website will appear in English (www.MyRecordsMyChoice.ca) and French (www.MesDocumentsMonChoix.ca). As well, the RHSP front-line workers will be able to provide information in various Indigenous languages.

Delivery:

Based on the Secretariat staff's experience and expertise, combined with input from the consultations, the Notice Program will be focused initially on ensuring survivors know that their IAP records are secure and that they have control of what will happen with their records, and subsequently on providing information regarding archiving their records. The messaging will be culturally sensitive and try to limit any trauma claimants have about revisiting their Indian Residential Schools and/or IAP or ADR experience and any concerns they may have. Care will be taken throughout the Notice Program to respect the privacy and confidentiality of individual claimants.

There will also be on-going support and information available for claimants throughout the first three phases of the distribution phase from RHSP front-line workers. The front-line workers are experienced in addressing a broad spectrum of mental-wellness issues related to the disclosure of childhood abuses. Furthermore, over the past ten years, these front-line workers have

⁶ Between October 2014 and April 2016, the Secretariat tracked the use of interpreters in IAP hearings. During that period, there were 543 requests for an interpreter and of those, the majority was for a Cree dialect, including Eastern James Bay, Swampy, Plains, Woodland, and Algonquin/Montagnais/Cree/Cree-French/Innu-French.

SCHEDULE "B"

provided information, answered questions and explained various processes to IAP claimants mostly in their indigenous language or language they have requested.

As described in greater detail below, the Notice Program will utilize a variety of products, media outlets, and delivery methods to reach claimants in an accessible, effective, culturally-sensitive, and respectful manner. These have been developed through the experience of past notice programs under the IRSSA, analysis completed by Hilsoft, and consultations held with former students, Indigenous organizations, and other stakeholders. This multifaceted approach will also provide notice about record retention and disposition to former students' families and communities, thus ensuring that information can be disseminated as broadly as possible while protecting individuals' confidentiality.

All products will be designed for claimants to be easy to read and understand the information being provided. The products will contain consistent messaging, presented in clear and concise plain language, with an identifiable look, headline, and graphic. The various types of products – and the Notice Program in its entirety – are intended to ensure that claimants are aware of their choices regarding the disposition of their records, and that if they choose to archive their records they are exercising that choice based on informed consent.

If during the course of the Notice Program it is determined that other products may need to be developed to meet evolving needs or address specific issues, that will be done in a manner consistent with the Court-approved Consent Form.

Responding to Inquiries:

Continuing through to 2027, the Secretariat's IAP Information Line, which claimants have been referred to for the past decade, will continue to be available to respond to telephone inquiries regarding the Notice Program.

For the initial two years of the distribution phase, the following resources will also be available to provide information regarding the Notice Program. First, Information Line Liaisons will be earmarked for the AFN, IRC, NTI, and Makivik Corporation, in order to respond to questions about the Notice Program that are directed to those organizations. Second, RHSP front line workers will be available to provide information, assistance and support. Third, the existing NCTR line will be enhanced by one resource person, an Information Line Liaison, to

SCHEDULE "B"

accommodate anticipated increase in information inquiries from claimants interested in learning more about the NCTR directly from the NCTR.⁷

After IAP sunset, the role of the Secretariat's IAP Information Line will transfer to Crawford, the Records Agent, which will answer questions about record storage and disposition and, when necessary, will refer callers to other entities such as the NCTR for follow-up.

The dedicated "Crisis Line" will be maintained and funded by Canada to the necessary capacity through to 2027.

NOTICE SCHEDULE

Preparation Phase Schedule:

Below is a schedule that outlines a timeframe for activities that are necessary and will be completed prior to the launch of the distribution phase. Due to the sensitivity and potential impacts of the notice, the launch of the distribution phase will be in January 2019, after the holiday season to ensure a claimant-centered approach.

ACTIVITY	TIMEFRAME
Draft, design and finalize products	July/August 2018
Translate products	September 2018
Produce videos	September/October 2018
Print products and create packages	September/October 2018
Training Sessions for RHSP – 8 Regions	October 2018 to December 2018 ⁸
Launch Distribution Phase	January 2019

⁷ The NCTR, AFN and 3 Inuit Corporations to provide submissions describing services along with a costing forecast.

