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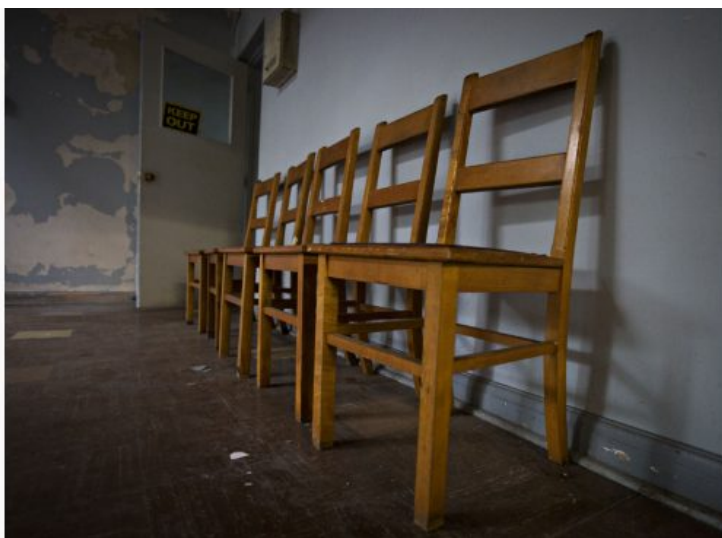
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News / Canada

Ontario court to decide if evidence from residential school survivors should be destroyed

Ontario's top court has begun hearings into one of the dilemmas of the tragic story of Indian residential school abuse. Some feel victims' privacy should be protected; others fear destroying the evidence will foster denial in the future.

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A row of chairs at the former Mohawk Institute Indian Residential School in Brantford.

By: [Jacques Gallant](#) Staff Reporter, Published on Tue Oct 27 2015

Ontario's top court has been tasked with deciding whether evidence given by thousands of Indian residential school survivors who sought compensation for sexual and other abuse should be maintained for future generations, or destroyed.

A two-day hearing kicked off on Tuesday before a three-judge panel of the Court of Appeal. Multiple parties, including the federal government and a number of religious entities, are involved in the process, underscoring the complexity of the case. There are those who wish to see the transcripts and other records preserved, and those who want [upheld a lower court judge's 2014 decision](#) to have them eventually destroyed.

At issue are records of testimony from nearly 38,000 survivors, produced in emotional hearings over the last several years as part of the Indian residential schools claims process. Advocates say the records paint an important picture of a painful chapter of Canadian history that may vanish if the appeal court upholds the 2014 ruling.

The chief adjudicator of the Independent Assessment Process (IAP), Dan Shapiro, has argued the complete destruction of recordings, transcripts and decisions is the only way to protect privacy.

The Truth and Reconciliation Commission, which heard from survivors in public sessions across the country and also collected documents from government and churches, is arguing to keep some of the records in a permanent archive. A likely location would be the National Research Centre for Truth and Reconciliation in Winnipeg.

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Ottawa, meanwhile, has argued that IAP records are government records. That would mean that a record could be released 20 years after those identified in it have died, according to the IAP.

Last year, Toronto Superior Court Justice Paul Perell ruled that the records could be destroyed after a 15-year holding period to allow for notification to survivors who may choose to maintain their own records in an archive. That ruling is now the subject of this week's appeal.

[Michael Cachagee](#), a 76-year-old Ontario residential school survivor who participated in the claims process, told the Star that all records should be preserved, and also pointed out that notification could be difficult as some survivors have since died.

"When you go back and look at history, who really makes the decision on what is pertinent and what isn't pertinent? Once history becomes malleable, then is it history?" he said. "If I was asked (about preserving his records), I'd say keep it, because it's part of my history and it happened to me. But is it really my history or is it the history of what Canada did to me and to so many others?"

In a factum filed with the court, Shapiro's lawyers have outlined several parts of Perell's decision with which Shapiro disagrees. He is arguing that the 15-year holding period should be brought down to two years, and that audio recordings of testimony should not be maintained.

"The history of the residential schools is one of terrible betrayal," says the factum. "The (Indian Residential School Settlement Agreement), crafted by the parties, adopts a model of reconciliation that compensates survivors without requiring them to publicly share what happened to them. It is the survivor's choice — and no one else's — whether to share these painful and intimate details, or to forget and have forgotten."

Justice Murray Sinclair, who headed the Truth and Reconciliation Commission, told The Canadian Press this week ahead of the appeal that he's concerned that the survivors' stories will be lost forever.

"In a few generations, that will allow people to be able to deny the validity of the stories we have heard," he said. "Right now there are deniers of those facts."

Even if the records are maintained, it remains to be seen whether they would be accessible to the public. The director of the National Research Centre for Truth and Reconciliation, Ry Moran, told the Star last year that the majority-aboriginal board of governors, assisted by a committee of survivors from across the country, would advise on how to handle the collection.

A sticking point in all of this is that claimants were apparently never asked at the beginning of the claims process whether they wanted their records released.

"The consent should have been built in early on, and there should have been steps where people could opt in or out," Kevin Walby, associate professor of criminal justice at the University of Winnipeg, told the Star.

"I do think that there's significant value in the records for future generations, not just for researchers who might want to analyze these testimonies in various ways, but for the communities themselves, for artists, for journalists, for people in other countries who want to understand the history of Canada."

With files from Tim Alamenciak and The Canadian Press

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