

COURT OF APPEAL FOR ONTARIO

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, 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 SMOKEDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE

Plaintiffs/
Respondents in Appeals

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 IN 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, 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 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-HYACINTHE AND INSTITUT DES SOEURS DE SAINT-JOSEPH DE ST-HYACINTHE, LES SOEURS DE JESUS-MARIE, 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, 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 MACKENZIE - FORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants/
Appellants and Respondents in Appeal and Cross-Appeals
(22 Catholic Entities as underlined and as in the Attached Appendix "A")
and

PRIVACY COMMISSIONER OF CANADA

Intervener

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

**UPDATED REPLY FACTUM OF THE RESPONDENTS TO CROSS-APPEALS,
THE TWENTY-TWO CATHOLIC ENTITIES as listed in Appendix "A" attached
hereto (with Reference to the Joint Compendium of Documents and Brief of
Authorities)**



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PART I - INTRODUCTION AND OVERVIEW

1. This Factum is submitted on behalf the Twenty-Two (22) Catholic Entities as listed in **Appendix “A”** attached hereto (collectively, the **“22 Catholic Entities”**) who are all parties to the Indian Residential Schools Settlement Agreement signed May 8, 2006 (the **“IRSSA”**), in response to the Cross-Appeals filed in these proceedings, by: (a) the Attorney General of Canada (**“Canada”**); (b) Independent Counsel; (c) the Truth and Reconciliation Commission of Canada (the **“TRC”**); and (d) the National Centre for Truth and Reconciliation (**“NCTR”**) (at times, collectively referred to as the **“Cross-Appeals”**).

2. The 22 Catholic Entities (as Appellants) in Court of Appeal File No.: 59320, appealed certain terms of the Reasons for Decision of the learned Judge, the Honourable Mr. Justice Perell, dated and released on August 6, 2014 (the **“Reasons for Decision”**), and entered February 10, 2015 (the **“Order”**) (the **“Appeal of the 22 Catholic Entities”**), namely, that: (a) IAP Redacted Documents (as defined in the Order) may be archived at the NCTR with the redaction of personal information about alleged perpetrators or other affected parties (collectively, the **“Alleged Perpetrators”**), and with the consent of the claimant (the **“Claimant”**); and (b) the notice program (as described in the Order), be undertaken in order to advise Claimants of their choice to transfer certain of the IAP Redacted Documents to the NCTR.

3. The documents generated under the Independent Assessment Process (the **“IAP Process”**) established pursuant to the terms of the IRSSA (the **“IAP Records”**) contain highly personal, confidential and sensitive information. The TRC, NCTR and

Canada have framed one of the central appeal issues involved in their respective Cross-Appeals as a determination of whether the IAP Records are government records such that they are subject to Canada's legislative regime for the management of such documents. This Honourable Court is therefore being asked to make such a determination on the basis of highly technical and legal reasoning based on the legal concept of who "controls" the IAP Records.

4. With respect, the 22 Catholic Entities submit that the issue as to whether or not the IAP Records are "controlled" by the Court, Canada or a separate entity is, for the purposes of the Cross-Appeals, a mischaracterization of the critical and substantial issues that exist in relation to the Cross-Appeals. Indeed, the 22 Catholic Entities submit that the more relevant and fundamental issue to be addressed in these Cross-Appeals involves the reasonable expectation of privacy and confidentiality that should be afforded to all affected individuals in the IAP Process and the deprivation of privacy and confidentiality which would be occasioned by the Order. These privacy and confidentiality protections were expressly or impliedly provided for pursuant to the terms of the IRSSA establishing confidentiality and destruction of the IAP Records.

5. The legal positions taken by the TRC, the NCTR and Canada that the IAP Records are subject to Canada's legislative regime for management of such documents, is based on the assumption of Canada "controls" the IAP Records. Such a position, in the opinion of the 22 Catholic Entities, undermines the express and implied provisions of the IRSSA establishing confidentiality and destruction of the IAP Records. Instead, the 22 Catholic Entities submit that it is imperative to consider the nature of the IAP Process itself as established by the terms of the agreement the parties reached at the time of

entering in to the IRSSA. Once the nature of the IAP Process and the terms of the IRSSA are considered, it becomes quickly apparent that the IAP Records involve extremely sensitive and confidential information and that disclosure of the IAP Records into a public archive for archival, historical or management purposes would involve a grave violation of the privacy of those involved in the IAP Process and a mischaracterization of the nature and purpose of the IAP Process.

6. Fundamentally, the Cross-Appeals and the Appeal of the 22 Catholic Entities are about maintaining the balance the parties agreed to in the IRSSA. In order to provide former residential schools students with a timely, sensitive and efficacious claims process, the IAP Process was intentionally designed to avoid providing the procedural fairness that Alleged Perpetrators would ordinarily deserve in light of such serious allegations of wrongdoing. In exchange, instead of procedural fairness, the IRSSA protected Alleged Perpetrators and religious organizations by ensuring that the process was closed to the public, and that the outcome of the process would remain confidential.

7. As submitted herein, the 22 Catholic Entities are gravely concerned that the accusations made against Alleged Perpetrators and religious organizations in connection with events that occurred decades ago, that are contained throughout the 37,000 IAP claims, could ultimately be made public through the terms of the Order. This proposed loss of confidentiality for Alleged Perpetrators and religious organizations is contrary to the plain reading of the terms of the IRSSA as the IRSSA does not provide for the unilateral and unconditional delivery of IAP Records to any third party for archival, historical or management purposes. Furthermore, this proposed loss of confidentiality is in direct contrast to the reasonable expectations of the organizations that negotiated the

terms of the IRSSA, and the individuals who participated in the IAP, and to fundamental fairness.