⁸ These sessions are scheduled to occur in the fall. The RHSP Coordinator has advised that they do not hold any summer sessions as attendance would be very minimal due to the cultural and traditional activities that occur in Indigenous and Inuit communities during the summer period June 21 to September 21 of each year.

SCHEDULE "B"

Distribution Phase Schedule:

Below is a timeline for distribution phase. Details for each phase follow.

PHASE	TIMEFRAME
Phase 1 – Multi media campaign	January to April 2019
Phase 2 – Mailouts of Packages	January to April 2019
Phase 3 – Local Community Notices	April 2019 to December 2020
Phase 4 – On-going Notice	January 2021 to September 2027

Phase 1 – Multi-Media Campaign (January 2019 to April 2019):

The appearances of the individual notices and media placements may vary within the notice period. Phase 1 will commence in January 2019 for at least a 14-week period. Below is a detailed breakdown of appearance.

a) Indigenous Television Notice

During a four-week period, approximately 750 Television Notices will be broadcast throughout Canada on Indigenous television networks. In addition to running on Aboriginal Peoples Television Network (“APTN”), Notices will also appear on Canadian Broadcasting Corporation (“CBC”) North.

APTN is a national television network featuring Canadian Aboriginal content and available in over 11 million households across the country. According to APTN, 58% of Indigenous People watch APTN National News on a weekly basis, 59% watch APTN movies once a week, and 47% watch traditional and cultural programming on a weekly basis. CBC North broadcasts across the Northwest Territories and Nunavut, with daily newscasts and programming in Inuktitut and Cree.

Notices will appear in a wide variety of program types and in nearly every daypart available, including primetime, early news, late news, daytime, morning early fringe and late night. The schedule includes many of the most popular and highest ranked programs on APTN and CBC North.

A total of four Television Notices will be created and appear in four different languages: English, French, Inuktitut and Cree. These will be 30-second informational announcements in

SCHEDULE "B"

English and 60-seconds in French (longer length due to translation) on APTN and CBC North. Indigenous language spots will also appear in 30- or 60-second formats, depending on the language being spoken.

In addition to the paid television broadcasts, we will send the Indigenous version(s) of the English television spot to CBC television for national broadcast as public service announcement(s) ("PSA"). The English and Inuktitut television spots for regional broadcast in the Nunavut, Northwest Territories, and Nunavik areas will also be sent to CBC.

b) Radio Notice

The Radio Notice will be produced and broadcast in 17 languages/dialects, including: English, French, Quebec Cree, Déné, Ojibway, North Slavey, South Slavey, Denesuline, Tlicho, Gwich'n, South Tutchone, Tlingit, Inuktitut, Innu, Atikamekw, Oji-Cree, and Cree. The Radio Notice will air on each network/station, in accordance with the language(s) of their programming and/or the predominant language(s) used by their listeners. Networks with multiple language programming will receive a higher number of spots, to ensure effective exposure of each version of the Notice. The radio spots will air over a four-week period.

Spots will be broadcast on radio stations within the following Indigenous communications organizations and radio networks:

Organization/Network	Languages
Aboriginal Multi Media Society of Alberta	English, Cree
James Bay Cree Communications Society Network	English, Québec Cree
Missinipi Broadcasting Corp. Network Radio (MBC)	English, Cree, Dene
Native Communications Inc. (NCI-FM)	English, Ojibway, Cree
Native Communications Society of the Western NW	English, Tlicho, North Slavey,
Northern Native Broadcasting Terrace (CFNR-FM -	English
Northern Native Broadcasting Yukon (CHON-FM)	English, Gwich'n, Southern
OKalaKatiget Society (CKOK Radio)	English, Inuktitut
Societe de Communications Atikamekw-Montagnais	Innu, Atikamekw, French
Taqramiut Nipingat Ltd. (TNI)	English, Inuktitut, French
Wawatay Radio Network (WRN)	English, Oji-Cree, Cree

c) Radio PSAs

The Radio Notice will be packaged and distributed to mainstream radio stations as a PSA. The PSA package will include a CD with an audio recording of the Radio Notice (both English and French) as well as a message to the Public Service Director explaining the importance of the

SCHEDULE "B"

Notice and requesting the station air the message. While not measured, PSAs provide an easy and simple way to more widely distribute the Notice.

d) *Print Publication Notices*

Notices will also be placed in mainstream newspapers and local newsletters, in order to increase the reach of the Notice Program particularly among those who reside in urban settings. Notices will appear one time in five different mainstream newspapers across Canada, for a total of five insertions. An approximate five inch by ten inch page unit Summary Notice will be placed in the newspapers.

