CITATION: Fontaine v. Canada (Attorney General), 2017 ONSC 2487
COURT FILE NO.: 00-CV-192059
DATE: 20170424

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 WESTMINISTER, 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-HYANCITHE, 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 MONTREAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES SOEURS DE LA CHARITE 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 ARCHIÉPISCOPALE 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

Proceeding under the *Class Proceedings Act, 1992*

COUNSEL:

- *Fay K. Brunning* and *Michael Swinwood* for IAP Claimants K-10106, H-15019, Edmond Metatawabin and Peetabeck Keway Keykaywin Association
- *Catherine Coughlan* and *Brent Thompson* for the Attorney General of Canada
- *Peter C. Wardle* and *Michael Darcy* for the Intervenor Nelligan O'Brien Payne LLP
- *Geoffrey D.E. Adair, Q.C.* for the Intervenor Wallbridge, Wallbridge

HEARD: March 24, 2017 and in writing

PERELL, J.

REASONS FOR DECISION

A. PROLOGUE

[1] Settlements are a compromise of justice, and the Indian Residential Schools Settlement Agreement ("IRSSA" or "Settlement Agreement") was both a settlement and a compromise. Moreover, the IRSSA was not a complete settlement, and it envisioned on-going adversarial proceedings between Canada and the survivors of the Indian Residential Schools ("IRSs"), whose claims were being settled. This was the bargain struck by the parties.

[2] The IRSSA is a contract. Pursuant to class action statutes and applicable rules of court, the IRSSA gained the approval of nine provincial and territorial superior courts[1], and with that approval, the IRSSA brought to an end national class actions brought by members of Canada's Inuit and First Nations communities, including some of those communities' leaders. In approving the IRSSA, the Courts did not ask whether the settlement was perfect or the absolute best that could be done for the Class Members, who are survivors of the evil that was the IRSs; rather, the Courts accepted that the Class Members were represented by competent and resolute Representative Plaintiffs and by Class Counsel. The Courts recognized that the parties had negotiated, bargained hard, and had struck their own bargain. In short, the Courts respected the parties' right to strike that bargain.

[3] In making a contract, the parties all made concessions. Canada agreed to apologize for the wrongs suffered, and it agreed to fund and to facilitate the work of a Truth and Reconciliation Commission. Canada also agreed to pay a variety of forms of compensation, but it retained the right to contest some claims brought by the Class Members. Canada and the Catholic Church Entities demanded releases from the survivors of the schools, and the Defendants reserved rights to take adverse positions against Class Members, including the right to contest the claims of individual Class Members for the various forms of compensation. Under the Settlement Agreement, there were to be ongoing, albeit modified, adversarial proceedings, including the Independent Assessment Process ("IAP"), the process the parties agreed upon for determination

---

[1] These were the Alberta Court of Queen's Bench, British Columbia Supreme Court, Manitoba Court of Queen's Bench, Nunavut Court of Justice, Ontario Superior Court of Justice, Québec Superior Court, Saskatchewan Court of Queen's Bench and Yukon Supreme Court. Actions brought in the Nova Scotia Supreme Court were continued in the Ontario Superior Court of Justice for the purposes of achieving the IRSSA's approval. The IRSSA is a pan-Canadian class action settlement.

of claims made by those who alleged that they suffered abuse at IRSs. This was part of the bargain negotiated by the parties and respected by the Courts.

[4] Class Counsel and the Representative Plaintiffs recommended the settlement to the Courts as reasonable and in the best interests of the Class Members. The Defendants, Canada and the Catholic Church Entities also recommended to the Courts that the IRSSA be approved.

[5] Unfortunately, the complexity of the Settlement Agreement, ongoing adversarial proceedings, and Canada's various roles under the IRSSA, which ranged from administering and funding the IRSSA to the conflicting role of being entitled to challenge the claims being made by the survivors, has turned out to be a source of misunderstanding and of ongoing acrimony and bitterness.

[6] Justice Winkler (as he then was), one of the judges who approved the IRSSA, foresaw that there might be problems because of Canada's conflicting roles. Nevertheless, he approved the Settlement because there were safeguards built into it, and, in any event, that Canada had conflicting roles and duties was what the parties themselves had bargained for. A settlement was preferable to the alternative of moving forward to what would have been a brutal trial of the class action followed by traumatic individual assessments of the injuries suffered by the survivors of the IRSs.

[7] With the approval of the Settlement Agreement came a change in the role of the Courts. The Courts' role changed from one of adjudicating the class actions to that of supervising and administering the Settlement that the parties had negotiated. The Courts also have a role in enforcing the provisions of the IRSSA in accordance with what the parties themselves had agreed.

[8] The Courts never had the power to make an agreement for the parties, and the Courts do not have the power to change what the parties themselves agreed. As the Court of Appeal recently noted in *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26 at para. 53:

> 53. *Fontaine v. Duboff Edwards Haight & Schachter*, 2012 ONCA 471 imposed strict limits on the scope for judicial intervention. It did so to respect the IRSSA, the contract the parties negotiated, of which the IAP is a fundamental part. As this court recognized in *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241 at para. 48: "[a]djudicators are specially trained to conduct the hearing in a way that is respectful to the claimant and conducive to obtaining a full description of his or her experience". The IAP has been aptly described as "a complete code" that limits access to the courts, preserves the finality of the IAP process, and respects the expertise of IAP adjudicators: see *Fontaine v. Canada (Attorney General)*, 2016 BCSC 2218, at para. 178.

B. INTRODUCTION AND OVERVIEW

[9] One of the ways that the Courts supervise, administer, and enforce the IRSSA is by a Request for Direction ("RFD"). Two closely-related RFDs are now before the Court. Both RFDs concern the disclosure of documents about criminal and civil proceedings commenced in Cochrane, Ontario, that contained information about the horrific events at St. Anne's Indian Residential School ("St. Anne's IRS") in Fort Albany, Ontario. In both RFDs, the Requestors assert that there is a mystery that must be solved about the Cochrane documents.

[10] In the first RFD, IAP Claimant H-15019 makes a request for a variety of different forms of relief with respect to his pending IAP adjudication hearing and generally with respect to the operation of the IAP. His RFD asserts, among other things, that Canada has failed to disclose

certain Ontario Provincial Police ("OPP") records that have information about the abuse suffered by former students at St. Anne's IRS. This RFD suggests that IAP claims have been compromised. The RFD alleges that two law firms, Nelligan O'Brien Payne LLP ("Nelligan") and Wallbridge, Wallbridge ("Wallbridge") were implicated in Canada's non-disclosure of the OPP documents.

[11] In the second RFD, Edmund Metatawabin and Peetabeck Keway Keykaywin Association (St. Anne's Survivors Association or "PKKA"), an association of former students of St. Anne's IRS who speak for claimants but are not claimants themselves, and K-10106, (the "Requestors"), make a similar request for relief. They seek extensive remedies, including a judicial investigation and an order extending the IAP deadline for former students of St. Anne's IRS who did not file an IAP claim, and an order reopening IAP claims.

[12] As will be seen, the claims for relief in the two RFDs are extraordinary, and because the relief was so extraordinary, in the second RFD, I ordered that there should be a preliminary motion to determine whether the Requestors had legal standing to bring the RFD, and if they did have standing, whether the Court had the jurisdiction, in whole or in part, to grant the relief requested.

[13] The first RFD involves an allegation that Canada breached an Order to produce what I shall call the "Cochrane documents". I ordered a hearing in writing to determine whether Canada had indeed breached its disclosure obligations under the IRSSA with respect to the Cochrane documents. If there was a breach, then the Court could consider, in a subsequent hearing, whether the various extraordinary requests for relief should be granted.

[14] For the reasons that follow, for the first RFD, I conclude that H-15019's RFD should be dismissed because Canada did not breach the IRSSA.

[15] For the reasons that follow, for the second RFD, I conclude that the Requestors do not have standing and that, in any event, the Court does not have the jurisdiction to grant the relief that they request.

[16] With respect to both RFDs, there is no mystery to clear up with respect to the Cochrane documents. Why some of these documents were initially not disclosed was investigated and explained in two prior decisions; namely: *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283, which I shall refer to as St. Anne's RFD-1, and *Fontaine v. Canada (Attorney General)*, 2015 ONSC 3611, which I shall refer to as St. Anne's RFD-2.

[17] In those decisions, I found that Canada had breached its disclosure obligations, and I ordered approximately 12,000 documents to be produced. There is no mystery to solve here. Canada breached the agreement, and the breach has been remedied.

[18] In the first RFD now before the Court, I conclude that Canada did not breach the IRSSA and it has provided a transparent explanation for why the balance of the Cochrane documents have not been produced. The documents are confidential and privileged.

[19] Again, there is no mystery about this, and, in any event, the informational content of the remaining Cochrane documents, which are transcripts of confidential and privileged examinations for discovery, is more or less available from the publicly available court documents in the civil cases or by the 12,000 Cochrane documents already produced.

[20] There is also no mystery about whether the delayed production of the Cochrane documents has had an adverse effect on IAP claims. My inquiries reveal that as of April 2017,

there have been 38,096 IAP claims nationally of which 504 claims are from students at St. Anne's IRS. Payments nationally to claimants excluding legal fees and disbursements total $2.568 billion. With 19 claims of former St. Anne's IRS students still in progress, payments to former St. Anne's IRS students through the IAP total $31.9 million, net of 15% for legal fees. The success rate for former St. Anne's IRS students in making IAP claims was 95.2%, which compares to an 89.2% success rate in the IAP nationally.

C. FACTUAL BACKGROUND

1. St. Anne's IRS and the Negotiation of the IRSSA

[21] From the early 1900s until 1976, Canada First Nations children in Winisk/Peawanuck, Attawapiskat, Fort Albany, Moose Factory, and Moosonee were removed from their homes and forced to reside at St. Anne's IRS. In other parts of the country, children were made to reside at other IRSs.

[22] St. Anne's IRS was operated by Catholic Church Entities in pursuance of policies developed by the federal government of Canada. The children at St. Anne's IRS and at other IRSs were physically and sexually abused. They suffered other forms of abuse. Their stories are horrific.

[23] In 1992, Aboriginal leaders organized the Keykaywin Conference in Fort Albany to disclose what had occurred at St. Anne's IRS and to begin the process of obtaining justice for the victims of the physical, sexual, cultural, and spiritual abuse.