8. In terms of the manner of final disposition of the IAP Records at the end of the IAP Process, the 22 Catholic Entities respectfully submit that destruction of the IAP Records is the only manner of disposition that is consistent with the nature of the IAP Process as defined by the IRRSA. All other suggestions in relation to the final disposition of the IAP Records, most notably the proposed options for the IAP Records to be housed at the NCTR or at the Library and Archives of Canada (“LAC”), as repositories, are fraught with uncertainty and are inconsistent with the reasonable expectation of privacy held and enjoyed by those involved in the IAP Process.

9. Furthermore, if any of the IAP Records are disclosed or authorized for the deposit into a public archive for archival, historical or management purposes, whether to the NCTR, the LAC, or any other archive, without first obtaining the consent of all ‘individuals affected’, the results and ultimate impacts on those individuals, their families, and the community as a whole will be devastating. Many Claimants and Alleged Perpetrators come from small, closely knit communities. Therefore, the 22 Catholic Entities submit that no degree of diligence and care can be exercised in managing the records in any potential archive to protect the confidential information of the ‘affected individuals’, particularly where, as here, the personal information is of the highest sensitivity and the risk of harm resulting from inappropriate disclosure is considerable. While there are fundamental legal issues involved in these proceeding, this is not simply an exercise in the abstract legal principles. There is a very real and serious risk that the lives of those individuals and their families will forever and profoundly be

impacted and changed if the IAP Records are made publicly accessible without the consent of **all** individuals affected.

10. Thus, the 22 Catholic Entities oppose the disclosure or authorization of the deposit of any of the IAP Records for public archival, historical or management purposes, whether at the NCTR, or at the LAC, or any public archive for that matter, as the parties to IRSSA never agreed that the IAP Records would ultimately be accessible to the TRC and form part of the NCTR archive. To the contrary, the parties to the IRSSA made commitments to make available their archives or copies of archive material and cooperate with Canada and the TRC. Those are the documents along with the voluntary stories told at the TRC Events, and the documents contained in the TRC database, that were the documents envisioned at the time of the IRSSA that the TRC would have and have access to.

11. The 22 Catholic Entities, therefore, respectfully submit that the Cross-Appeals raise the following collective issues for determination by this Honourable Court, namely:

- (a) Whether the Court of Appeal has jurisdiction to determine the within appeals?
- (b) Whether the IAP Records are in the control of Canada, the Court or other parties, such that they are subject to Canada's legislative regime for the management of such documents?
 - (i) the collecting of, and use of the IAP Records by the TRC is a breach of the express and implied provisions of the IRSSA establishing confidentiality.
 - (ii) the Application "Guide" does not form part of the IRSSA.
 - (iii) the *Privacy Act*, R.S.C. 1985, c P-21, the *Access to Information Act*,

R.S.C. 1985, c. A-1, and the *Library and Archives Canada Act*, S.C. 2004, c. 11, do not apply to IAP Records.

- (iv) the law of Absolute Privilege, the Implied Undertaking of Confidentiality and the law of Confidential Communications apply to the IAP Records.
 - (v) the terms of the IRSSA provide for destruction of the IAP Records at the end of the IAP Process.
 - (vi) the ADR process documents should form part of the provisions of the destruction order.
 - (vii) the 15 year retention period is too long.
- (c) What are the practical consequences of public disclosure of the highly personal and confidential information of the IAP Records to 'affected individuals'?

PART II – STATEMENT OF FACTS

12. In the interest of brevity, the facts contained in the factum of the 22 Catholic Entities in connection with the Appeal of the 22 Catholic Entities will not be restated in an introductory section to this Factum. Rather, relevant portions of those facts will be discussed below in the context of a discussion of the merits of the Cross-Appeals.

PART III – ISSUES AND ARGUMENT

(a) Whether the Reasons for Decision is final or interlocutory in nature?

13. The 22 Catholic Entities respectfully submit that this Honourable Court has jurisdiction to determine the within appeals on the basis that the Reasons for Decision and the Order are in the nature of a final Order.

14. Section 6(1) of the *Courts of Justice Act*, provides:

6.(1) An appeal lies to the Court of Appeal from,

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;
- (b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;
- (c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court.

[emphasis added]

Reference: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 6(1).

15. Recently, the Ontario Court of Appeal in *Parsons v. Ontario*, had occasion to review and comment on the distinction between interlocutory and final decisions in the context of class action proceedings. In that case, the Court of Appeal stated the following at paragraph 42:

[42] The classic statement on the distinction between a final and an interlocutory order appears in this court's decision in *Hendrickson v. Kallio*, 1932 CanLII (ON CA), [1932] O.R. 675 (C.A.), at p. 678:

The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the application, but it is interlocutory if the merits of the case remain to be determined.

Reference: *Parsons v. Ontario*, 2015 ONCA 158 at para. 42, **Joint Brief of Authorities, Vol 3, Tab 90.**

16. In the matter herein, the Reasons for Decision and the resulting Order clearly were a final determination of the question or real matter in dispute as between the parties. The Order provided for some of the IAP Records to be destroyed immediately after the completion of the IAP Process, and the others after a 15-year retention period – thereby bringing absolute finality to the disposition of the IAP Records.

(b) Whether the IAP Records are in the control of Canada, the Court or other parties, such that they are subject to Canada's legislative regime for the management of such documents?

