

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

-and-

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

METHODIST CHURCH OF CANADA (ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINSTER, THE 2 SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYANCITHE, LES SOEURS DE JESUSMARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA 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 DIRECTION

1. PARTY REQUESTING DIRECTIONS

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

2. THE MATTER IN ISSUE

By way of overview, the Commission seeks this Honourable Court's guidance through judicial interpretation of express terms set out in the Indian Residential Schools Settlement Agreement (the “Settlement Agreement”) on questions relating to the Commission's document collection mandate and the corresponding document production obligations of the Defendant Canada.

3. RELIEF REQUESTED

The Commission respectfully requests this Honourable Court to determine the following issues:

- (A) What are Canada's obligations under the Settlement Agreement with respect to documents in their possession or control regarding an investigation by the Ontario Provincial Police into abuse at St. Anne's residential school in Fort Albany?
- (B) Such further and other relief as counsel may advise and this Honourable Court may permit.

4. RELIEF IS OPPOSED

Canada opposes the relief sought.

5. THE POSITION OF THE PARTIES

The Commission's Position

1. Schedule "N" of the Settlement Agreement provided for the creation of the Truth and Reconciliation Commission of Canada. The mandate of the Commission is *inter alia* as follows:
 - (a) To guide a process of reconciliation, including the conduct of national events, the support of community events and commemoration projects;
 - (b) To "identify sources and create as complete an historical record as possible of the IRS system and legacy" to be preserved and made accessible to the public for future study and use.
 - (c) To establish a National Research Centre ("NRC"), to ensure preservation of the Commission's archives, with access for former students, their families and communities, the general public, researchers and educators;

- (d) To "produce and submit to the Parties of the Agreement a report including recommendations to the Government of Canada concerning the IRS system and experience including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of the IRS system (including systemic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools"¹; and,
- (e) To "make recommendations for such further measures as it considers necessary for the fulfillment of the Truth and Reconciliation Mandate and goals"².

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

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

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

3. The Commission takes the position that the materials relating to the OPP investigation into abuse at St. Anne's school fall within Canada's production obligations under Schedule "N". In particular, Canada is required to produce all relevant materials in its "possession or control". The only exception to Canada's general obligation to produce all relevant documents is in respect of materials subject to solicitor client privilege. The materials sought by the Commission have been acknowledged to be in Canada's possession. No claim of solicitor client privilege has been advanced in respect of these materials.

¹ Settlement Agreement, Schedule "N" para. 1(f)

² Settlement Agreement, Schedule "N", fn.3

4. The Commission further takes the position that these materials are relevant to the mandate of the Commission because they document a 5-year investigation of serious sexual and physical abuse of former students at the St-Anne's residential school, which resulted in *Criminal Code* convictions against certain offenders.
5. Further, Schedule "N" specifically provides for situations in which the privacy interests of affected individuals are implicated. In such circumstances, the Commission is to be provided with the documents, and thereafter is obligated to comply with applicable privacy legislation. Schedule "N" does not authorize Canada to withhold materials from the Commission based on privacy legislation.
6. The Commission has used its best efforts to resolve the disputes regarding the provision of documents. Justice Sinclair, Chair of the Commission, wrote to the RCMP Commissioner, AANDC Deputy Minister and Deputy Minister of Justice Canada on May 2, 2012 asking for, among other things, all records relating to investigations and prosecutions and civil proceedings concerning all Indian Residential Schools. Canada did not reply to this aspect of the May 2, 2012 letter. With respect to the St. Anne's residential school specifically, by correspondence of August 27, 2013 and September 11, 2013 the Commission specifically requested these materials. Canada refused this request by letter of September 12, 2013.
7. The Commission has a serious interest in resolving these issues in a timely fashion, as the Commission is required to complete its mandate by July 1, 2014.
8. The Commission understands that an RFD concerning the same records has been scheduled to be heard on December 17, 2013. The Commission respectfully requests that its RFD be heard at the same time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF OCTOBER, 2013

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LARRY PHILIP FONTAINE et al.
Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA et al.
Defendants

Court File No. 00-CV-192059

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

REQUEST FOR DIRECTION

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