

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH  
IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF  
CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME  
MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S  
MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH, THE BAPTIST  
CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL  
SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA  
IMPACT NORTH MINISTRIES OF THE COMPANY FOR THE  
PROPAGATION OF THE GOSPEL IN NEW ENGLAND, (also known as THE  
NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE  
DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE  
PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF  
THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE  
MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE  
MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA  
(ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF  
CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA,  
THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC,

THE SYNOD OF THE DIOCESE OF ATHABASCA, 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 JESUSMARIE, 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 MACKENZIEFORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

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

## **REQUEST FOR DIRECTIONS**

### **I. PARTY REQUESTING DIRECTIONS**

1. This request for directions is brought by the Chief Adjudicator of the Indian Residential Schools Independent Assessment Process (“IAP”).

### **II. THE MATTER IN ISSUE**

2. The Chief Adjudicator seeks this Honourable Court’s guidance and direction with regard to the proper disposition and appropriate privacy controls for the evidence, transcripts and decisions of the IAP established pursuant to the Indian Residential Schools Settlement Agreement (the “Settlement Agreement”).

### **III. RELIEF REQUESTED**

3. The Chief Adjudicator respectfully requests the guidance and direction of this Honourable Court with regard to the following issues (the “Issues”) related to the records from the IAP established pursuant to the Settlement Agreement:

(1) Upon completion of the IAP:

- a. What IAP records are to be retained, and for how long?
- b. What IAP records are to be disposed of, when, and how?

- (2) Regarding the IAP records which are to be retained:
  - a. To whom is access to be provided?
  - b. What closed period, if any, is to be enforced?
  - c. What redactions, if any, are to be made?
  - d. What access restrictions, if any, are to be in place?

#### **IV. CONTEXT OF REQUEST FOR DIRECTIONS**

4. As a component of the Settlement Agreement, the parties agreed to establish the IAP.
5. The IAP is a claimant-centered, non-adversarial out of court process for the resolution of claims of sexual abuse, serious physical abuse, and other wrongful acts suffered at Indian Residential Schools. Former students or residents of Residential Schools (the “Claimants”) may apply to the IAP in order to demonstrate that they experienced certain enumerated forms of abuse. Claims may also be brought by individuals who were abused while they were on the premises for an authorized school activity, even if they were not students at that particular facility.
6. As outlined in Schedule D of the Settlement Agreement, the IAP uses a “uniform inquisitorial process for all claims to assess credibility, to determine which allegations are proven and result in compensation, to set compensation according to the Compensation Rules, and to determine actual income loss claims.”

#### ***Overview of Documents in the Possession of the Secretariat***

7. The Secretariat is the administrative body established to support the Chief Adjudicator. The Secretariat functions as the registry of the IAP and retains possession of the documents provided to and generated by the IAP.
8. From September 19, 2007 until March 31, 2013, the IAP received 37,716 applications. Out of these, 20,413 have been resolved, and 17,303 remain in progress. To date, a total of \$1.951-billion in compensation has been paid out, including awards, legal fees and disbursements. 16,700 hearings have been held.

9. Generally speaking, the documents in the possession of the Secretariat fall into six categories:

- (a) The Applications submitted by the Claimants to initiate the process.
- (b) The witness statements submitted to the Secretariat;
- (c) The documentary evidence produced by the parties;
- (d) The transcripts of the hearings in the IAP;
- (e) Expert medical reports generated in relation to the Claimants; and
- (f) The Decisions of the Adjudicators.

***Privacy interest of the Parties and Witnesses***

10. The parties and witnesses at the IAP were provided with assurances of privacy and confidentiality regarding the documents in the possession of the Secretariat. The privacy and confidentiality assurances were provided in a variety of ways, including:

- (a) In the text of the Settlement Agreement itself;
- (b) In the Application Form and Guide to the Independent Assessment Process Application;
- (c) In the Confidentiality Agreements that parties, witnesses and others in attendance at hearings were required to sign;
- (d) Orally by the adjudicators presiding over the hearings.

11. The Chief Adjudicator and the Secretariat require the guidance and direction of this Honourable Court regarding the Issues in relation to the IAP record.

**V. MANNER OF HEARING**

12. The Chief Adjudicator requests that this Honourable Court convene an oral hearing to address the Issues listed in paragraph 3 above.

13. The Chief Adjudicator further requests that this Honourable Court appoint counsel as *amicus curiae* to represent the interests of the Claimants on this Request for Directions.

October 11, 2013

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AND TO: **Registrar of this Honourable Court**

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

Court File No. 00-CV-192059

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT TORONTO

**REQUEST FOR DIRECTIONS**

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