17. In the Reasons for Decision, Perell J. made the following collective findings in connection with the characterization of which entity is in “control” of the IAP Records:

- the IAP Documents are governed by: the IRSSA, the *Class Proceedings Act, 1992, S.O. 1992*, the court's jurisdiction as a superior court to fashion remedies, the implied undertaking, and the common law and equity. [para. 19]
- The IAP Documents are neither court records nor government records. [para. 19]
- In my opinion, the IAP Documents are not under the control of a government institution; rather, they are under the control of various supervisory bodies, including ultimately the court under the IRSSA. [para. 319]

Reference: *Fontaine v Canada (Attorney General)*, 2014 ONSC 4585 at para. 19 and 319, [2014] OJ No 8638, **Joint Brief of Authorities, Vol 2, Tab 47.**

18. The 22 Catholic Entities submit that the issue as to whether or not the IAP Records are “controlled” by the Court, Canada or a separate entity is, for the purposes of the Cross-Appeals, is a mischaracterization of the real substantial issues that exist in relation to the Cross-Appeals. Indeed, the 22 Catholic Entities submit that the fundamental issue to be addressed in these Cross-Appeals involves the proposed loss of privacy and confidentiality to all affected individuals of the IAP Process. The provisions of the IRSSA both explicitly and implicitly require confidentiality in relation to the IAP Records and individuals affected by the IAP Process have a reasonable expectation of privacy and confidentiality in regard to these records.

19. The 22 Catholic Entities submit that it is imperative that the nature of the IAP Process itself be considered, rather than focussing on which entity possesses the IAP

Records. Indeed, whether the the IAP Records are “government records” or “Court records”, the IRSSA recognizes that the IAP Records are extremely sensitive records of a non-public claims process, which were never intended to be housed in a public archive. Indeed, the parties have always held a shared recognition that serious harm could result from their unauthorized disclosure into a public archive for archival, historical or management purposes.

(i) The collecting of, and use of the IAP Records by the TRC is a breach of the express and implied provisions of the IRSSA establishing confidentiality?

20. The 22 Catholic Entities submit that the Claimants, parties, the witnesses involved in the IAP process and the parties that negotiated the IRSSA, were provided with assurances of privacy and confidentiality regarding the documents in the possession of the Secretariat. It is submitted that these privacy assurances were given because the IRSSA demanded it. In particular, these privacy assurances were based on: (a) In the IRSSA itself; (b) In the Application Form and Guide to the Independent Assessment Process Application; (c) In the Confidentiality Agreement the Claimants, parties, witnesses and others in attendance at hearing were required to sign; (d) Notice of Allegations provided to Alleged Perpetrators; and (e) Orally by the adjudicators presiding over the hearings.

21. The legal basis for this position is contained in Schedule “D” and Schedule “N” of the IRSSA. The relevant provisions of these schedules are as follows:

Article III(o)(i) of Schedule “D”

Hearings are closed to the public. Parties, an alleged perpetrator and other witnesses are required to sign agreements to keep information disclosed at a hearing

confidential, except their own evidence, or as required within this processor otherwise by law. Claimants will receive a copy of the decision, redacted to remove identifying information about any alleged perpetrators, and are free to discuss the outcome of their hearing, including the amount of any compensation they are awarded.

[Emphasis Added]

Article III(o)(ii) of Schedule “D”

Adjudicators may require a transcript to facilitate report writing, especially since they are conducting questioning. A transcript will also be needed for a review, if requested. Proceedings will be recorded and will be transcribed for these purposes, as well as if a Claimant requests a copy of their own evidence for memorialization. Claimants will also be given the option of having the transcript deposited in an archive developed for the purpose.

[Emphasis Added]

Appendix II, section (iv) of Schedule “D”

The following conditions apply to the provision of the application to the Government or a church entity:

- The application will only be shared with those who need to see it to assist the Government with its defence, or to assist the church entities with their ability to defend the claim or in connection with their insurance coverage;
- If information from the application is to be shared with an alleged perpetrator, only relevant information about allegations of abuse by that person will be shared, and the individual will not be provided with the Claimant’s address or the address of any witness named in the application form, nor with any information from the form concerning the effects of the alleged abuse on the Claimant, unless the Claimant asks that this be provided to the alleged perpetrator;
- Each person with whom the application is shared, including counsel for any party, must agree to respect its confidentiality. Church entities will use their best efforts to secure the same commitment from any insurer with whom it is obliged to share the application;
- Copies will be made only where absolutely necessary, and all copies other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations.

[Emphasis Added]

Article 11 of Schedule “N”

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.

[Emphasis Added]

Reference: Schedule “D” of the IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 346 and 350.

Schedule “N” of the IRSSA, Joint Compendium of Documents, Vol 1, Tab 25 at 391.

22. These provisions of the IRSSA taken as a whole, establish that the treatment of IAP Records under the terms of the IRSSA fall into two components. The first component is a Claimant’s right to access and obtain certain of his or her IAP records (the “**Right to Possess**”). The second component is the ability of certain historical materials to be archived at the NCTR (the “**Ability to Archive Materials**”). The Right to Possess is derived from the IAP Process, whereas the Ability to Archive Materials is derived from the TRC process. As quite rightly pointed out by Independent Counsel in its Factum in connection with its Cross-Appeal, it is important that these two concepts are not “intermingled”.

Reference: Factum of Independent Counsel dated July 17, 2015, at para. 77.

23. Firstly, the IAP Process has always provided that Claimants are able to access certain of their own IAP Records. This Right to Possess and obtain documents are contained in the terms of the IRSSA, namely:

- (a) In Schedule D, III(o)(i) on page 15, a claimant is able to access and obtain a copy of the decision, redacted to remove identifying information about any alleged perpetrators, and are free to discuss the outcome of their hearing,

including the amount of any compensation they are awarded (the “**Redacted Decision**”);

- (b) In Schedule D, III(o)(ii) on page 15, a claimant is able to access and obtain their own memorialized (redacted) transcripts, and to do with as they wish (the “**Redacted Transcripts**”), and can have the transcript deposited in an archive developed for the purpose; and,

In Schedule “D”, Appendix II, section (iv) on page 19, a claimant is able to access and obtain a copy their own application form (the “**Application Form**”).

Reference: Schedule “D” of the IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 346 and 350.