[24] Mr. Metatawabin is a member of the Cree Nation, an Executive Member of PKKA, and a survivor of St. Anne's IRS. Mr. Metatawabin is a Class Member but not a signature party to the IRSSA. He has not made a claim under the IAP.

[25] After the Keykaywin Conference, Mr. Metatawabin, then the Chief of the Fort Albany First Nation, asked the OPP to investigate what had occurred at St. Anne's IRS.

[26] From 1992 to 1997, the OPP gathered documents and met hundreds of former St. Anne's IRS students and took witness statements. Criminal prosecutions in Cochrane, Ontario brought by Ontario's Ministry of the Attorney General followed, and more evidence was gathered. There were over 12,000 OPP and related documents in the Crown's brief. Charges were laid against many of the teachers, staff, and supervisors of St. Anne's IRS. There were criminal trials with some acquittals and some convictions. Some of the alleged perpetrators died before their trials.

[27] In 2000, 154 former students hired Wallbridge, a law firm in Timmins, Ontario, to commence 62 civil proceedings in Cochrane against Canada and the Catholic Church Entities. Around this time, there were also national class actions brought in several provinces about what had occurred at the IRSs.

[28] In the Cochrane civil proceedings, the Department of Justice ("DOJ") represented Canada and the Ottawa law firm of Nelligan represented the three Catholic Church Entities that operated St. Anne's IRS.

[29] In 2003, in the civil proceedings, Canada brought a motion to the Superior Court in Cochrane to obtain possession of the OPP records. Canada said that the records were relevant and necessary to the adjudication of the pending civil trials and that it would be unfair to require Canada to proceed to trial without production of the records.

[30] On August 1, 2003, Justice Trainor of the Superior Court issued an order that the documents be released. The Order was based on the motion by Canada, the consent of the plaintiffs, the church defendants not opposing, and counsel for the OPP not attending. A schedule to the Order indicates that the production order applied to 154 plaintiffs.

[31] Justice Trainor ordered that counsel for the parties have an opportunity to inspect and copy the contents of the OPP files that related to the 154 plaintiffs in the civil actions. Justice Trainor's Order stated:

> THIS COURT ORDERS that counsel for the parties may inspect and copy the contents of the Ontario Provincial Police file of the investigation of St. Anne's Residential School, relating to the Plaintiffs set out in Exhibit "A" of the motion record, any perpetrators, and to any further plaintiffs added to the action or any further perpetrators which become known.

[32] With respect to the OPP files that related to non-plaintiffs, Justice Trainor adjourned the motion, and he ordered that a mutually convenient date and means of obtaining copies of the documentation relating to non-plaintiffs was to be arranged between Canada and the OPP. Non-plaintiffs were other survivors of St. Anne's IRS that had given statements to the OPP. Justice Trainor's Order stated:

> THIS COURT ORDERS the reainder of the Defendant's motion as it relates to information in the Ontario Provincial Police file, of non-plaintiffs, is hereby adjourned *sine die*. ... This order pertains to all of the actions listed in the Motion Record and to any further actions which may be heretofore brought by Plaintiffs' counsel.

[33] Claimant H-15019 was not one of the parties involved in the Cochrane civil litigation. There is no evidence that Canada, Wallbridge, or Nelligan obtained copies of information in the OPP files of non-plaintiffs.

[34] In 2005, the parties to the civil proceedings negotiated a settlement, and it was a term of this settlement that if a plaintiff had not already been examined for discovery, then he or she would be examined for discovery for the purposes of negotiating the quantum of the settlement. All the examinations for discovery were made part of the settlement process.

[35] At the same time as the Cochrane proceedings were being settled, there were negotiations leading to the settlement of the national class actions and also numerous individual actions against Canada and the numerous Catholic and other Church Entities that operated IRSs, including the Catholic Church Entities that operated St. Anne's IRS. This settlement came to be known as the IRSSA.

[36] In May 2006, the IRSSA was signed. The parties who executed the IRSSA included: (a) Canada, as represented by The Honourable Frank Iacobucci; (b) the class action Plaintiffs, as represented by the National Consortium, Merchant Law Group, and Independent Counsel; (c) the Assembly of First Nations and Inuit Representatives; and, (d) the General Synod of the Anglican Church of Canada, the Presbyterian Church of Canada, the United Church of Canada, and 51 Roman Catholic Entities.

2. The IRSSA

[37] In late 2006 and early 2007, nine superior courts across Canada certified the class actions and approved the IRSSA as a fair and reasonable settlement in the best interests of the Class Members.

[38] There are four major components to the IRSSA: (1) Canada placed $1.9 billion into a

trust fund to fund payments of the "Common Experience Payment" ("CEP") to Class Members who resided at an IRS during the class period; (2) Canada established the uncapped but time-limited IAP, under which Class Members who suffered physical or sexual abuse at an IRS could claim compensation in a process administered by Canada but adjudicated by independent adjudicators; (3) a Truth and Reconciliation Commission was established with a mandate to create an historical record of the IRS system to be preserved and made accessible to the public for future study; and (4) Class Members released their legal claims in exchange for the benefits of the IRSSA. The releases extended to Canada and the Catholic Church Entities who were the named Defendants.

[39] Under the IRSSA, to facilitate the work of the Truth and Reconciliation Commission and to implement the IAP, very substantial obligations were imposed on the Defendants, most particularly Canada, to produce documents, many of which contained extraordinarily sensitive personal information about the causes and effects of the abomination that was Canada's IRS system.

[40] The IRSSA contained numerous provisions to protect the confidentiality and privacy of the survivors of the IRSs and to respect that their stories were their stories to tell or to keep private.

3. The Administration Infrastructure of the IRSSA

[41] In March 2007, on consent of the parties, the nine Courts issued identical Implementation Orders. The Implementation Orders impose an ongoing supervisory and administrative role for the Courts largely by means of RFDs, the procedure for which is set out in the Court Administrative Protocol which is appended to the Implementation Orders.

[42] The Chief Adjudicator, who is appointed pursuant to court Order under the IRSSA, supervises the IAP and the adjudicators that decide IAP claims, of which I will say more below.

[43] Subject to the direction of the Chief Adjudicator, the IAP is administered by the IRSs Adjudication Secretariat (the "Secretariat"). The Secretariat provides secretarial and administrative support to the Chief Adjudicator. The Secretariat is a branch of a department of Canada's civil service. However, save for specific financial, funding, auditing and human resource matters, the Secretariat is under the direction of the Chief Adjudicator and is an independent body.

[44] Pursuant to the IRSSA Implementation Orders, Crawford Class Action Services was appointed Monitor of the IRSSA. The role of the Monitor, who reports to and is directed by the Courts, is to receive, on behalf of the supervising Courts, all information relating to the implementation or administration of the CEP and the IAP.

[45] As a matter that is particularly important to the two RFDs now before the court and about which I shall have more to say in the "Analysis and Discussion" portion of these Reasons for Decision, the Monitor is also charged with investigating complaints against lawyers acting for IAP Claimants.

[46] On November 25, 2014, the Administrative Judges, myself and Justice Brown of the British Columbia Supreme Court, issued a Complaints Protocol, i.e., a Joint Direction for handling complaints against lawyers representing IAP claimants. The Complaints Protocol recognized two situations in which the conduct of counsel may affect the integrity of the IAP;

i.e., conduct of claimant counsel and others purporting to act on behalf of IAP claimants that: (1) encourages, supports, condones or is complicit in the bringing or advancement of fraudulent claims; and (2) amounts to financial exploitation of IAP claimants, including conduct that deprives or seeks to deprive IAP claimants of the benefits or protections to which they are entitled under the IRSSA, Implementation Orders, or any applicable statute or law.

[47] By order dated June 23, 2014, The Honourable Ian Pitfield was appointed Independent Special Advisor ("ISA") to the Monitor to review complaints relating to the conduct of lawyers and others purporting to act on behalf of claimants under the IAP and to report to the Monitor. Where the ISA determines that a complaint cannot be addressed outside the IRSSA, he or she is required to report to the Monitor and recommend that the Monitor bring an RFD.

[48] Apart from preliminary investigations by the Chief Adjudicator, the Complaints Protocol prohibits any inquiries or investigations into complaints against IAP counsel, other than at the direction of the Court Monitor or ISA.

[49] The National Administration Committee ("NAC") supervises the implementation of the IRSSA. The NAC is comprised of seven representative members, including Canada, the Assembly of First Nations, Inuit Entities, Church Entities, and three representatives of plaintiffs' counsel. The NAC prepares policy protocols and standard operating procedures. The NAC hears appeals with respect to CEP eligibility.

[50] The Oversight Committee ("OC") is responsible for supervising the IAP. It is comprised of an independent Chair and eight other members consisting of: two former students, two Class Counsel representatives, two Church representatives, and two representatives for Canada. The OC is responsible for the recruitment and oversight of the Chief Adjudicator, recruitment and appointment of adjudicators, approval of adjudicator training programs, recruitment and appointment of experts for psychological assessments, instructions about the interpretation and application of the IAP, monitoring the implementation of the IAP, and making recommendations to the NAC on changes to the IAP as necessary to ensure its effectiveness.

4. Canada's Roles under the IRRSA

[51] Canada, which is defined in the IRSSA to mean the Government of Canada, was a party Defendant to the class actions and individual actions that were settled by the IRSSA. Canada signed the IRSSA. Canada has an obligation to provide documents for the Truth and Reconciliation Commission, but it has a right to challenge the scope of that obligation. Canada administers the CEP, and it is the first level of appeals for CEP claimants. Canada is a member of the NAC that hears the second level of appeals of CEP claims. Canada is a member of the OC. Canada is a party to applications to add to the list of IRSs for which there may be CEP and IAP claims, and Canada can oppose applications to have a school added to the list. Canada is the responding party to challenge the claims of IAP claimants. Lawyers from Canada's Department of Justice are sometimes engaged as legal counsel for Canada's various roles under the IRSSA.

[52] Thus, Canada has multifarious and conflicting roles under the IRSSA. It was a given of the negotiations and of their outcome, that Canada, which was providing billions of dollars of funding for the settlement, would have a role in administering the settlement funds and providing the infrastructure for the CEP and IAP while at the same time having a right to challenge entitlements.

