



Fate of heart wrenching residential school abuse stories hangs in balance

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The Canadian Press

TORONTO – The question of what to do with records of deeply personal, often heart-wrenching testimony from thousands of survivors of Indian residential schools who sought compensation for sexual and other abuse lands on the doorstep of Ontario’s top court Tuesday.

On one side of the two-day hearing are those who argue a lower court judge was right to order the material destroyed in due course. On the other are those who believe it should be kept in perpetuity under appropriate lock and key.

Justice Murray Sinclair, who headed the Truth and Reconciliation Commission, said his concern is that the stories of what went on in the schools will be lost forever if the “rich trove” of documents is destroyed as ordered.

“In a few generations, that will allow people to be able to deny the validity of the stories we have heard,” Sinclair told The Canadian Press from Vancouver. “Right now there are deniers of those facts.”

The records in question come from compensation hearings that arose out of the settlement of a class-action suit against the government and others related to the notorious church-run residential schools.

Their accounts under the independent assessment process – separate from thousands of others who spoke publicly to Sinclair’s judicial commission – were intended to be confidential but the signatories to the class-action settlement never specified what would happen to records of the accounts. Claimants were supposed to have been given a choice at the start of their hearings but weren’t.

The claims process turned up the “most significant” stories of the abuse that occurred and they may not have been heard elsewhere, Sinclair said.

“That the survivors testified in front of adjudicators and the adjudicators believed them and awarded compensation is an important part of Canada’s national memory.”

The head of the claims-adjudication process, Dan Shapiro, with backing from a privacy expert, argued the only way to ensure confidentiality and avoid revictimizing survivors was to destroy the documents once their claims had been finalized.

“All parties agree that the records...contain the most highly sensitive personal information of claimants, alleged perpetrators, witnesses and others,” Shapiro’s lawyers say in their appeal factum.



“The uncontradicted evidence of claimants and church participants is that they agreed to participate in the (adjudication process) based on the understanding that, with limited exceptions, records produced and prepared...were to be used and disclosed for that purpose alone.”

The competing claims and counter-claims left Ontario Superior Court Justice Paul Perell with an almost impossible task.

In August last year, Perell ruled the testimony should be kept for 15 years then destroyed. The intervening years should be used to see whether those involved might agree to have their records transferred to a new national archive, he said. If they did, the material would have to be redacted to protect the abusers or others.

The commission calls the ruling “unworkable” on the grounds that there would be no way to ask the more than 30,000 claimant survivors what they would want to see happen to their information _ especially given a lack of resources to do so.

For its part, Ottawa argues Perell was wrong to conclude the records were not “government records.” The federal government argues it should keep any material deemed to be of historical significance under regular archiving laws, which include proper privacy safeguards.

In all, the Court of Appeal will have to sort out three appeals and four cross-appeals stemming from Perell’s ruling.

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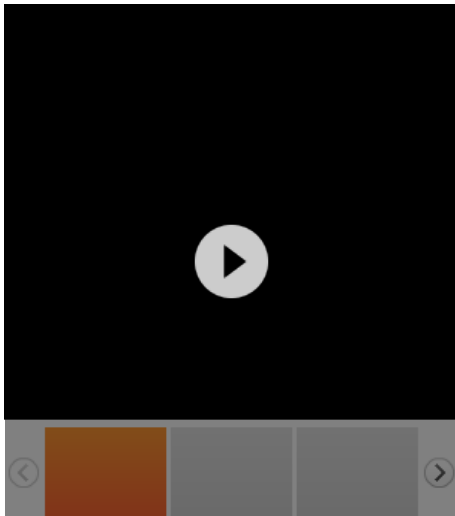


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