24. Secondly, the express terms of the IRSSA contemplates that only one type of IAP Record may be archived, and that is the Redacted Transcripts (Article III(o)(ii) of the Schedule “D” of the IRSSA). In such a situation, the Redacted Transcripts may only be transferred to the TRC for research and archiving purposes, with the consent of all ‘individuals affected’ (Article 11 of Schedule “N”). For the purposes of this particular provision, the 22 Catholic Entities submit that ‘individuals affected’ would include Defendants, witnesses, Alleged Perpetrators, the Church Entities, the 22 Catholic Entities, non-religious local and caregiving staff, other students, and all other identifiable individuals in each IAP hearing.

25. Notwithstanding this, and in the event that this Honourable Court determines that other types of IAP Records may be transferred to the TRC, including Redacted Decisions and Application Forms, the only manner in which the TRC and/or the NCTR can obtain such IAP Records, is in accordance the section 11 of Schedule “N” of the IRSSA. That is, even if a claimant chooses to the transfer their IAP Records to the TRC, the TRC may only do so “insofar as agreed to by the individuals affected and as permitted by process requirements.” In other words, the TRC must actively seek the

consent of all of the ‘individuals affected’ – not just the Claimant, before it can retain the IAP Records. Section 11 of Schedule “N” therefore acts as a filter whereby only those IAP Records that have been agreed to be archived by all ‘affected individuals’ can be subsequently transferred to the TRC/NCTR (the “**Section 11 Filter**”).

26. The reason why the drafters of Schedule “N” of the IRSSA included the language at section 11 of: “insofar as agreed to by the individuals affected and as permitted by process requirements”, is that the drafters at that time could not contract out the individual privacy rights that each ‘individual affected’ possessed in connection with the IAP Records. Therefore, the drafters of Schedule “N” drafted section 11 in such a manner as the TRC would have to obtain each ‘affected individual’s’ consent prior to the proposed transfer of any proposed IAP Records to the TRC.

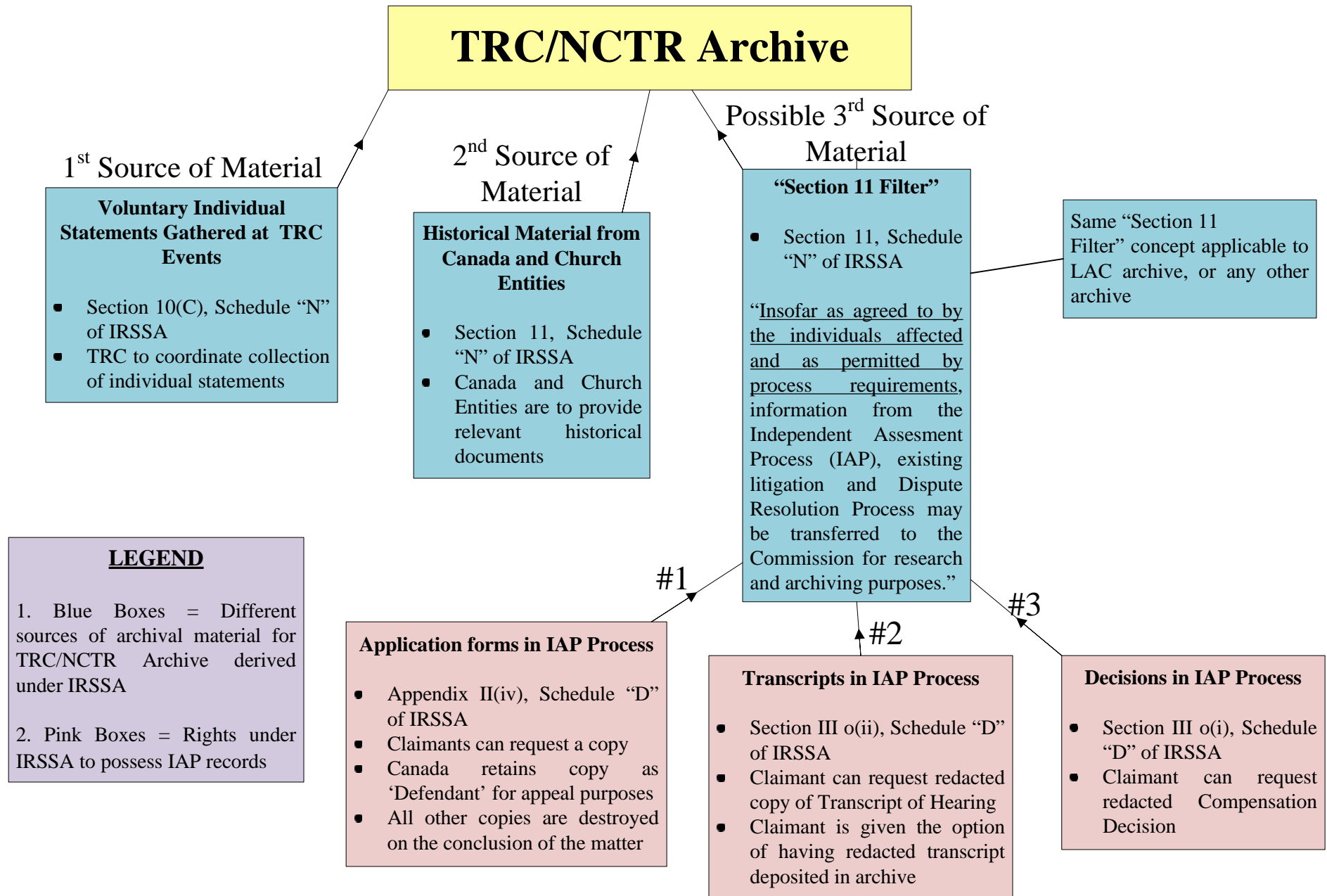
27. With respect to Application Forms, pursuant to Schedule “D”, Appendix II(iv), Canada retains a copy of the Application Form as ‘Defendant’ for appeal purposes. In its capacity as ‘Defendant’, Canada must adhere to the strict distribution restrictions as contained in Appendix II(iv). In other words, Canada, in its capacity as ‘Defendant’ cannot deliver or provide the Application Forms to any third party or archive, whether the TRC/NCTR, the LAC or any other archive for that matter without the consent of all parties.