5. The IAP

[53] Under the IRSSA, the IAP is a type of litigation. Justice Winkler in his judgment in *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) at para. 38 noted "the potential for conflict for Canada between its proposed role as administrator and its role as a continuing litigant". Earlier in his judgement (at para. 29), Justice Winkler described the IAP as "an opportunity to litigate their claims in an extra-judicial process." Justice Winkler's answer to Canada's conflict of interest in the administration of the IRSSA was to require that authority over the administrative side of the settlement ultimately rest with persons who would report and take direction from the court.

[54] Schedule "D" to the IRSSA sets out what is known as the "IAP Model". It provides that an individual IAP claimant may receive compensation of up to $525,000; a maximum of $275,000 in relation to sexual and physical assaults and other wrongful acts and up to a further $250,000 for "proven actual income loss".

[55] There is a time limit to make IAP claims but Canada's liability to fund the IAP is uncapped.

[56] The IAP is a specialized form of litigation. The IAP Model includes procedural requirements, including directions with respect to what amounts to pleadings of a case, the production of evidence, onus of proof, standard of proof, hearings, testimony, credibility, examinations, etc. Appendix X of Schedule "D" provides directions with respect to the ability of adjudicators to make use of information obtained or known beyond that provided by the parties in each individual case.

[57] In *Fontaine v. Canada (Attorney General)*, 2012 BCSC 839, at paras. 29-30, Justice Brown described the IAP as follows:

> 29. The purpose of the IAP is to provide a modified adjudicative proceeding for the resolution of claims of serious physical or sexual abuse suffered while at a residential school. The hearings are to be inquisitorial in nature and the process is designed to minimize further harm to claimants. The adjudicator presiding over the hearing is charged with asking questions to elicit the testimony of claimants. Counsel for the parties may suggest questions or areas to explore to the adjudicator but they do not question claimants directly.
>
> 30. The hearings are meant to be considerate of the claimant's comfort and well-being but they also serve an adjudicative purpose where evidence and credibility are tested to ensure that legitimate claims are compensated and false claims are weeded out. It is strongly recommended that claimants retain legal counsel to advance their claims within the IAP.

[58] The IAP hearing serves two purposes: (1) testing the credibility of the claimant; and (2) assessing the harm suffered by him or her: *Fontaine v. Canada (Attorney General)*, 2012 BCSC 1671 at para. 38. The parties to an IAP hearing are the Claimant, Canada, and any Church Entity affiliated with the school where the assault occurred. The parties may have counsel.

[59] Schedule "D" lists the mandatory documents that must be submitted by claimants if they are claiming certain levels of consequential harm, loss of opportunity, or need for future care. Claimants may be required to submit records related to their treatment and health (medical), Workers' Compensation, correctional history, education, income tax, Canada Pension Plan, and employment insurance.

[60] Canada is required to search for and report the dates that the claimant attended an IRS. Canada must also search for documents relating to the alleged perpetrators named in the Application Form, and is required to provide the Secretariat with the following documents: (a) documents confirming the claimant's attendance at the IRS(s); (b) documents about the person(s) named as abusers, including their jobs at the IRS(s), the dates they worked or were there, and any sexual or physical abuse allegations concerning them; (c) a report about the IRS(s) in question and the background documents; and (d) any documents mentioning sexual abuse at the IRS(s) in question.

[61] The IRSSA does not preclude a claimant from producing documents in support of his or her claim beyond those articulated as mandatory in the application process.

[62] The relevance and admissibility of documents is determined by the adjudicator on a case-by-case basis.

[63] The adjudicator is required to produce a decision outlining the key factual findings, and, except in cases resulting in a Short-Form Decision, the adjudicator must outline the rationale for finding or not finding that the claimant is entitled to compensation.

[64] An unsatisfied IAP claimant may appeal to the Chief Adjudicator or his designate. The IAP procedure provides for a Review Hearing and a Re-Review Hearing. There is no right of appeal to the courts from an IAP hearing decision. The Review and Re-Review of Adjudicators' decisions is governed by s. III(l) of Schedule "D" of the IRSSA which provides the standard of appellate review.

[65] Finally, it should be noted that IAP claimants are generally represented by their own lawyers, whose fees are governed by the IRSSA.

6. Claimants H-15019 and K-10106 and St. Anne's RFD-1 and St. Anne's RFD-2

[66] In 2011, Claimant H-15019 retained Wallbridge to make a claim for him for IAP compensation and Claimant K-10106 retained Nelligan to act to make a claim for her for IAP compensation.

[67] In February 2011, Claimant K-10106's IAP claim that she had been sexually assaulted was denied. She sought a Review Hearing.

[68] In 2012, a Review Adjudicator granted Claimant K-10106's IAP claim. She received $175,000 plus $26,250 towards her legal fees plus reimbursement for reasonable disbursements. Although now a successful claimant, Claimant K-10106 was traumatized by the experience, and she complained to the Chief Adjudicator. She was told that she would not be advised about the outcome of the Chief Adjudicator's investigation of her complaint.

[69] On May 30, 2013, Adjudicator Ravindra heard H-15019's testimony with submissions to follow on July 25, 2014.

[70] Meanwhile, in December 2013, St. Anne's RFD-1 came before the court. The issue was whether Canada had complied with its disclosure obligations for the IAP and for the Truth and Reconciliation Commission. The requestors for this RFD were the Truth and Reconciliation Commission and 60 survivors of St. Anne's IRS. The survivors were represented by Faye Brunning. Mr. Metatawabin spoke at the hearing.

[71] I released a decision for St. Anne's RFD-1 on January 14, 2014, and in my decision, I

ordered that Canada produce documents. In St. Anne's RFD-1, Canada's failure to disclose concerned the documents that had been prepared for the criminal and civil proceedings in Cochrane, Ontario. The thrust of my Order in St. Anne's RFD-1 was that the OPP produce its documents with respect to its investigations that led to the criminal charges about events at St. Anne's IRS. The documents were to be produced to Canada for use in the IAP and to the Truth and Reconciliation Commission in accordance with the IRSSA. The documents were to be produced by June 30, 2014. The January Order provided in part:

> 6. THIS COURT ORDERS that Canada shall by June 30, 2014, produce for the IAP:
>
> ...
>
> (b) the transcripts of criminal or civil proceedings in its possession about the sexual and/or physical abuse at St. Anne's IRS; and
>
> (c) any other relevant and non-privileged documents in the possession of Canada to comply with the proper reading and interpretation of Canada's disclosure obligations under Appendix VIII.

[72] It should be noted that the Order speaks of transcripts of civil proceedings without differentiating between discovery transcripts and trial transcripts. To foreshadow the dispute between the parties to the RFDs now before the court, Canada interprets the Order in St. Anne's RFD-1 to apply only to trial transcripts but the Requestors and Claimant H-15019 says that the order applies to both types of transcript. Further, Canada says that the discovery transcripts are privileged settlement communications or subject to the deemed undertaking.

[73] In my Reasons for Decision in St. Anne's RFD-1, I indicated that the IRSSA does not preclude a claimant from producing documents in support of his or her IAP claim beyond those articulated as mandatory in the application process and that the relevance and admissibility of documents is determined by the adjudicator on a case-by-case basis.

[74] In my Reasons for Decision in St. Anne's RFD-1, I also ruled that the court had jurisdiction to re-open IAP claims affected by the non-disclosure, but that jurisdiction had to be exercised on an individual case-by-case. At paragraphs 224-232 of my decision, I stated:

> 224. The above orders should resolve any problems associated with Canada's failure to comply with its disclosure obligations concerning the Narratives and POI Reports for St. Anne's, but the Applicants' RFD raises the question of whether the court may direct the re-opening of settled IAP claims on the grounds of Canada's breach of its disclosure obligations.
>
> 225. In my opinion, the answer to this question is yes. The court does have the jurisdiction to re-open settled claims but that jurisdiction must be exercised on a case-by-case basis.
>
> 226. If truth and reconciliation is to be achieved and if nous le regrettons, we are sorry, nimitataynan niminchinowesamin mamiattugut, is to be a genuine expression of Canada's request for forgiveness for failing our Aboriginal peoples so profoundly, the justness of the system for the compensation for the victims must be protected. The substantive and procedural access to justice of the IRSSA, like any class action, must also be protected and vouched safe. The court has the jurisdiction to ensure that the IRSSA provides both procedural and substantive access to justice.
>
> 227. This is not to say that Canada is not entitled to put the Claimants to the proof of their claims under the IAP, it is rather to say that Canada must comply with the requirements of the IAP and if it does not do so, the court has the jurisdiction to have the IAP done right both procedurally and substantively.
>
> 228. This is also not to say that any breach of Canada's disclosure obligations will necessarily lead to a re-opening of a settled claim. Each case will have to be decided on its own merits and a variety of factors may have to be considered in any given case including some demonstration that

> the prejudice from non-disclosure was more than a theoretical miscarriage of justice. The court's jurisdiction to re-open a claim will be a rare or extraordinary jurisdiction.
>
> 229. For all the parties and participants in the IAP, there obviously was a great deal of angst associated with the Applicants' asking whether settled claims can be re-opened with the threat of setting back the progress made and being made to complete the IAP.
>
> 230. I think the fears are likely overblown because the Narratives and the POI Reports as they have already been produced may have been adequate for the purposes of the particular Claimant or the Claimant may have been properly compensated in any event. Better Narratives and better POI Reports may have made it easier for Claimants to prove their claims, but the Claimants may have persuaded the adjudicator to the correct result in any event. It needs to be recalled that the IAP was never intended to have the amount of disclosure of court proceedings and was designed to be an inquisitorial system to facilitate the expedited resolution of the claims. It is to be noted that the court's jurisdiction to re-open claims will be an extraordinary jurisdiction.
>
> 231. However, be that as it may be, as Justice Winkler noted at para. 12 in *Baxter v. Canada (Attorney General) supra*, that once the court is engaged it cannot abdicate its responsibilities to ensure that the IRSSA operates in the way it was intended by the parties to operate. The parties to the IRSSA intended the IAP to provide genuine access to justice for the Claimants.
>
> 232. Thus, I conclude that the court does have the jurisdiction to re-open a settled IAP claim but whether a claim should be re-opened will depend upon the circumstances of each particular case.

[75] I pause here to say that my 2014 decision in St. Anne's RFD-1 must now be read and interpreted in the light of the Ontario Court of Appeal's 2017 decision: *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26, discussed below.

[76] After the January 2014 Order in St. Anne's RFD-1, the pending hearings by St. Anne's IRS, including Claimant H-15019's application, were not adjourned, and the Chief Adjudicator did not order any review of completed IAP claims. Wallbridge did not request revised disclosure from Canada for Claimant H-15019 at any time after the January 2014 Order.

