

**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,
MICHELLE 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, INSITU DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE
SAINT-HYACINTHE, LES SOEURS DE JESUSMARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE
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 MOOSEJUNCTION, 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 OF 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 EPISCOPAL 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 and of the Defendant Catholic Entities listed below (hereinafter the “Catholic entities”):

- The Roman Catholic Episcopal Corporation of Halifax
- Les Soeurs de l’Assomption de la Saint Vierge de l’Alberta (Edmonton)
- Sisters of Charity (Grey Nuns) of Alberta
- Les Soeurs de La Charité des T.N.O. Grey Nuns Régional Centre
- Hôtel-Dieu de Nicolet (HDN) (merged with Soeurs Grises de Montréal/ Grey Nuns of Montreal in 1941)
- The Grey Nuns of Manitoba Inc. - Les Soeurs Grises du Manitoba Inc.
- The Archiepiscopal Corporation of Regina
- The Sisters of St. Joseph of Sault St. Marie
- Les Soeurs de la Charité d’Ottawa - Sisters of Charity of Ottawa
- The Benedictine Sisters of Mt. Angel Oregon
- Les Pères Montfortains
- Roman Catholic Archiepiscopal Corporation of Winnipeg
- La Corporation Épiscopale Catholique Romaine de Prince Albert
- The Roman Catholic Bishop of Thunder Bay
- Immaculate Heart Community of Los Angeles CA
- The Roman Catholic Episcopal Corporation of Mackenzie-Fort Smith
- The Roman Catholic Episcopal Corporation of Prince Rupert
- OMI Lacombe Canada Inc.

3. RELIEF REQUESTED

The Commission respectfully requests this Honourable Court determine the following:

- (A) A determination as to whether Canada is in compliance with its obligation to provide all relevant documents pursuant to Order in Council PC 2008-0793 that incorporates paragraph 11 of Schedule N of the Settlement Agreement;
- (B) A determination as to whether the Catholic entities are in compliance with their obligation to provide all relevant documents pursuant to Order in Council PC 2008-0793 that incorporates paragraph 11 of Schedule N of the Settlement Agreement;
- (C) An order that Canada comply with its obligations to provide all relevant documents in an organized manner pursuant to Order in Council PC 2008-0793 that incorporates paragraph 11 of Schedule N of the Settlement Agreement;
- (D) An order that the Catholic entities comply with their obligations to provide all relevant documents in an organized manner pursuant to Order in Council PC 2008-0793 that incorporates paragraph 11 of Schedule N of the Settlement Agreement;
- (E) A determination as to the scope and effect, if any, of the Implied/Deemed Undertaking Rule which is being raised by Canada as an impediment to the complete production of all relevant documents in the respondent's possession;
- (F) An order that Canada produce a list of documents over which solicitor-client privilege is asserted, which list shall contain sufficient particulars to permit the Commission and the court to assess such privilege claim;
- (G) An order that the Catholic entities produce a list of documents over which solicitor-client privilege is asserted, which list shall contain sufficient particulars to permit the Commission and the court to assess such privilege claim;
- (H) An order that any additional costs associated with the Commission's collection, review and preservation of documents attributable to Canada or the Catholic entities' delayed

compliance with its production obligations be assessed, and made payable by Canada and/or the Catholic entities;

- (I) An order that Canada and the Catholic entities comply with a schedule for the provision of documents to the Commission pursuant to Order in Council PC 2008-0793 that incorporates paragraph 11 of Schedule N of the Settlement Agreement;
- (J) Should Court scheduling require, an order continuing the Commission to permit for the orderly determination of the herein proceedings;
- (K) The costs of this proceeding; and
- (L) Such further and other relief as counsel may advise and this Honourable Court may permit.

4. RELIEF IS OPPOSED

Canada and the Catholic entities oppose the relief sought.

5. THE POSITION OF THE PARTIES

The Commission's Position

1. The Commission takes the position that Canada and the Catholic entities have not fulfilled their document production obligations as outlined in Schedule "N" of the Settlement Agreement. 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) The creation of a legacy, including the collection of all relevant records and the conduct of statement taking, and other truth sharing activities, the classification of such documentation, and the preservation of these records.

- (c) To establish a National Research Centre, 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 conduct research and to produce a report to the Parties of the Settlement Agreement of the Commission's historic findings and recommendations.

2. Schedule "N" imposes document production obligations on the defendants 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.

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.

3. The Commission has encountered serious difficulties with respect to obtaining relevant documents from Canada and from the named Church entities. These difficulties arise

primarily from differing interpretations of the document production obligations as outlined in certain provisions in Schedule “N”. In particular:

- (a) Canada has refused to provide certain documents that it obtained from the Catholic entities in the course of the litigation on the basis of the implied undertaking rule;
 - (b) the Catholic entities have not provided any documents;
 - (c) Canada has made a blanket assertion of multiple types of privilege over documents held by the Department of Justice based on a sample review, rather than conducted a review of those documents to make specific assertions of solicitor-client privilege (the only type of privilege provided for in the Settlement Agreement); and
 - (d) Canada and the Church parties have failed to provide a list, particularized or otherwise, of documents over which solicitor-client privilege, Cabinet Confidences, and/or secrecy is claimed.
4. The Commission has used its best efforts to resolve this longstanding dispute regarding the provision of documents.
 5. The Commission has a serious interest in these issues, as the Commission is required to complete its mandate by June 30, 2015. The document production difficulties are sufficiently serious that the Commission’s ability to fulfill its mandate within the prescribed time and within its budget is now in jeopardy.
 6. The Commission seeks judicial interpretations and guidance in respect of the document production terms of Schedule “N”, in order that it may complete its mandate in an expeditious and efficient manner.

Canada’s Position

The Catholic entities’ Position

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th DAY OF MAY, 2015

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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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