28. The principles described in paragraphs 20 to 27 hereof are more particularly illustrated in the Chart that immediately follows this page.

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IAP Process vs. TRC Process Chart

(Right to Possess IAP Records) (Sources of Archival Material)



29. For these reasons, the 22 Catholic Entities submit the disclosure of the IAP Records to the TRC and the NCTR, or the LAC, without the consent of all ‘affected individuals’ is a clear breach of the express terms of the IRSSA, and the privacy obligations to which the parties are strictly bound to observe pursuant to the IRSSA. Moreover, the assurances of privacy which were provided ought to be honoured in order to protect the privacy and confidentiality of the information contained in the IAP Records and the integrity of the IAP Process and IRSSA as a whole.

30. In order to provide former residential schools students with a timely, sensitive and efficacious claims process, the IAP Process was intentionally designed to avoid providing the procedural fairness that Alleged Perpetrators would ordinarily deserve in light of such serious allegations of wrongdoing. In exchange, instead of procedural fairness, the IRSSA protected Alleged Perpetrators and religious organizations by ensuring that the process was closed to the public, and that the outcome of the process would remain confidential.

31. Some of the procedural rights Alleged Perpetrators gave up in exchange for this confidential process, include, *inter alia*:

- (a) many adjudicative hearings occur where an Alleged Perpetrator or person of interest cannot be located, has passed away or is unable to defend themselves due to advanced age or physical or mental infirmity. In such a situation, the hearing still occurs, notwithstanding the fact that the Alleged Perpetrator is unable to give evidence in defence of the allegations of the Claimant and in

defence of their reputation [Appendix III, section (i) of Schedule “D” of IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 352];

- (b) if an Alleged Perpetrator provides a sworn statement to the Adjudication Secretariat, but is unable to attend the hearing, the statement is not produced to the adjudicator for consideration at the hearing. In fact, this process is expressly provided for in each letter that an Alleged Perpetrator receives from AANDC when first being made known that particular allegations have been made against them [Example of letter (redacted) sent to Alleged Perpetrator containing particular allegations made against them, Exhibit “A” to the Affidavit of F. Mark Rowan sworn May 1, 2014, Joint Compendium of Documents, Vol 2, Tab 29];
- (c) Alleged Perpetrators are only provided with extracts from the Application Form, outlining the allegations made against, to be returned at the conclusion of the process [Appendix III, section (v) of Schedule “D” of IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 352];
- (d) a witness statement, or failing that the interview notes, are a condition of the Alleged Perpetrator being heard by the Adjudicator [Appendix III, section (vii) of Schedule “D” of IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 352];
- (e) Alleged Perpetrators or their counsel may not attend at same time and place as the Claimant [Appendix III, section (ix) of Schedule “D” of IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 352];

- (f) Alleged Perpetrators are witnesses, not parties [Appendix III, section (xi) of Schedule “D” of IRSSA]; and
- (g) Alleged Perpetrators are entitled to know the results of the hearing with respect to the allegations against them, but not the amount of any compensation awarded [Appendix III, section (xii) of Schedule “D” of IRSSA Joint Compendium of Documents, Vol 1, Tab 24 at 353].

32. The 22 Catholic Entities submit that fundamental aspects of procedural fairness which would allow Alleged Perpetrators to dispute the accuracy of the allegations and defend themselves and their reputation are entirely absent from the IAP Process. In light of this, it cannot be maintained that the outcome of the IAP process should be treated as anything other than a confidential claims process.

33. Furthermore, the “bargain” arrived at between the parties to the IRSSA does not restrict the Claimants from telling their own story. A Claimant has the ability to tell his or her own story and memorialize their own evidence through the process developed by the TRC and which was made available through the TRC Events.

(ii) The Application Guide does not form part of the IRSSA.

34. The Application Guide (the “**Guide**”) does not form part of the IRSSA and therefore its provisions do not bind the signatories of the IRSSA. Indeed, the contents of the Guide were drafted by Canada without the assistance or input of the Chief Adjudicator. This is illustrated by the Affidavit sworn by Daniel Ish on September 27, 2013, wherein he states the following at paragraph 39:

“I did not draft, nor have I been asked to approve, the privacy statements in the Guide. My understanding is that these statements are substantially the same as those in the Guide to the former ADR process, which was first published in 2003.”

Reference: Affidavit of Daniel Ish, sworn September 27, 2013, at para. 39, Joint Compendium of Documents, Vol 2, Tab 32 at 494.

35. Any addition or modification of the express terms of the IRSSA represents a material amendment to the IRSSA, which is contrary to the express terms of the IRSSA by reason of section 18.06 of the IRSSA. Section 18.06 of the IRSSA reads as follows:

18.06 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

(the “**Entire Agreement Clause**”).

Reference: Section 18.06 of the IRSSA, Joint Compendium of Documents, Vol 1, Tab 23 at 318.

36. Therefore, neither the Guide, nor the federal privacy legislation references contained therein can be read into the IRSSA such that the parties are thereby bound by the same.