[77] On June 30, 2014, the documents from St. Anne's RFD-1 were produced. Ms. Brunning, the counsel for the 60 survivors of St. Anne's IRS, received an external hard drive from the Secretariat containing approximately 12,300 electronic documents in .pdf format, including a 313-page index.

[78] By way of a letter dated June 30, 2014, counsel for Canada reported to the court concerning its intended compliance with the January 2014 Order. In that letter, Canada's counsel indicated that:

- Pursuant to subparagraph 6(a) of the January 2014 Order, Canada would produce the OPP documents in its possession.
- Pursuant to subparagraph 6(b), Canada would produce the transcripts of criminal proceedings in its possession about the abuse at St. Anne's IRS.
- Canada was not in possession of any civil trial transcripts in relation to St. Anne's IRS because no civil trials took place with respect to that IRS.
- Pursuant to subparagraph 6(c), Canada would produce any other relevant and non-privileged documents from its St. Anne's IRS files. These documents were comprised of pleadings, demands for particulars, responses to those demands, notices of discontinuance, dismissal orders, and other such documents.
- Canada would not produce examination for discovery transcripts of those parties who had

settled with Canada prior to the IRSSA because these transcripts were subject to settlement privilege and undertakings of confidentiality given to the plaintiffs in the context of the pre-IRSSA settlements.

[79] On the matter of the discovery transcripts, the relevant part of Canada's reporting letter stated:

> As contemplated by Perell J.'s Order, Canada will not produce documents that are subject to solicitor client, litigation or settlement privileges. In this regard, Canada is of the view that there are two types of transcripts that contain extremely personal and painful stories that are not being produced because of settlement privilege and/or undertakings of confidentiality given to the plaintiffs in the context of pre-IRSSA settlements. These are transcripts that were part of an ADR process that led to settlements with Canada and discovery transcripts with other parties who settled prior to the IRSSA. In any event, these documents would have been severely redacted in accordance with the privacy provisions of Appendix VIII. Finally, there are a small number of plaintiffs who did not settle with Canada through the ADR process and later went into the IAP process. Their transcripts are being produced for the IAP hearings of these plaintiffs, according to Appendix XI of the IAP model.

[80] Pausing here, this is obviously a very significant letter, about which I will have more to say below. For immediate purposes, the point to note is that Canada did not hide that it would not produce discovery transcripts of parties who had settled their claims before the IRSSA was negotiated and approved.

[81] On July 25, 2014, Claimant H-15019's IAP hearing went forward without the benefit of the Cochrane documents that had recently been produced by Canada, and on September 23, 2014, Claimant H-15019's IAP claim was dismissed. Claimant H-15019 sought a Review hearing.

[82] On April 2, 2015, the Review Adjudicator upheld the original decision dismissing Claimant H-15019's claim. Claimant H-15019 did not seek a Re-Review Hearing. He was so distraught that he attempted suicide.

[83] In June 2015, the former students of St. Anne's IRS, along with students from Bishop Horden IRS, who had made or were making claims for compensation under the IAP, filed an RFD that I have called St. Anne's RFD-2.

[84] In St. Anne's RFD-2, the requestors were again represented by Ms. Brunning. In St. Anne's RFD-2, the requestors asserted that Canada had not complied with its report writing obligations under the IRSSA, including its obligation to update reports following the Order made in St. Anne's RFD-1. The requestors submitted that Canada had not provided an adequate School Narrative or Person of Interest Reports ("POI Reports") for claims involving St. Anne's IRS.

[85] In St. Anne's RFD-2, I ordered Canada: (1) to revise its School Narrative and POI Reports for St. Anne's IRS; and (2) to provide unredacted copies of any court records, including transcripts and pleadings, that were at any time publicly available to the Secretariat and, upon request, to claimants or their lawyers for IAP hearings about St. Anne's IRS or Bishop Horden IRS, the latter having been operated in Moosonee, Ontario.

[86] In St. Anne's RFD-2, I dismissed the request for an order that Canada provide the Secretariat, claimants, and claimants' counsel with unredacted copies of other documents gathered for the School Narrative and POI Reports. I also dismissed the claimants' request that Canada update its reports for Bishop Horden IRS.

[87] In November 2015, Claimant H-15019 filed a RFD seeking court intervention in his IAP

claim. He had, by this time, changed counsel and was now represented by Ms. Brunning. His RFD is the first of the two RFDs now before the court. On February 11, 2016, Claimant H-15019 filed an amended RFD. In his RFD, Claimant H-15019 requested the following relief:

> Claimant H-15019 seeks:
>
> (a) an order directing a re-hearing of his IAP application, along with leave to amend his application;
>
> (b) an order directing how the Adjudicator should adjudicate the IAP with respect to the admissibility and use of evidence;
>
> (c) payment of aggravated and/or punitive damages and any other proper remedies for breach of the IRSSA to IAP claimants prejudiced by the defendants' failure to make documentary disclosure;
>
> (d) alternatively, that the Chief Adjudicator be ordered to oversee the re-hearing on the correct documentary record;
>
> (e) an order that there be a fresh IAP adjudicator who is fully familiar with the additional document for St. Anne's IRS;
>
> (f) an order that if his testimony is found credible, the Secretariat arrange a psychiatric evaluation of Claimant H-15019 as to harm suffered;
>
> (g) that lawyers from the Department of Justice be removed from representing Canada or any defendant in all IAP re-hearing processes for former students of St. Anne's IRS, including Claimant H-15019;
>
> (h) an order that legal counsel for Canada and/or the Catholic Church Entities be estopped from opposing the admissibility of criminal trial transcripts and statements by former students to the Ontario Provincial Police ("OPP") and/or from denying that certain adult supervisors attended at St. Anne's IRS at relevant times;
>
> (i) an order determining whether other former students of St. Anne's IRS may have been prejudiced in the outcome of his or her IAP claims, similar to his and to remedy the non-disclosure breach of the IRSSA by Canada and the Catholic Church Entities to ensure justice is done for survivors of St. Anne's IRS;
>
> (j) an order that a process be determined for claims of former students of St. Anne's IRS that were decided prior to November 1, 2015 be reviewed for possible re-hearings;
>
> (k) an order that a fee be paid by Canada, regardless of outcome, to his counsel in respect of the re-hearing process;
>
> (l) an order that the Chief Adjudicator establish and maintain a shortlist of approved counsel;
>
> (m) an order that the Secretariat be directed to fund approved counsel and designated agents of St. Anne's Survivors Association to attend a legal education conference regarding representation of St. Anne's IRS claimants; and,
>
> (n) if an amendment of the IRSSA is necessary to effect the relief related to his counsel, that the court mandate the Oversight Committee to conduct a review and make recommendations to the National Administration Committee and the court.

[88] In March 2016, Claimant K-10106 returns to the factual narrative. She was receiving counseling from the PKKA for her ongoing trauma, and she alleges that during counseling she learned for the first time about St. Anne's RFD-1 and that Nelligan had had a solicitor and client relationship with the Catholic Church Entities that were defendants in the proceedings leading up to the IRSSA and were aware of and had possession of the documents from the criminal and civil proceedings in Cochrane.

[89] Claimant K-10106 alleges that she discovered that Nelligan had not disclosed its conflict

of interest and it had not used the documents available to it that would have helped her succeed with her claim.

[90] At this juncture, the Mushkegowuk Council decided to get involved, and on March 2, 2016, it filed an RFD on behalf of Claimant K-10106. However, in the face of a challenge to its standing to do so and by letter to the court dated October 3, 2016, the Mushkegowuk Council advised that it no longer intended to proceed with that RFD. Within days, the court was advised that Mr. Metatawabin and the PKKA and Claimant K-10106 would pursue an RFD seeking essentially the same relief. This RFD is the second of the two RFDs now before the court.

[91] In this RFD, the Requestors make allegations against Nelligan. The Requestors allege that the firm had a conflict of interest and had breached its fiduciary duties and was professionally negligent because it represented the Church Entities that operated St. Anne's IRS during the civil proceedings in Cochrane and during a pilot ADR program, but subsequently it represented IAP claimants from St. Anne's IRS without informing them it had previously represented the church. Further, the Requestors allege that Nelligan knew about the Cochrane documents, but failed to file them in the IAP or request them from Canada during the IAP; or bring a RFD about the documents.

[92] In the second RFD now before the Court, the Requestors seek the following relief:

> RELIEF REQUESTED
>
> 9. The Applicants seek that the following be undertaken by this Honourable Court, through its own agents and under its own powers/means, with participation rights being granted to the Applicants. Alternatively, the Applicants seek the following directly:
>
> (i) For this Honourable Court, as enforcer and supervisor of the Indian Residential School Settlement Agreement (IRSSA), to inquire, investigate and determine whether and why there was breach of the IRSSA by Canada and/or the Catholic Church entities that operated St. Anne's IRS, arising from non-disclosure of documents in their possession, which documents record details of the sexual and physical abuse of approximately 1000 children who attended St. Anne's IRS ("Evidence of 1000 Former St. Anne's Students") and were created through the operations of the Ontario system of justice.
>
> (ii) The Order of Mr. Justice Trainor dated August 1, 2003 of this Honourable Court granted access to the lawyers for the parties in the Cochrane civil actions, and adjourned the rights of "non-plaintiffs", to the special investigation documents generated by the OPP into child abuse at St. Anne's IRS. The Applicants seek for this Court to inquire, investigate and determine, for the St. Anne's former students who are the "non-plaintiffs":
>
> > (1) Who copied the OPP documents, and who has current possession of the OPP documents outside the IAP and TRC;
> >
> > (2) What use was made of those documents and by whom;
> >
> > (3) Why there was non-disclosure of those documents into the IAP and to the TRC;
> >
> > (4) Who should have ownership/possession of those documents presently;
> >
> > (5) Who is entitled to notice hereof, and who shall provide evidence to the Court in this regard.
>
> (iii) That this Honourable Court enforce paragraph 6(b) of the Order of January 14, 2014, to compel federal officials to produce for the IAP in redacted format, the transcripts of examinations for discovery in civil proceedings about sexual and/or physical abuse at St. Anne's IRS conducted prior to the IRSSA being signed; and for agents of this Honourable Court to give appropriate notice to each civil plaintiff of his/her personal option to file his/her transcript with the National

Centre for Truth and Reconciliation;

(iv) For this Honourable Court to determine, in the first instance, that for the purposes of the IAP, the documents comprising the Evidence of 1000 Former St. Anne's Students, if relevant to an individual IAP claim, are "reliable and trustworthy" evidence under the IAP, admissible under Appendix VIII and X of the IAP, can be argued by other former students to corroborate an IAP claim and/or can be relied upon by IAP adjudicators as corroborating evidence to make findings of fact, credibility, liability and compensation under the IAP model;

(v) For this Honourable Court to suspend the release and extend the deadline date for filing an IAP claim to each former student of St. Anne's IRS who gave a signed statement to the Ontario Provincial Police, and who did not file an IAP claim and/or receive compensation in civil proceedings;

(vi) For this Honourable Court and Chief Adjudicator to determine the process by which all St. Anne's survivors who have suffered a miscarriage of justice due to this nondisclosure, will be identified, notified, provided with independent legal advice, and remediated for proper compensation owed under the IAP; suggestions include appointment of the administrative judge or a judicial officer, with necessary powers, to review the revised disclosure and the IAP claims from St. Anne's, to identify and notify those former students who may have been prejudiced by the non-disclosure, and to order appropriate compensation for selected claimant counsel payable by Canada that is not contingent upon outcome, plus appropriate compensation to PKKA personnel for duties assigned to locate, notify and support OPP witnesses in IAP process.

