



TRUTH AND RECONCILIATION COMMISSION MAKES REFERENCE TO COURT

December 3, 2012 – On December 20 and 21, 2012, the Truth and Reconciliation Commission (TRC) will make a reference to the Ontario Superior Court of Justice to interpret the TRC's mandate regarding the collection of documents from the Government of Canada under the Indian Residential Schools Settlement Agreement (IRSSA).

“Despite the concerns outlined in our [Interim Report](#), our document collection challenges remain largely unresolved,” said TRC Chair Justice Murray Sinclair. “The Commission is taking this step very reluctantly and with a sense that it has been left with no alternative.”

He said that with very limited exceptions, the TRC's mandate requires it to collect all documents relevant to the Indian Residential Schools that are in the possession or control of the Government of Canada, and to make them available to the people of Canada. “With the Commission wrapping up in a year and a half, it is essential that this fundamental issue be resolved without delay.”

TRC counsel Julian Falconer explained that to date, Canada has released a batch of documents from a pre-existing litigation database, but there are many Government departments that have yet to fulfil their production obligations. Furthermore, the larger issue of archival records housed at Library and Archives Canada (LAC) remains unresolved.

“What is at stake here is control over history,” Falconer said. “While in the last 12 months, Canada has produced approximately one million documents, with a century and a half of residential school operations, many, many more documents remain undisclosed. Put simply, a “half loaf” in the form of one million documents isn't going to do it. Canada's complete and unreserved compliance with its obligations under the Settlement Agreement should be the standard applied here. Of real concern is that Canada has declined to identify and organize for production to the TRC all Residential School documents that are in federal archives (LAC). Canada's honouring of the Settlement Agreement isn't only important to Survivors, but to Canadians across the country. Tragically, the Commission is running out of time to protect these issues.”

Intervener status in the case has been granted to the Assembly of First Nations, Inuit representatives, and the University of Manitoba.

The Truth and Reconciliation Commission was established as a result of the IRSSA. The Settlement Agreement imposes on the TRC the primary task of truth-telling about the harms and injustices experienced by Aboriginal peoples during the 150-year history of the residential schools, and to guide and inspire a process of reconciliation and renewed relationships based on mutual understanding and respect.

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Relevant Sections of Schedule “N” of the Indian Residential Schools Settlement Agreement:

11. Access to Relevant Information

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

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

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

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

12. National Research Centre

A research centre shall be established, in a manner and to the extent that the Commission’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 the term of its mandate, the Commission shall ensure that all materials created or received pursuant to this mandate shall be preserved and archived with a purpose and tradition in keeping with the objectives and spirit of the Commission’s work. The Commission 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 Commission concerning the continued confidentiality of records, all materials collected through this process should be accessible to the public.



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