The prominent Notice positioning negotiated and achieved will help garner more attention from readers. Notices will appear primarily in the Main News section.

Following are the mainstream newspapers where each Notice will appear:

Newspaper	City/Area	Province
<i>Edmonton Sun</i>	Edmonton	Alberta
<i>Saskatoon Star Phoenix</i>	Saskatoon	Saskatchewan
<i>The Globe and Mail</i>	Toronto	Ontario
<i>The National Post</i>	Toronto	Ontario
<i>Vancouver Sun</i>	Vancouver	British Columbia

Notices will also appear, as a full-page unit, in 32 highly targeted Indigenous publications. Indigenous Publications provide local and regional news to a large portion of Indigenous communities. Eight publications which were included in previous notice programs ceased operations and therefore were not included in this Notice Program. These publications include *Deh Cho Drum, The Northerner, northern Journal, Windspeaker, Saskatchewan Sage, Birchback, Alberta Sweetgrass, and Opportunity North*. In replacement, four publications are included which were not in previous iterations of the Notice Programs. These publications are *Le Regional, L'Action, Le Rempart, and Yellowknifer*.

In bilingual publications, multiple Notices will appear, once in English or French and again in the primary Indigenous language(s) of the publication. A total of 40 insertions will appear. The Notice will be produced and appear in six different languages: English, French, Inuktitut, Innuinaqtun, Siglit and Oji-Cree.

SCHEDULE "B"

Following are the Indigenous publications where each Notice will appear:

Publication	Coverage	Ad Language
<i>Alberta Native News</i>	Alberta	English
<i>Anishinabek News</i>	Ontario	English
<i>Eagle Feather News</i>	Saskatchewan	English
<i>Eastern Door</i>	Québec	English
<i>Elsipogtogeoei</i>	New Brunswick	English
<i>First Nations Drum</i>	National	English
<i>First Nations Voice</i>	National	English
<i>Grassroots News</i>	Manitoba	English
<i>Ha-Shilth-Sa</i>	British Columbia	English
<i>Inuvik Drum</i>	Northwest Territories	English
<i>Kivalliq News</i>	Nunavut	English
<i>Kivalliq News</i>	Nunavut	Inuktitut
<i>L'Action</i>	Ontario	French
<i>L'Aquilon</i>	Northwest Territories	French
<i>Le Journal Innuvelle</i>	Québec	French
<i>Le Metropolitain</i>	Ontario	French
<i>Le Regional</i>	Ontario	French
<i>Le Rempart</i>	Ontario	French
<i>L'horizon</i>	Ontario	English
<i>Mi'kmaq-Maliseet Nations News</i>	Nova Scotia	English
<i>Native Journal</i>	National	English
<i>Nunatsiaq News</i>	Northwest Territories	English
<i>Nunatsiaq News</i>	Northwest Territories	Inuktitut
<i>Nunavut News/North</i>	Nunavut	English
<i>Nunavut News/North</i>	Nunavut	Inuktitut
<i>Nunavut News/North</i>	Nunavut	Innuinaqtun
<i>NWT News/North</i>	Northwest Territories	English
<i>NWT News/North</i>	Northwest Territories	Inuktitut
<i>NWT News/North</i>	Northwest Territories	Innuinaqtun
<i>Prince Albert Grand Council Tribune</i>	Saskatchewan	English
<i>Secwepemc News</i>	British Columbia	English
<i>The Chief</i>	British Columbia	English
<i>The Hay River Hub</i>	Northwest Territories	English
<i>The Nation</i>	Québec/Ontario	English
<i>Turtle Island News</i>	Ontario	English
<i>Tusaayaksat</i>	Northwest Territories	English
<i>Tusaayaksat</i>	Northwest Territories	Siglit
<i>Wawatay News</i>	Ontario	English
<i>Wawatay News</i>	Ontario	Oji-Cree
<i>Yellowknifer</i>	Northwest Territories	English

e) Online Notice

The online portion of the Notice Program includes banner advertisements, which will run for a 30-day period.