(vii) An Order pursuant to Appendix VIII and X of the IAP, that Canada shall make admissions, or the Chief Adjudicator will make findings of fact, from the criminal proceedings, examinations for discovery, OPP signed witness statements, and/or from previous decisions for St. Anne's IRS, with respect to student-on-student abuse, where supervisors and/or church officials knew or ought to have known about the abuse happening at St. Anne's IRS and/or failed to take reasonable steps to stop the abuse.

(viii) Directions from this Honourable Court as to the manner in which to resolve possible conflicts of interest identified in the evidence.

(ix) Directions from this Honourable Court, given IAP confidentiality guarantees, as to the process to seek damages (aside from remedial IAP compensation), for individual or categories of former students of St. Anne's, for breach of contract, breach of fiduciary duty and/or unjust enrichment, such as:

(1) Aggravated damages for mental pain and suffering, loss of dignity, etc.

(2) Punitive damages;

(3) Repayment of legal fees to prevent unjust enrichment;

(x) For this Honourable Court, on the basis that the revised November 2015 narrative should have been known to the Secretariat since 2007, to extend and enforce Article 8.02 of the IRSSA for St. Anne's survivors in the James Bay region, including:

(1) to Order Canada to provide funding to PKKA in trust (or a charitable organization to be created by PKKA); PKKA shall employ staff and provide Aboriginal cultural health support programs to the survivors of St. Anne's IRS and their families; funding at $500,000 per year for 3 years; Programs to include:

(a) Elders Teaching House and outreach support positions; and

(b) Youth and Elders Camp; and

(c) Albany River Rafting for youth and elders.

(xi) Substantial indemnity legal costs of this RFD at rates, taxes and disbursements consistent with the IAP process. Advance costs of $50,000.00 to Edmund Metatawabin, including approval for

disbursements incurred for Edmund Metatawabin and affiants to attend all public proceedings before the Court on this RFD.

(xii) Preliminary Preliminary Relief:

> (1) An Order granting Metatawabin and IAP Claimant K-10106 and all St. Anne's survivors, immunity from costs being ordered against any one and all St. Anne's survivors, for bringing forward RFDs to this Honourable Court for supervision and enforcement of the IRSSA/IAP, in matters pertaining to or arising from nondisclosure of documentation about sexual and physical abuse of children at St. Anne's IRS.

(xiii) Preliminary Relief:

> (1) An Order to grant standing to Metatawabin to pursue this RFD under the IRSSA, on behalf of the former students of St. Anne's IRS, including estates of former students who have died on or after May 30, 2005;
>
> (2) An Order directing the Chief Adjudicator to participate in this RFD;
>
> (3) An Order to compel Canada to file immediately into the public record of this RFD, the following documents already in the possession of federal officials in the Department of Justice, being the "Evidence of 1000 Former St. Anne's Students" about sexual and/or physical abuse of IRS children:
>
> > (a) Documents arising from criminal proceedings against former supervisors of St. Anne's IRS;
> >
> > (b) Pleadings in the public court record from civil actions, issued prior to the signing of the IRSSA, for sexual and/or physical child abuse of former students of St. Anne's IRS, against Canada and/or the Catholic Church entities;
> >
> > (c) In relation to the over 700 former students of St. Anne's, who between 1992 and 1997 gave oral testimony and signed statements to the Ontario Provincial Police about child abuse at St. Anne's, a copy of the handwritten signed statement and the OPP typed version of that same statement; statements in the public record to be redacted as to the name and identity of the students and perpetrators. Metatawabin and PKKA are to receive unredacted copies of signed statements on terms that are just.
>
> (4) Such further and other preliminary relief as this Honourable Court may deem just.

[93] Returning to Claimant H-15019 and the first RFD now before the court, in May 2016, he made a motion for preliminary relief. See *Fontaine v. Canada (Attorney General)*, 2016 ONSC 4328.

[94] Claimant H-15019 sought the following preliminary relief:

> (a) a sealing order, a publication ban, redaction orders as necessary and an *in camera* hearing with respect to the record for the RFD;
>
> (b) an order that Canada deliver affidavits from Gail Soonarane and Catherine Coughlan (who are Department of Justice lawyers), to explain why 12,300 documents about abuse at St. Anne's IRS were improperly withheld from disclosure contrary to Appendices III and IV of Schedule D and/or Articles 2.9 and 2.10 of Schedule 0-3 to the IRSSA and to describe what steps, if any, have been taken by Canada and/or Catholic Church Entities to identify IAP claimants whose claims for compensation have been compromised by Canada's failure to comply with its disclosure and reporting obligations for IAP claims;
>
> (c) an order that the IAP Adjudicator file an affidavit with respect to his conduct of the IAP hearing and what he said to [Claimant H-15019] outside of the hearing;
>
> (d) an order that the IAP Review Adjudicator file an affidavit about his conduct of the review

hearing;

(e) an order that the Catholic Church Entities that operated St. Anne's IRS file affidavit material on the RFD with respect to whether there has been compliance with the documentary disclosure and reporting obligations of the IAP;

(f) an order directing Canada and the Catholic Church Entities to file affidavit evidence with respect to certain civil proceedings, the Cochrane Civil Action, that concerned abuse at St. Anne's IRS;

(g) an order directing the Chief Adjudicator to file affidavit evidence as to why there was non-compliance with this court's orders with respect to the production of documents for IAP hearings concerning St. Anne's IRS claimants;

(h) an order disqualifying Catherine Coughlan for appearing for Canada on the RFD; and,

(j) an advance costs award of $40,000.

[95] The motion for preliminary relief was heard and, Canada, which had not filed any material to respond to the RFD, addressed the issue of the confidentiality of the record for the RFD, but Canada submitted that the balance of the relief requested and the RFD itself was premature because Canada had consented to a Re-Review Hearing for Claimant H-15019 and it consented to the production of a revised Narrative and POI Reports for consideration by the Re-Review Adjudicator.

[96] On the preliminary motion, I granted a confidentiality order. In all other respects, I agreed with Canada's submission, and I adjourned Claimant H-15019's RFD and his motion for preliminary relief to be brought on, if necessary, after his Re-Review Hearing.

[97] On July 2016, there was a Re-Review Hearing of Claimant H-15019's IAP claim heard by Chief Adjudicator Daniel Shapiro, who reserved judgment.

[98] On September 29, 2016, the Mushkegowuk Council served a Fresh Amended RFD that removed the Council as Requestor, and substituted Mr. Metatawabin and Claimant K-10106.

[99] By preliminary motion heard in the second RFD, on December 14, 2016, the Requestors requested an order that they be immune from any adverse costs awards in the RFD. At the same time, Wallbridge and Nelligan sought intervenor status, which was not opposed. See *Fontaine v. Canada (Attorney General)*, 2016 ONSC 791.

[100] On the preliminary motion in the second RFD, on consent of the parties, I granted the motion for a costs immunity order, in part, and subject to the following terms:

(1) The RFDs for IAP Claimants H15019 and C14114 scheduled for March 24, 2017 are adjourned *sine die*;

(2) There shall be a standing and jurisdiction motion in the Metatawabin and others RFD now before the court to be heard on March 24, 2017 provided that the Court of Appeal releases its decision in the recently heard RFD appeal by February 15, 2017;

(3) If the Court of Appeal does not release its decision by February 15, 2017, the March 24, 2017 hearing will be adjourned and rescheduled;

(4) The material for the jurisdiction motion is frozen and shall consist of the fresh amended RFD and the material filed by the Intervenors and Canada and no other material;

(5) There shall be no other materials and no cross-examinations;

(6) The issue to be determined on the jurisdiction motion is whether the court under the Indian Residential Schools Settlement Agreement has the jurisdiction in whole or in part to grant the relief requested in the fresh amended RFD;

(7) This motion for costs immunity and the jurisdiction motion are to be without costs to the RFD applicants, Canada, Wallbridge and his firm and Nelligan Power; and

(8) This order is without prejudice to further requests for costs immunity awards by any party.

[101] In January 2017, the Chief Adjudicator ordered a new hearing of Claimant H-15019's IAP claim. However, Claimant H-15019, rather than proceeding to the new IAP adjudication, sought to bring back on his adjourned RFD. He wished guidance from the court on the procedural details of the new IAP hearing, and he raised again the issue of whether there had been compliance with my order in St. Anne's RFD-1.

[102] On February 7, 2017, there was a case conference to determine whether Claimant H-15019's RFD should proceed. At the case conference, Canada confirmed that it had examination for discovery transcripts from the civil proceedings in Cochrane, but it had not produced them because of settlement privilege or the deemed undertaking. As already noted, this information had been disclosed in June 2014 in correspondence to the court and to the parties to St. Anne's RFD-1. In its factum, Canada adds the explanation that the production of the documents would be contrary to the letter and spirit of the provisions of the IRSSA.

[103] At the case conference, I directed that there should be a hearing in writing to determine whether Canada had indeed breached its disclosure obligations under the IRSSA with respect to the Cochrane documents. If there was a breach, then the court could consider in a subsequent hearing whether the various extraordinary requests for relief should be granted and directions given with respect to Claimant H-15019's IAP hearing.