(iii) **The *Privacy Act*, R.S.C. 1985, c P-21, the *Access to Information Act*, R.S.C. 1985, c. A-1, and the *Library and Archives Canada Act*, S.C. 2004, c. 11, do not apply to IAP Records.**

37. The 22 Catholic Entities submit that the *Privacy Act*, R.S.C. 1985, c P-21 (the “**Privacy Act**”), the *Access to Information Act*, R.S.C. 1985, c. A-1 (the “**Access to Information Act**”), and the *Library and Archives Canada Act*, S.C. 2004, c. 11 (the

“Library and Archives Canada Act”) (at times collectively referred to as the **“Federal Privacy Legislation”**), do not apply to the privacy considerations relating to the IAP Records. The IAP Application and the oral assurances of privacy provided by Adjudicators to IAP Claimants and other interested parties created an expectation on the part of the IAP Claimants and the Alleged Perpetrators that their confidential information would be protected.

38. The only mention of the Federal Privacy Legislation occurring in the IRSSA is under the IAP Application form at Section 8, which asks the applicant to give permission to:

“... the Library and Archives of Canada and any other federal provincial or territorial government department having records relevant to my claim to share them with the Indian and Northern Affairs Canada. This permission will allow the government to research my claim.”

Reference: Affidavit of Daniel Ish, sworn September 27, 2013, at para. 39 Exhibit “C”, IAP Application Form, Section 8 – Declaration, at page 21, **Joint Compendium of Documents, Vol 2, Tab 27 at 457.**

39. It is clear from this provision of the IAP Application Form that the Federal Privacy Legislation only applies to the “front end” of the process in gathering documents and information in connection with the research of the Claimant’s claim. Clearly, it is not logical that this statement would extend to and equally apply to the resulting IAP Records generated under the IAP Process.

40. If this Honourable Court is inclined to find that the *Privacy Act* applies to the IAP Records, the resulting impacts on individuals named and/or otherwise involved in the IAP Process would be devastating. While the *Privacy Act* establishes a regime for the

protection of personal information under the control of government institutions, within the context of the IRSSA, there are significant limits to those protections, particularly in the situation of an Alleged Perpetrator.

41. In particular, pursuant to section 3(m) of the *Privacy Act*, “personal information” is defined as:

Information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

...

but, for the purposes of sections 7, 8 and 26 and section 19 of the Access to Information Act, does not include

...

(m) information about an individual who has been dead for more than twenty years;

[emphasis added]

Reference: *Privacy Act*, R.S.C. 1985, c P-21, s. 3(m)

42. Therefore, a government institution does not require the consent of the deceased individual’s estate to use or disclose personal information more than 20 years after an individual’s death. This provision of the *Privacy Act* is of particular importance to Alleged Perpetrators given that a large group of Alleged Perpetrators have now been deceased for over 20 years. The implications of having the IAP Records therefore subject to the *Privacy Act*, consequently provides absolutely no privacy protections for Alleged Perpetrators who have now been deceased for over 20 years.

(iv) The law of Absolute Privilege, the Implied Undertaking of Confidentiality and the law of Confidential Communications applies to the IAP Records.

43. The 24 Catholic Entities submit that the documents provided to and generated by the IAP Process are subject to the law of absolute privilege, the implied undertaking of

confidentiality and the law of confidential communications which should prevent disclosure of the IAP Records to any third party, including the TRC.

44. The principle of absolute privilege allows the preservation of the integrity and independence in the IAP Process, in particular the privilege attached to the communications made during the course of and in connection with such proceedings. In order to facilitate the full disclosure of facts in judicial or quasi-judicial proceedings, the law provides an “absolute privilege” to communications made in the course of and in connection to such proceedings, which is a defence to defamation and other actions.

Reference: S. Ruel, “What Privileges Arise in the Administrative Context and When?” (2013) 26 Can. J. Admin. L. & Prac. 141 at page 5.

45. In addition, administrative or quasi-judicial bodies, are subject to the same implied undertaking of confidentiality rules that are found in the civil litigation context. That is, information and documentation obtained and provided during an adjudicative process is subject to an implied undertaking of confidentiality imposed by either common law or statute depending on the jurisdiction and context. As author S. Rule explains in “What Privileges Arise in the Administrative Context and When?”:

The undertaking prohibits the party who has obtained the information or documentation to use or disclose it for purposes other than defending his interest or for trial preparation in the legal proceeding in question.

Reference: S. Ruel, “What Privileges Arise in the Administrative Context and When?” (2013) 26 Can. J. Admin. L. & Prac. 141 at page 15.

46. Finally, the IAP process is also subject to the law of confidential communications. The law of confidential communications has been described as follows:

A privilege of confidential communications may be asserted on a case-by-case basis pursuant to the four-pronged test elaborated by

Professor Wigmore, which was adopted in the Canadian jurisprudence. The onus is on the person asserting privilege to establish those four criteria:

- (1) The communications must originate in a confidence that they will not be disclosed.
- (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
- (3) The relation must be one which in the opinion of the community ought to be sedulously fostered.
- (4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

Reference: S. Ruel, "What Privileges Arise in the Administrative Context and When?" (2013) 26 Can. J. Admin. L. & Prac. 141 at page 15 and 16.

47. The 22 Catholic Entities submit that once the private and confidential assurances were given to the parties of the IAP Process, a unique relationship arose between the parties and the IAP such that it attracted the protection of confidential communications privilege. This confidentiality is consistent with the terms of the IRSSA and the reasonable expectations of the parties.

(v) The terms of IRSSA provide for destruction of the IAP Records at the end of the IAP Process.

48. Appendix II, section (iv) of Schedule "D" of the IRSSA provides for the destruction of Application Forms at the conclusion of the matter, with the exception of the Claimant, legal counsel, and Canada (in its capacity as defendant, i.e. continuing litigant in the IAP), who may hold the Application Forms for specific reasons.