The banner advertisements will run on a rotating basis on the following websites:

- FirstNationsVoice.com
- FirstNationsDrum.com
- WawatayNews.ca
- WindSpeaker.com
- AlbertaNativeNews.com
- AnishinabekNews.ca
- NunatsiaqOnline.ca
- NORJ.ca
- Grassrootsnewsmb.ca

The banner will appear in English on the selected websites with the exception of www.WawatayNews.ca, which it will appear in both English and Oji-Cree.

Banner ads will also appear on Facebook.com targeting individuals in Canada whose interests include "Indigenous Rights", "Indigenous Music", "Inuit Art", "Local Natives", "Traditional Knowledge", and "Aboriginal Titles".

Further, the dedicated website containing neutral comprehensive information about the options available to claimants regarding their IAP records will be available.

The Secretariat will also use a number of social media channels including Twitter, Facebook and Instagram to share information about the Notice Program. These will direct claimants, family members and others to the dedicated web site, the NCTR website, or other on-line locations where they can find relevant information about their IAP records.

f) Videos

Three "stand-alone" videos will be made to provide a range of information on the Settlement Agreement, IAP/ADR Records, and the NCTR. The use of three videos will provide flexibility to viewers enabling them to obtain information on all these subjects, or to select a particular topic

SCHEDULE "B"

about which they wish to learn more. The videos will be included in the information packages (described below) on USB keys, will be made available in DVD format, and will also be accessible on You Tube with a link on the dedicated website.

Video 1 – “Overview of the Settlement Agreement”: to provide claimants with information on the difference between the various components of the Settlement Agreement

Video 2 – “My Records, My Choice”: to inform claimants about their choices regarding the retention and archiving of their ADR/IAP records (The script for this video to conform to Court-approved Consent Form)

Video 3 – “National Centre for Truth and Reconciliation”: to provide information on the NCTR (The script for this video to conform to Court-approved Consent Form)

g) “Earned Media” Activities

Earned media activities are means of obtaining coverage in credible new sources that do not involve the purchase of paid advertising. These would include the use of news releases, media advisories, personal contact with reporters, and other activities designed to encourage stories to be written about the Notice Program and the options available for claimants regarding their IAP and ADR records. As part of this process, an Information news release conforming to the Court-approved Consent Form will be issued to provide a fair and neutral statement of the Notice Program and encourage media interest.

Phase 2 – Mail-outs of Information Packages (January 2019 to April 2019):

Phase 2 of the distribution phase will coincide with Phase 1. After the initial mail-outs are complete, on-going mail-outs will continue throughout the first 2 years of the distribution phase.

Information packages will be mailed to over 1,200 organizations including First Nation, Métis, and Inuit communities; Indigenous Organizations that work with claimants; Friendship Centres; Federal and Provincial Correctional Centres; Tribal Councils; and other partners and stakeholders. These packages will also include a USB stick with videos and with printable notice products such as posters, pamphlets, post cards, and forms on which a claimant can request a copy of his/her Retained Documents and/or have them archived at the NCTR. The material will be available in English, French, Inuktitut, and other Indigenous languages. In partnership with

SCHEDULE "B"

the Secretariat, these various groups will then disseminate the information more broadly throughout communities that will help refer claimants to various resources should they want more information.

Organizations can also provide links on their websites to the dedicated website and NCTR website for those claimants wanting more information

The Secretariat will also provide information package to legal firms that have represented claimants so they can refer to available resources should the claimant reach out to them. However, this plan does not envision claimant counsel reaching out to claimants.

Phase 3 – Community Radio stations, local newsletters and websites (April 2019 to December 2020):

The Secretariat staff will reach out and partner with Indigenous communities across Canada to provide notice on local radio stations, local newsletters and links on their websites. These notices will be in the language of the community media type.

Phase 4 – Ongoing Information for the Duration of the Record Retention Period (January 2021 to December 2027):

After the initial two years of the distribution phase, the Secretariat will continue on-going notice through the dedicated website until sunset. Preparations will be completed to transfer to Crawford, and will occur upon the Secretariat sunset date, to be determined at a later date.