[104] The jurisdiction and standing motion in the Requestor's RFD was heard on March 24, 2017 and by that time I had already received the written submissions in Claimant H-15019's RFD.

[105] I am releasing these Reasons for Decision for both RFDs.

D. CLAIMANT H-15019's RFD and DID CANADA BREACH THE IRSSA?

1. Claimant H-15019's Submissions

[106] Claimant H-15019 submits that Canada has failed to comply with its disclosure obligations under the January 2014 Order, and he also raises questions about Canada's compliance with respect to the OPP documents and about whether Canada is obligated to make admissions about abuse at St. Anne's IRS based on the information obtained during the examinations for discovery in the St. Anne's civil litigation.

[107] Claimant H-15019 argues that the documents are not protected by settlement privilege because they were created during the ordinary course of litigation for use at trial. He argues that testimony given on examination for discovery was not made with the express or implied intention that the testimony would not be disclosed in the event settlement failed and rather, the testimony was given to test the pleadings and to be used at trial. Further, he says that there is insufficient evidence to conclude that the examinations for discovery in the civil litigation were for the purpose of facilitating settlement.

[108] Claimant H-15019 argues that the IAP Model does not exempt Canada from disclosing the discovery transcripts, but rather requires their production. He notes that under Appendix VIII of the IAP Model, Canada is required to disclose in its POI Report any allegations of abuse

committed by the POI and Canada is required to provide the claimant with copies of documents that contain those allegations of abuse upon request by the complainant. He submits that the discovery transcripts contain allegations of abuse and Canada should be required to produce those documents in redacted form. He also notes that the IAP Model does not contain any "settlement privilege" exemption to limit Canada's disclosure obligations with respect to documents containing allegations of abuse.

[109] In addition, Claimant H-15019 raises questions about the credibility and motivations of the DOJ lawyers and suggests that the DOJ has acted in bad faith and has intentionally withheld information for ulterior motives. He makes allegations about his former counsel, Wallbridge, suggesting that Wallbridge was in a conflict of interest at the time it represented him.

2. Canada's Submissions

[110] Canada submits that it has fully complied with its disclosure obligations under the January 2014 Order. It outlines three reasons why it is not obligated to disclose the discovery transcripts.

[111] First, Canada argues that on a plain reading of the January 2014 Order and the IAP Model, Canada is not required to disclose the discovery transcripts. Canada argues that the wording of the January 2014 Order in referring to "civil proceedings" must be taken to mean proceedings in which *viva voce* evidence was taken in open court, free from privilege or confidentiality concerns.

[112] Canada says that this interpretation is consistent with the IAP Model itself. Appendix XI of the IAP Model provides for only limited use of discovery transcripts, but does not contain an express term requiring disclosure of third party discovery transcripts. Since the IAP is a "complete code" for IAP proceedings, the absence of an express term suggests that there is not a general requirement on Canada to produce third party discovery documents. Further, Canada argues that this interpretation of the January 2014 Order is consistent with the concept of IAP confidentiality.

[113] Second, Canada argues that the deemed undertaking rule applies to the discovery transcripts and the undertaking should not be lifted by court order. Canada submits that the interests of justice do not support the release of the discovery transcripts of third parties into IAP claims where they will have limited or no use, given the fact that the transcripts are akin to IAP hearing transcripts and contain very sensitive and personal information.

[114] Third, Canada argues that the discovery transcripts are protected by settlement privilege. Canada submits that the examinations for discovery were conducted to facilitate settlement and were not intended to be used for trial. According to Canada, it was anticipated that had settlement efforts failed, (i) the parties could only use the discovery transcripts upon their mutual agreement to lift settlement privilege; or (ii) should the matters proceed to trial, the parties would have to reconvene for more fulsome examinations for discovery on a non-expedited basis.

3. Claimant H-15019's Reply Submissions

[115] In reply, Claimant H-15019 argues that Canada has the onus of bringing an RFD about disclosure of transcripts of examinations for discovery, and Canada ought to have brought an RFD on that issue after the January 2014 Order was made. He submits that the evidence does not

support Canada's submission that the discoveries in Cochrane were in furtherance of settlement. Claimant H-15019 acknowledges that the deemed undertaking would apply to the Cochrane discovery documents, but he argues that the interests of justice outweigh any prejudice that would be associated with production of these documents and the confidentiality guarantees imposed in the IAP process would provide adequate protection to the plaintiffs in the St. Anne's litigation if their discovery transcripts were produced.

4. Analysis and Discussion

[116] I agree with Canada's argument that the reference to transcripts of civil and criminal proceedings in my January 2014 Order in St. Anne's-RFD1 was not meant to include any and all transcripts of discovery evidence from previous civil proceedings, especially discoveries designed for settlement purposes. The January 2014 Order specifically provides that Canada is required to produce only relevant, non-privileged documents, which suggests that the reference to transcripts of "civil proceedings" is meant to refer to proceedings where privilege and confidentiality issues do not apply. Transcripts from examinations for discovery are protected by the deemed undertaking rule and can only be used in subsequent proceedings in very limited circumstances. My January 2014 Order should not be read as creating a general exception to that well-established rule.

[117] This interpretation of the January 14, 2014 Order is consistent with the IAP Model, which, as noted above, the Court of Appeal in *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26 at para. 53, characterized as a complete code. The IAP Model created an express obligation to disclose examination for discovery transcripts in limited circumstances involving the direct participant in the IAP process. It provides that if a claimant gave evidence at discovery in a prior civil proceeding and now wishes to enter the IAP, he or she must disclose his or her transcript. In essence, a claimant must consent to certain uses of the discovery transcript, if the claimant makes an IAP claim. (It is worth noting that consenting to the use of one's own examination for discovery evidence is one of the recognized exceptions to the deemed undertaking rule set out in rule 30.1.01(4) of the *Rules of Civil Procedure*.)

[118] Although, as Claimant H-15019 notes, Canada is obligated under Appendix VIII of the IAP Model to produce documents containing allegations of abuse, that obligation must be read in context and in a manner that is consistent with the IAP Model as a whole. Appendix XI of the IAP Model addresses the limited circumstances in which discovery transcripts can be used in IAP proceedings. To find that Appendix VIII imposes a general obligation on Canada to produce examination for discovery transcripts would be inconsistent with Appendix XI.

[119] I turn now to Canada's argument about the deemed undertaking justifying the non-production of the discovery transcripts from the Cochrane civil proceedings. As noted above, Claimant H-15019 acknowledges that that the deemed undertaking would apply to the Cochrane discovery documents. Where the parties disagree is on the issue of whether the court should exercise its discretion and find that the interests of justice outweigh the privacy concerns at play and that the deemed undertaking should be lifted.

[120] In deciding whether to lift the deemed undertaking, the court must be satisfied that exceptional circumstances exist to override the deemed undertaking rule: *Doucette (Litigation Guardian of) v. Wee Watch Day Care Systems Inc.*, 2008 SCC 8, at paras. 30 and 32. Where discovery material in one action is sought to be used in another proceeding with the same or

similar parties and the same or similar issues, the courts have found that the prejudice to the examinee is "virtually non-existent" and leave is often granted: *Doucette (Litigation Guardian of) v. Wee Watch Day Care Systems Inc., supra* at para. 35. In contrast, courts generally refuse to lift the undertaking in cases where there is an attempt to use the discovered material for an extraneous purpose or for an action wholly unrelated to the purpose of the proceeding in which discovery was obtained: *Doucette (Litigation Guardian of) v. Wee Watch Day Care Systems Inc., supra* at para. 36. Likewise, consent to lift the undertaking will "virtually never be given" in cases where a non-party to the undertaking requests that the undertaking be lifted: *Doucette (Litigation Guardian of) v. Wee Watch Day Care Systems Inc., supra* at para. 36; *Livent Inc. v. Drabinsky*, [2001] O.J. No. 918.

[121] Although the issues in Claimant H-15019's IAP proceeding are similar to those at issue in the St. Anne's civil litigation, Claimant H-15019 is a non-party to the St. Anne's litigation and to the undertakings given in that case. Thus, Claimant H-15019 has a heavy burden to demonstrate that the deemed undertaking should be lifted in this case. (I pause here to note parenthetically that it is worth recalling that Justice Trainor was very careful not to order the production of the Cochrane OPP documents of non-plaintiffs to the plaintiffs of the Cochrane civil proceedings.)

[122] As Canada argues, the discovery transcripts in the St. Anne's litigation are akin to IAP hearing transcripts and contain extremely sensitive and personal information. The discovery evidence was given with the understanding that it would not be used for purposes other than the proceeding in which it was given, and consent to disclosure of this information has not been obtained from the plaintiffs in the Cochrane civil proceedings. Further, protection of confidentiality is consistent with the goal of reconciliation underlying the IRSSA process. Canada is right to be reluctant to agree to disclosure of this information, as doing so could undermine the goals of the IRSSA process. As such, the decision to order disclosure of this information should only be made where the interests of justice clearly outweigh the harm to the individual who provided the evidence.

[123] In my opinion, this is not a case where the undertaking should be lifted. At his new hearing, Claimant H-15019 will have the benefit of the additional information about St. Anne's IRS produced pursuant to the January 2014 Order. He will have the benefit of all of the non-privileged, relevant documents in the St. Anne's civil litigation including pleadings, demands for particulars, and responses to those demands. He will also have the OPP reports with respect to the police investigation of activities at St. Anne's IRS.

[124] I also agree with Canada that the discovery documents from the Cochrane civil litigation are covered by settlement privilege, and I disagree with Claimant H-15019's submission that Canada has not met the evidentiary burden of showing that the discoveries were communications made with a view to reconciliation or settlement.

[125] In this last regard, it is telling that in its letter of June 30, 2014, Canada made it transparently clear that it would not produce examination for discovery transcripts of those parties who had settled with Canada prior to the IRSSA because these transcripts were subject to settlement privilege and undertakings of confidentiality given to the plaintiffs in the context of the pre-IRSSA settlements.

[126] It has long been recognized that there is a policy interest in encouraging parties to resolve their disputes without recourse to litigation. In furtherance of this objective, the courts have

found that privilege attaches to communications made with a view to reconciliation or settlement. This is a class privilege that applies to all communications made for this purpose: *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, at para 12.