49. Appendix II, section (iv) of Schedule "D" of the IRSSA provides as follows:

Appendix II, section (iv) of Schedule “D”

The following conditions apply to the provision of the application to the Government or a church entity:

- The application will only be shared with those who need to see it to assist the Government with its defence, or to assist the church entities with their ability to defend the claim or in connection with their insurance coverage;
- If information from the application is to be shared with an alleged perpetrator, only relevant information about allegations of abuse by that person will be shared, and the individual will not be provided with the Claimant’s address or the address of any witness named in the application form, nor with any information from the form concerning the effects of the alleged abuse on the Claimant, unless the Claimant asks that this be provided to the alleged perpetrator;
- Each person with whom the application is shared, including counsel for any party, must agree to respect its confidentiality. Church entities will use their best efforts to secure the same commitment from any insurer with whom it is obliged to share the application;
- Copies will be made only where absolutely necessary, and all copies other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations.

[emphasis added]

Reference: Schedule “D” of the IRSSA, Joint Compendium of Documents, Vol 1, Tab 24 at 350.

50. The Application Forms contain arguably the most confidential and private information of the ‘affected individuals’ involved in the IAP Process. Most notably, contained in the Application Forms are the statements made by the Claimants against Alleged Perpetrators recounting their experiences at residential schools and identifying other parties involved, such as witnesses, Alleged Perpetrators, non-religious local and caregiving staff, and other students.

51. For the drafters of the IRSSA to formally use the words “will be destroyed” in connection with the ultimate disposition of one of the core documents in the collection

of the IAP Records as a whole, is significant and demonstrates the intentions of the parties of the IRSSA to have the IAP Records destroyed at the conclusion of the process. Had the parties to the IRSSA contemplated and agreed that the *Privacy Act*, the *Access to Information Act*, and the *Library and Archives Canada Act*, would apply to the IAP Records, the provision for the destruction of the Application Forms under Appendix II, section (iv) of Schedule “D” of the IRSSA would not have been included.

(vi) ADR process documents should form part of the provisions of the destruction order.

52. The 22 Catholic Entities agree with Independent Counsel’s position that the Alternative Dispute Resolution Process, referred to in Article 1.01 of the IRSSA should be added in the definitions of “IAP”, “Claimant” and “IAP Claim” in Schedule “A”, to the Order so as to include ADR documents under the protection of the Court Order, on the basis of Independent Counsel’s argument as contained in paragraphs 64 to 66 of its Factum dated July 17, 2015.

Reference: Factum of Independent Counsel dated July 17, 2015, at para.’s 64 to 66.

(vii) The 15 year retention period is too long.

53. The 22 Catholic Entities agree with Independent Counsel’s position that the 15 year retention is too long on the basis of its arguments as contained in paragraphs 95 to 100 of its Factum dated July 17, 2015.

Reference: Factum of Independent Counsel dated July 17, 2015, at para.’s 95 to 100.

(c) What are the practical consequences of disclosure of the highly personal and confidential information from the IAP Records to the “affected individuals”?

54. If any of the IAP Records are disclosed or authorized for the deposit into a public archive for archival, historical or management purposes, whether at the NCTR, the LAC, or any other archive, without first obtaining the consent of all ‘individuals affected’, the results and ultimate impacts on those individuals, their families, and the community as a whole will be devastating. Many Claimants and Alleged Perpetrators come from small, closely knit communities. Therefore, the 22 Catholic Entities submit that no degree of diligence and care can be exercised in managing the records in any potential archive to protect the confidential information of the ‘affected individuals’, particularly where, as here, the personal information is of the highest sensitivity and the risk of harm resulting from inappropriate disclosure is considerable.

55. The comments made by Mr. Larry Philip Fontaine, O.C. in his Affidavit are telling on this issue, when he states:

para. 25. “I know that within my community as well as other aboriginal communities if there were cases where survivors are alleged to have abused other children in the residential school, and their identities became public or accessible to any person, this would have long term devastating consequences in our communities. This would not only devastate these individuals but also their grandchildren and great grandchildren if this information came out at a future date.

para. 26. It was for this reason that I strongly argued that in cases of student on student abuse the names of alleged perpetrators never be made public to any person. The assurance that this information would never be disclosed outside of the IAP process and the guarantees in the Settlement Agreement were the protections that we obtained as a compromise in the Settlement Agreement. If any of this information is placed into an archive, even if it is sealed for ten years, fifty years, a hundred years or longer, the identities of these perpetrators and their victims will some day become available to their descendants or researchers who may publish

information. Within our communities, such knowledge even in future generations would continue the legacy of dysfunction and trauma that was created by residential schools.”

Reference Affidavit of Larry Philip Fontaine, O.C. sworn May 1, 2014, at para. 25 and 26, **Joint Compendium of Documents, Vol 4, Tab 41 at 1587 and 1588.**

56. In the instant case, where many Alleged Perpetrators (which include student on student abuse) come from small, closely knit communities, identifiable markers such as the years they worked/attended at the school, their birth place and year, combined with information from sources otherwise available could invariably lead to the identification of the Alleged Perpetrators by the general public. Therefore, the 22 Catholic Entities submit that no degree of diligence and care can be exercised in managing the records in any potential archive to protect the confidential information of the ‘affected individuals’, particularly where, as here, the personal information is of the highest sensitivity and the risk of harm resulting from inappropriate disclosure is considerable.

57. Similarly, if the IAP Records are transferred to the TRC and thereafter to the NCTR, the various parties to the IAP Process will lose all ability to control the accessibility of those records by third parties. Although the TRC, by way of the Affidavit of Tom McMahon describes at length the manner in which both the TRC and the NCTR are subject to federal and provincial privacy and access to information laws, neither the TRC nor the NCTR will ever be able to ensure that the highly personal and sensitive material contained in the IAP Records will not fall into the hands of further unauthorized third parties. This is illustrated at paragraph 57 of the Affidavit of Tom McMahon, where Mr. McMahon states:

The Administrative Agreement, at article 35, provides that records that cannot be disclosed to the general public can be made available to researchers at the University's discretion,

according to the requirements of "applicable legislation, appropriate ethics and other approvals, and in accordance with the requirements of the University".