RECORDS DISPOSITION ESTIMATED BUDGET INCLUDING NOTICE PROGRAM COSTS

Assumptions for estimates:

- 1 The Court Order will be finalized in 2018/2019
- 2 The reach and goal of the Notice Program is to notify claimants of their rights to archive at the NCTR, request a copy of their records or do nothing
- 3 Due to the fact that claimants can make a choice by doing nothing, the success of the notice program cannot be measured on how many Claimants ask for a copy of their records or request to archive their record
- 4 Claimants knowledge that they have the right to a copy of their claim will increase therefore there will an increase in costs from claimants asking that they receive a copy of their records
- 5 Forecasted budgets in variable areas could increase or decrease depending on how many requests are received
- 6 Estimates of 30% budget is broken down to 15% of requests received in the first 3 years (2018/2019 to 2020/2021) and 15% of requests received over the remaining 7 years (2021/2022 to 2027/2028)
- 7 Estimates of 15% budget is broken down to 10% of requests received in the first 3 years (2018/2019 to 2020/2021) and 5% of requests received over the remaining 7 years (2021/2022 to 2027/2028)

SCHEDULE "C"

Costing estimates for IAP/ADR Records Disposition including the Notice Program

1 Notice Program		20%	15%	10%	5%	Fixed or Variable
A) Multi Media (Hilsoft) (2018-2019)		Estimated Costs				Fixed or Variable
<i>i</i>	Indigenous Newspapers	\$140,000	\$140,000	\$140,000	\$140,000	Fixed
<i>ii</i>	Mainstream Newspapers	\$66,000	\$66,000	\$66,000	\$66,000	Fixed
<i>iii</i>	Radio (Indigenous)	\$110,000	\$110,000	\$110,000	\$110,000	Fixed
<i>iv</i>	Radio (PSAs)	\$11,000	\$11,000	\$11,000	\$11,000	Fixed
<i>v</i>	Indigenous Banner Ads	\$8,500	\$8,500	\$8,500	\$8,500	Fixed
<i>vi</i>	Television (CBC North and APTN)	\$120,000	\$120,000	\$120,000	\$120,000	Fixed
<i>vii</i>	Production Expenses - includes video and printing (see NCTR submission for NCTR video and pamphlet)	\$275,000	\$275,000	\$275,000	\$275,000	Fixed
<i>viii</i>	Professional Services	\$80,000	\$80,000	\$80,000	\$80,000	Fixed
	Subtotal	\$810,500	\$810,500	\$810,500	\$810,500	
B) IRSAS and others (2018/19 to 2019/20 - includes 15 months of 2 year notice program)		Estimated Costs				Fixed or Variable
<i>i</i>	Project Administration	\$430,000	\$430,000	\$430,000	\$430,000	Fixed
<i>ii</i>	Notice Development (products, consent, video etc.)	\$651,000	\$651,000	\$651,000	\$651,000	Fixed
<i>iii</i>	Training sessions with RHSP meetings - includes 2 IRSAS staff (travel)	\$20,000	\$20,000	\$20,000	\$20,000	Fixed
<i>iv</i>	Information Packages (Distribution) and resource package for front-line workers	\$100,000	\$100,000	\$100,000	\$100,000	Fixed
	Resource line liaison (Other Parties - NCTR, AFN, IRC, Makavik, NTI - See Party Submissions) Costs also to include					
<i>v</i>	travel for training session	-	-	-	-	n/a
<i>vi</i>	Indigeous Services Canada Resolution Health Support Program Services (RHSP)	-	-	-	-	n/a
	Subtotal	\$1,201,000	\$1,201,000	\$1,201,000	\$1,201,000	
C) IRSAS and others (includes costing until December 2020 for Notice Program)		Estimated Costs				Fixed or Variable
<i>i</i>	Project Admin - includes transition preparation to new records trustee	\$200,000	\$200,000	\$200,000	\$200,000	Fixed
<i>ii</i>	Resource line liaison (Other Parties - NCTR, AFN, IRC, Makavik, NTI - See Party Submissions)	-	-	-	-	
<i>iii</i>	Indigeous Services Canada Resolution Health Support Program Services (RHSP)	-	-	-	-	
	Subtotal	\$200,000	\$200,000	\$200,000	\$200,000	
	Total Notice Program Costs	\$2,211,500	\$2,211,500	\$2,211,500	\$2,211,500	
2 RECORDS ADMINISTRATION (2018-2021)		20%	15%	10%	5%	Fixed or Variable
A) IRSAS Costs		Estimated Costs (20% first 3 years)	Estimated Costs (15% first 3 years)	Estimated Costs (10% first 3 years)	Estimated Costs (5% first 3 years)	Fixed or Variable
<i>i</i>	Project Administration	\$279,000	\$279,000	\$279,000	\$279,000	Fixed
<i>ii</i>	Processing Consent forms	\$372,000	\$372,000	\$372,000	\$372,000	Fixed
<i>iii</i>	Transcription	\$640,000	\$480,000	\$320,000	\$160,000	Variable
<i>iv</i>	File Storage	\$60,000	\$60,000	\$60,000	\$60,000	Fixed
<i>v</i>	Electronic creation and file transfer and Destruction	\$1,146,000	\$1,146,000	\$1,146,000	\$1,146,000	Fixed
<i>vi</i>	NCTR resource for processing records (see NCTR submission)	-	-	-	-	n/a
	Subtotal	\$2,497,000	\$2,337,000	\$2,177,000	\$2,017,000	
B) CRAWFORD Costs		Estimated Costs (20% first 3 years)	Estimated Costs (15% first 3 years)	Estimated Costs (10% first 3 years)	Estimated Costs (5% first 3 years)	Fixed or Variable