[127] In *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35 at para. 31, the Supreme Court described settlement privilege in the following terms:

> 31. Settlement privilege is a common law rule of evidence that protects communications exchanged by parties as they try to settle a dispute. Sometimes called the "without prejudice" rule, it enables parties to participate in settlement negotiations without fear that information they disclose will be used against them in litigation. This promotes honest and frank discussions between the parties, which can make it easier to reach a settlement: "In the absence of such protection, few parties would initiate settlement negotiations for fear that any concession they would be prepared to offer could be used to their detriment if no settlement agreement was forthcoming" (A. W. Bryant, S. N. Lederman and M. K. Fuerst, *The Law of Evidence in Canada* (3rd ed. 2009), at para. 14.315).

[128] Settlement privilege applies in the absence of any statutory provisions or contract clauses with respect to confidentiality, and parties do not need to use any special words or phrases to invoke the privilege. Instead, what matters is the intent of the parties to settle the action and any negotiations undertaken with this purpose are inadmissible. The privilege survives even after a settlement is reached. See *Union Carbide Canada Inc. v. Bombardier Inc., supra,* at para. 34.

5. Conclusion

[129] I conclude that Canada did not breach the IRSSA agreement or the IAP Model in transparently refusing to produce the discovery transcripts of the Cochrane civil proceedings. There is no mystery about what it did with these documents and why it did not produce them.

[130] It follows that Claimant H-15019's RFD should be dismissed.

E. MR. METATAWABIN's, PKKA's AND CLAIMANT K-10106's RFD

1. Introduction

[131] Mr. Metatawabin's, PKKA's and Claimant K-10106's RFD involves the matter of the disclosure of the Cochrane documents, but this RFD adds the toxic allegation that Wallbridge, Nelligan, and the lawyers of the DOJ, breached duties of care and fiduciary duties owed to IAP claimants. The motion now before this court, however, does not address the merits of the allegations but rather addresses two preliminary issues. The first preliminary issue is whether Claimant K-10106 and Mr. Metatawabin, who is representing PKKA, have the legal standing to bring this very serious RFD. The second preliminary issue is whether the court has the jurisdiction to deal with the subject matter of the RFD and whether it has the jurisdiction to provide the relief requested by these Requestors.

[132] Outside of the IRSSA, the court obviously has the jurisdiction to litigate professional negligence and breach of fiduciary duty claims by a client against his or her lawyer, but within the IRSSA, the court's jurisdiction is circumscribed by its role supervising and administering what is a settlement of a class action. As I mentioned above and shall explain below, the IRSSA does supervise, in a circumscribed way, the relationship between IAP claimants and their lawyers, but that supervision is largely assigned to the Monitor and not the courts. In the circumstances of the immediate case of Mr. Metatawabin's, PKKA's and Claimant K-10106's

RFD, complaints about the lawyers are outside the boundaries of the administration of the IRSSA.

[133] In the analysis below, I will explain why Mr. Metatawabin, PKKA, and Claimant K-10106 do not have standing, why their complaint is properly the subject matter of someone else's cause of action outside of the IRSSA, and why, even if the court had jurisdiction to hear their RFD, the court does not have the jurisdiction to grant the extensive relief requested in their RFD.

[134] In this introduction, before undertaking that analysis in the discussion below, I shall make three points: (1) I shall set out the gist of the complaints against the Nelligan, Wallbridge, and DOJ lawyers; (2) I shall point out that the complaints are allegations that Nelligan, Wallbridge, and Canada's lawyers, the DOJ lawyers, vigorously deny; and (3) I shall summarize the nature of the relief that is being sought.

[135] In Claimant K-10106's case, the allegation is against Nelligan, her former lawyer. Claimant K-10106 alleges that she discovered that Nelligan had a conflict of interest because it previously acted for the Catholic Church Entities that operated St. Anne's IRS.

[136] This is vigorously denied by Nelligan, but, if true, would appear to be an egregious breach of fiduciary duty. Claimant K-10106 adds the further allegation that Nelligan was aware of the Cochrane documents but did not use them in prosecuting her IAP claim, where they arguably would have been helpful to her. This allegation may be another incident of breach of fiduciary duty or it may be a professional negligence claim. In any event, I am not to be taken as making any finding on the merits of any cause of action against Nelligan.

[137] In Mr. Metatawabin's case, although he himself is not a claimant, he supports Claimant K-10106's complaint against Nelligan, and Mr. Metatawabin also advances a complaint against Wallbridge. While it is not entirely clear, this complaint would appear to sound as a professional negligence claim rather that a breach of fiduciary duty claim, because Wallbridge has no patent conflict of interest and never had a relationship with the Catholic Church Entities and only acted for St. Anne's survivors. The professional negligence allegation, which is not Mr. Metatawabin's claim to make, is that since Wallbridge acted for plaintiffs in the Cochrane civil proceedings, it ought to have used the Cochrane documents in aid of its IAP clients.

[138] Wallbridge vigorously denies that it did anything wrong, and the analysis above suggests that it may have been correct in not using the discoveries of the parties that settled the civil proceedings in Cochrane and it may not have had the Cochrane documents concerning non-plaintiffs. In any event, I am not to be taken as making any binding finding on the merits of any cause of action against Wallbridge.

[139] Mr. Metatawabin and Claimant K-10106 also advance a complaint against Canada's lawyers, the legal basis of which is not clear, because Canada reserved the right to oppose IAP claims and its DOJ lawyers obviously had no lawyer-and-client relationship with the IAP claimants. Once again, Mr. Metatawabin has no basis for a personal claim.

[140] The DOJ lawyers were acting for Canada, which had a right to oppose the IAP claimants. It is difficult to conceive what cause of action an IAP claimant would have against a DOJ lawyer, but for present purposes, I will assume that there is a tort claim of some sort that lies against Canada's lawyers. In any event, I am not to be taken as making any finding on the merits of any cause of action against the DOJ lawyers.

[141] As a remedy for these complaints, the Requestors seek: (a) a judicial investigation into

the conduct of counsel in connection with a possible breach of the IRSSA by Canada and the Catholic Church Entities; (b) a judicial investigation into the rights of the non-plaintiffs referred to by Justice Trainor (later IAP claimants) as to the handling of the Cochrane documents and why those documents were not provided to the Secretariat and to the Truth and Reconciliation Commission; (c) directions as to the manner to resolve conflicts of interest; (d) given IAP confidentiality guarantees, directions as to the process for seeking damages against the lawyers for breach of contract, breach of fiduciary duty and unjust enrichment including claims for aggravated damages, punitive damages and the repayment of legal fees; and (e) directions as to how these claims may be prosecuted.

2. Discussion and Analysis – The Standing Issue

[142] The right to bring an RFD is contemplated by paragraph 31 of the Courts' orders approving the IRSSA:

> THIS COURT ORDERS THAT... The Representative Plaintiffs, Defendants, Released Church Organizations, Class Counsel, the National Administration Committee, or the trustee, or such other person or entity as this Court may allow, after fully exhausting the dispute resolution mechanisms contemplated in the Agreement, may apply to the Court for directions in respect of the implementation, administration or amendment of the Agreement or the implementation of this judgment on notice to all affected parties, all in conformity with the terms of the Agreement.

[143] For RFDs, the Approval Order for the IRSSA provides standing to "the Representative Plaintiffs, Defendants, Released Church Organizations, Class Counsel, the National Administration Committee ("NAC"), or the Trustee, or such other person or entity as this Court may allow." Under the Protocol for the IRSSA, RFDs may be brought only by "a party, counsel or other entity with standing in respect of the Agreement." The IRSSA defines "Parties" as meaning "collectively and individually the signatories to the agreement."

[144] The PKKA has no official role within the IRSSA. It is not a signatory of the IRSSA. It is not a party or a privy of a party. It is not a Class Member.

[145] Mr. Metatawabin has no official role within the IRSSA. He did not sign the IRSSA. He is not a party or the privy of a party. He is a Class Member; however, he did not make a claim in the IAP.

[146] Claimant K-10106's position is the same as Mr. Metatawabin, but with the exception that she made an IAP claim that was resolved five years ago.

[147] As a matter of contract law, PKKA is a third party with no rights to enforce the IRSSA.

[148] As a matter of contract law, as Class Members, Mr. Metatawabin and Claimant K-10106 are third party beneficiaries to a contract. The normative legal principle is that they do not have privity of contract and the general rule is that a third party beneficiary does not have the right to enforce the contract. See *Fenrich v. Wawanesa*, 2005 ABCA 199 at para. 26; *Benzie v. Hania*, 2012 ONCA 766.

[149] The law of standing determines who is entitled to bring a case to court for a decision and screens out busybody litigants to ensure that courts have the benefit of contending points of view of those most directly affected and that courts play their proper role within the democratic system of government: *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607, at p. 631; *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.

[150] In *Fontaine v. Canada (Attorney General)*, 2015 BCSC 1386 (Cachagee RFD), Justice Brown, acting in her capacity as an Administrative Judge under the IRSSA, formulated the test for standing to bring an RFD. She said that there were three elements to the test; namely: (1) there is a serious issue to be tried; (2) the entity is directly affected or has a genuine interest in the issues raised; and (3) there is no other reasonable and effective manner by which the issue can be brought before the court.

[151] In my opinion, PKKA, Mr. Metatawabin, and Claimant K-10106, respectively, do not satisfy the test for standing. They raise serious issues to be tried, but the serious issues are not their issues but rather personal issues between an IAP claimant and his or her lawyer and these personal complaints are outside the purview of the IRSSA and the IAP, which as noted above, empowers the Monitor with a circumscribed authority to initiate investigations of lawyer conduct in the IAP process.

[152] PKKA could not be an IAP claimant, and Mr. Metatawabin was not one. They have no personal interest in the serious issues raised in the RFD. Claimant K-10106 resolved her IAP claim five years ago, and she discovered her grievance with Nelligan in March 2016. There is now no recourse for this grievance within the IRSSA.

[153] PKKA, Mr. Metatawabin, and Claimant K-10106 have no direct or even indirect interest in the affairs of Wallbridge's clients. Thus, they fail both the first and the second elements of the test for standing.

[154] The Requestors also fail the third element of the test. There is a reasonable and an effective manner to bring solicitor's negligence and solicitor's breach of fiduciary duty claims before the court; normative litigation outside the IRSSA. It is outside the administration of the IRSSA to litigate professional negligence claims.