Reference: Affidavit of Tom McMahon, sworn November 12, 2013 at para. 57, Joint Compendium of Documents, Vol 2, Tab 33 at 540.

58. Again, the only manner in which to ensure with reasonable certainty that no privacy breaches ever occur in relation to the IAP Records is for the entire collection of the IAP Records to be destroyed at the end of the IAP Process in accordance with the IRSSA. All other suggestions in relation to the final disposition of the IAP Records, most notably the proposed options for the IAP Records to be housed by the NCTR as a repository, and LAC, are fraught with uncertainty and have the potential to undermine the fundamental rights to privacy held and enjoyed by all Canadian citizens.

PART IV - ORDER REQUESTED

59. Therefore, the 22 Catholic Entities respectfully request that the Order be varied on the following basis, that:

- (a) All individuals affected, including all the Claimants, members or former members of the Church Entities, Persons of Interest and/or Alleged Perpetrators, non-religious staff, other students and witnesses, or any associated persons concerned in the IAP claim, be given the opportunity to consent to any of their respective IAP Records being archived at the NCTR and/or any other archive, prior to transfer of such documents;
- (b) The notice program ordered be set aside;

- (c) The Retention Period as provided for in the Order be reduced to a period of 2 years; and
- (d) The Alternative Dispute Resolution Process be included in the Order so as to include the ADR documents under the protection of the Order.

ALL OF WHICH IS RESPECTFULL SUBMITTED

DATED at Saskatoon, Saskatchewan, this 15th day of October, 2015.


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Appeals, the 22 Catholic Entities

Court of Appeal File No.: 59310
Court of Appeal File No.: 59311
Court of Appeal File No.: 59320

COURT OF APPEAL FOR ONTARIO

BETWEEN:

LARRY PHILIP FONTAINE et al.

Plaintiffs
(Respondents in Appeal)

-and-

THE ATTORNEY GENERAL OF CANADA et al.

Defendants
(Appellants and Respondents to the Appeal and Cross-Appeals)

-and-

PRIVACY COMMISSIONER OF CANADA

Intervener

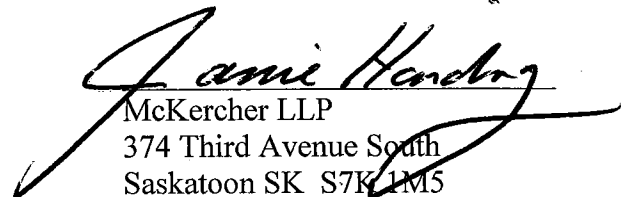
CERTIFICATE

I, Janine L. Harding, lawyer for the Respondents to the Cross-Appeals certify:

1. an order under subrule 61.09(2) is not required; and
2. the estimated time for oral argument by the Appellants/Respondents' counsel to the Cross-Appeals, not including a reply, is one hour.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Saskatoon, Saskatchewan, this 15th day of October, 2015.



McKercher LLP
374 Third Avenue South
Saskatoon SK S7K 1M5

JANINE L. HARDING

Mr. Michel G. Thibault **Barrister & Solicitor**
Mr. David M. Stack, Q.C.
Ms. Janine L. Harding

SCHEDULE “A” - LIST OF AUTHORITIES

Tab

- 1 *Parsons v. Ontario*, 2015 ONCA 158
- 2 *Fontaine v Canada (Attorney General)*, 2014 ONSC 4585 at para. 19 and 319, [2014] OJ No 8638

SCHEDULE “B” – STATUTES, REGULATIONS AND BY-LAWS

1. *Courts of Justice Act*, RSO 1990, Chapter C. 43.

6. (1) An appeal lies to the Court of Appeal from,

(a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;

(b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;

(c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court.

2. *Privacy Act*, R.S.C. 1985, c P-21

3 Information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

...

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

...

(m) information about an individual who has been dead for more than twenty years;

APPENDIX “A”

1. Les Oeuvres Oblates de l’Ontario
2. Les Residences Oblates du Quebec
3. Soeurs Grises de Montreal/Grey Nuns of Montreal
4. Sisters of Charity (Grey Nuns) of Alberta
5. Les Soeurs de La Charité des T.N.O.
6. Hotel-Dieu de Nicolet
7. The Grey Nuns of Manitoba Inc. – Les Soeurs Grises du Manitoba Inc.
8. The Sisters of Saint Ann
9. Sisters of Instruction of the Child Jesus
10. The Sisters of Charity of Providence of Western Canada
11. Immaculate Heart Community of Los Angeles CA
12. Missionary Oblates – Grandin Province
13. Les Oblates de Marie Immaculee du Manitoba
14. Oblates of Mary Immaculate- St. Peter’s Province
15. Order of the Oblates of Mary Immaculate in the Province of British Columbia
16. La Corporation Episcopale Catholique Romaine de Grouard
17. The Catholic Episcopale Corporation of Mackenzie
18. Roman Catholic Episcopal Corporation of Prince Rupert
19. Sisters of Charity Halifax
20. The Roman Catholic Bishop of Kamloops Corporation Sole
21. Sisters of the Presentation
22. Roman Catholic Archiepiscopal Corporation of Winnipeg

LARRY PHILIP FONTAINE et al-and- THE ATTORNEY GENERAL OF CANADA et al

Plaintiffs (Respondents in Appeals)

Defendants (Appellants and Respondents in Appeal/Cross-Appeals)

Court of Appeal File No.: 59310

Court of Appeal File No.: 59311

Court of Appeal File No.: 59320

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**UPDATED REPLY FACTUM OF THE RESPONDENTS TO
CROSS-APPEALS, THE TWENTY-TWO CATHOLIC
ENTITIES (with Reference to the Joint Compendium of
Documents and Brief of Authorities)**

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