SCHEDULE "C"

<i>i</i>	Audio Redaction (including Quality Control)	\$2,766,286	\$2,074,682	\$1,383,077	\$691,605	Variable
<i>ii</i>	Non-Audio Redaction (Including Quality Control)	\$1,127,490	\$845,600	\$563,710	\$281,890	Variable
<i>iii</i>	Project Management	\$510,000	\$487,500	\$465,000	\$442,500	Variable
<i>iv</i>	IT systems (including redaction, server and EDI)	\$269,578	\$269,578	\$269,578	\$269,578	Fixed
<i>v</i>	Information line Help Desk (agents and supervisor)	\$585,000	\$585,000	\$585,000	\$585,000	Fixed
<i>vi</i>	Other (reporting, training, legal services, translation)	\$54,500	\$54,500	\$54,500	\$54,500	Fixed
Subtotal		\$5,312,854	\$4,316,860	\$3,320,865	\$2,325,073	

3 RECORDS ADMINISTRATION (2021- 2028)	20%	15%	10%	5%	Fixed or Variable
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	Estimated Costs (20% over remaining 7 years)	Estimated Costs (15% over remaining 7 years)	Estimated Costs (10% over remaining 7 years)	Estimated Costs (5% over remaining 7 years)	Fixed or Variable
A) CRAWFORD Costs					
<i>i</i> Audio Redaction (including Quality Control)	\$2,835,156	\$2,126,334	\$1,417,511	\$708,823	Variable
<i>ii</i> Non-Audio Redaction (including Quality Control)	\$1,127,490	\$845,600	\$563,710	\$281,890	Variable
<i>iii</i> Project Management	\$900,000	\$870,000	\$840,000	\$795,000	Variable
<i>iv</i> IT systems (including redaction, server and EDI)	\$313,778	\$313,778	\$313,778	\$313,778	Fixed
<i>v</i> Information line Help Desk (agents and supervisor)	\$1,118,250	\$1,118,250	\$1,188,250	\$1,188,250	Fixed
<i>vi</i> Document handling (transfer costs including claimant confirmation letters and destruction)	\$568,575	\$555,675	\$542,775	\$529,875	Variable
<i>vii</i> Other (reporting, training, legal services, translation, IAP information phone line fee)	\$48,825	\$48,825	\$48,825	\$48,825	Fixed
Subtotal	\$6,912,074	\$5,878,462	\$4,914,849	\$3,866,441	

	Estimated Costs (20% over remaining 7 years)	Estimated Costs (15% over remaining 7 years)	Estimated Costs (10% over remaining 7 years)	Estimated Costs (5% over remaining 7 years)	Fixed or Variable
B) NCTR Costs					
<i>i</i> NCTR resource for processing records (see NCTR submission)	-	-	-	-	n/a
Total Administration of records	\$14,721,928	\$12,532,321	\$10,412,714	\$8,208,513	
Total Costs for Notice Program and administration of records	\$16,933,428	\$14,743,821	\$12,624,214	\$10,420,013	

Based on Crawford costing received on April 30th, 2018 and Hilsoft costing received on April 26th, 2018

CITATION: Fontaine v. Canada (Attorney General), 2018 ONSC 4179
COURT FILE NO.: 00-CV-192059
DATE: 20180704

**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, et al.

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA et
al.

Defendants

DIRECTION

Perell, J.

Released: July 4, 2018