[155] I appreciate that Mr. Metatawabin has been granted standing in other RFDs. However, the explanation is that his standing was never challenged, and, in any event, there were others who did have standing to advance the particular RFDs.

3. The Jurisdiction Issue

(a) Introduction

[156] The above ruling on standing is dispositive of the RFD and leads to the conclusion that Mr. Metatawabin's, PKKA's and Claimant K-10106's RFD should be dismissed.

[157] However, even if these Requestors had standing, their RFD should be dismissed because: (a) the court acting in its capacity as an administrator and enforcer of the IRSSA does not have the jurisdiction to address the grievances; (b) the court has already addressed the subject matter of the grievance; (c) the court does not have the jurisdiction to grant the relief requested under the IRSSA; and (d) the court does not have the jurisdiction to grant the relief requested inside or outside the IRSSA.

[158] To explain these conclusions, I shall, in the sections that follow, first describe the court's jurisdiction to administer and enforce the IRSSA and the IAP. Then, I shall describe the limits and boundaries on the court's administrative and enforcement jurisdiction. Finally, in the analysis and discussion part, I shall apply that law to the circumstances of this RFD.

(b) The Court's Jurisdiction to Administer and Enforce the IRSSA and the IAP

[159] An RFD is not an alternative to a civil action; it is a specialized procedure for asking the court to exercise supervisory jurisdiction over the IRSSA: *Fontaine v. Canada (Attorney General)*, 2012 ONCA 471 at para 39. The court has four sources of jurisdiction over the performance of the terms of the IRSSA.

[160] First, there is the court's jurisdiction over the administration of a class action settlement derived from its inherent jurisdiction, the applicable class proceedings law, and the approval and implementation order.

[161] Second, there is the court's plenary jurisdiction from s. 12 of the *Class Proceedings Act, 1992*; S.O. 1992, c. 6. Section 12 states:

> 12. The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

[162] The court has broad powers under s. 12 of the *Class Proceedings Act, 1992* to ensure that a class action proceeds in both an efficient and fair manner: *Guglietti v. Toronto Area Transit Operating Authority (c.o.b. Go Transit)*, [2000] O.J. No. 2144 (S.C.J.) at para. 6; *Peter v. Medtronic Inc.*, [2008] O.J. No. 4378 (S.C.J.) at paras. 21-23.

[163] In a class proceeding, and the IRSSA agreement arose from a class proceeding, the court is empowered to make any order it considers necessary to ensure the fair and expeditious determination of the proceedings on such terms as it considers appropriate: *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.* (2000), 48 O.R. (3d) 21 (S.C.J.) at para. 50; *Ontario New Home Warranty Program v. Chevron Chemical Co.* (1999), 46 O.R. (3d) 130 (S.C.J.) at pp. 141 and 148, *Fenn v. Ontario*, [2004] O.J. No. 2736 (S.C.J.) at paras. 13-17; *Vitelli v. Villa Giardino Homes Ltd.* (2001), 54 O.R. (3d) 334 (S.C.J.); *Lewis v. Shell Canada Ltd.* (2000), 48 O.R. (3d) 612 (S.C.J.); *Fantl v. Transamerica Life Canada,* 2009 ONCA 377.

[164] Third, there is the court's jurisdiction derived from the IRSSA, which includes its jurisdiction to interpret and enforce contracts and its own orders, including its approval and implementation orders of the IRSSA. Under the approval orders, the courts are authorized "to issue such orders as are necessary to implement and enforce the provisions of the Agreement and this [approval] judgment." It should be noted that the power to implement and enforce an agreement would include the court's normal jurisdiction under the law of contract and the law of civil procedure to interpret documents and to enforce contracts and court orders.

[165] Fourth, there is a very narrow and restricted curial review or "judicial recourse" jurisdiction with respect to the determination of claims made under the IAP, the limits of which were elucidated recently by the Court of Appeal in *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26.

[166] These sources of jurisdiction provide the court with the powers to make orders and impose such terms as necessary to ensure that the conduct of the IAP, which implements the settlement, is fair and expeditious: *Fontaine v. Canada (Attorney General)*, 2013 BCSC 1955 at para. 21.

[167] The court has an ongoing obligation to oversee the implementation of a settlement agreement and to ensure that the interests of the class members are protected. Where there are

vulnerable claimants, the court's supervisory jurisdiction will permit the court to fashion such terms as are necessary to protect the interests of that group: *Fontaine v. Attorney General (Canada)*, 2012 BCSC 839 at para. 120. In *Baxter v. Canada (Attorney General)*, *supra*, Justice Winkler stated at para. 12:

> 12. .... The court has an obligation under the *Class Proceedings Act* ("CPA") to protect the interests of the absent class members, both in determining whether the settlement meets the test for approval and in ensuring that the administration and implementation of the settlement are done in a manner that delivers the promised benefits to the class members. In seeking the approval of the court, the plaintiffs and defendants essentially seek the benefits of having the court sanction the settlement. Such approval cannot be divorced from the obligation it entails. Once the court is engaged, it cannot abdicate its responsibilities under the CPA.

[168] The supervisory jurisdiction of the court is to be exercised to ensure that claimants obtain the intended benefits of the IRSSA and to ensure that the integrity of the implementation and administration of the agreement and related processes are maintained: *Fontaine v. Attorney General (Canada)*, 2012 BCSC 1671 at para. 50.

[169] In *Fontaine v. Canada (Attorney General)*, 2006 YKSC 63 at para. 54, Justice Veale stated that any deficiencies in the administration of the IAP can be remedied under the court's supervisory jurisdiction. The court's supervisory jurisdiction over class action settlements includes the jurisdiction to remedy any mechanical or administrative problems with the settlement: *Bodnar v. Cash Store Inc.,* 2011 BCSC 667 at paras. 117-130.

[170] The court has administrative jurisdiction over a class action settlement independent of any conferral of jurisdiction by the settlement agreement: *Fantl v. Transamerica Life Canada*, 2009 ONCA 377 at para. 39; *Sparvier v. Canada (Attorney General)*, 2006 SKQB 4999 at para. 13; *Lavier v. MyTravel Canada Holidays Inc.*, 2011 ONSC 3149; *Bodnar v. Cash Store Inc.*, *supra*, at paras. 96-130. Under the IRSSA, the parties agreed to involve the court in the administration of the settlement, but in any event, the court retains jurisdiction over the implementation of a settlement it has approved: *Kelman v. Goodyear Tire and Rubber Co.* (2005), 5 C.P.C. (6th) 161 (Ont. S.C.J.) at para. 25.

(c) Limits and Boundaries to the Court's Administrative and Enforcement Jurisdiction

[171] There are, however, limits to the court's administrative and enforcement jurisdiction.

[172] After the settlement has been approved, the court's administrative and implementation jurisdiction does not include power to vary the settlement reached by the parties: *Lavier v. MyTravel Canada Holidays Inc.*, *supra.*

[173] The court does not have the jurisdiction to impose burdens on the defendant that the defendant did not agree to assume: *Lavier v. MyTravel Canada Holidays Inc., supra; Stewart v. General Motors*, (SCJ) unreported, September 15, 2009, per Justice Cullity at pp. 8-9.

[174] In *Fontaine v. Canada (Attorney General),* unreported November 20, 2013 (BCSC), Justice Brown ruled that the administrative power of the courts did not extend so far as to allow an extension of time for IAP claims that, under the IRSSA, had a firm deadline of September 19, 2012, without any provision in the Settlement Agreement for extension or for relief from the deadline. That decision was upheld on appeal; see *Myers v. Canada (Attorney General)*, 2015 BCCA 95, in which the British Columbia Court of Appeal held that the court does not have the

power to vary the deadline for filing IAP applications that was set out in the IRSSA.

[175] The fourth source of jurisdiction to administer and enforce the IRSSA is very narrow.

[176] In particular, in *Fontaine v. Duboff Edwards Haight & Schachter*, 2012 ONCA 471 and in *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26, the Ontario Court of Appeal made it clear that judicial recourse to challenge IAP decisions is limited to very exceptional circumstances.

[177] In *Fontaine v. Canada (Attorney General), supra*, the Court of Appeal stated at paras. 51, 53:

> 51. I see no merit in M.F.'s argument that *Schachter* should be read narrowly as applying only to legal fee determinations. That argument was properly rejected in *Fontaine v. Canada (Attorney General)*, 2016 BCSC 2218 at para. 176. While *Schachter* involved a dispute concerning IAP legal fees, the principles upon which the decision rests apply with equal force to IAP compensation decisions. The IAP represents a comprehensive, tailor-made scheme for the resolution of claims by trained and experienced adjudicators, selected according to specified criteria and working under the direction of the Chief Adjudicator. Allowing appeals or judicial review to the courts from IAP decisions is not contemplated by the IAP, the IRSSA or the Implementation Orders. Allowing appeals or judicial review would seriously compromise the finality of the IAP and fail to pay appropriate heed to the distinctive nature of the IAP and the expertise of IAP adjudicators.
>
> ....
>
> 53. *Fontaine v. Duboff Edwards Haight & Schachter*, 2012 ONCA 471 imposed strict limits on the scope for judicial intervention. It did so to respect the IRSSA, the contract the parties negotiated, of which the IAP is a fundamental part. As this court recognized in *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241 at para. 48: "[a]djudicators are specially trained to conduct the hearing in a way that is respectful to the claimant and conducive to obtaining a full description of his or her experience". The IAP has been aptly described as "a complete code" that limits access to the courts, preserves the finality of the IAP process and respects the expertise of IAP adjudicators: see *Fontaine v. Canada (Attorney General)*, 2016 BCSC 2218, at para. 178.

[178] In *Fontaine v. Canada (Attorney General)*, 2016 MBQB 159 (one of the decisions that the Ontario Court of Appeal endorsed in *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26), Justice Edmond stated that judicial recourse was limited to ensuring that the Review Adjudicator did not endorse a legal interpretation that was so unreasonable that it amounted to a failure to apply the IAP Model.

[179] In *Fontaine v. Canada (Attorney General)*, 2016 BCSC 2218 (another decision endorsed by the Ontario Court of Appeal), Justice Brown held that judicial recourse was limited to situations where an IAP decision reflects a patent disregard for the IAP Model's compensation rules, such as a "failure to award compensation on the basis of the rubric it provides" (para. 183) or was so exceptionally wrong as to amount to a failure to apply the IAP Model (para. 199).

[180] In *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26, the Ontario Court of Appeal explained the rationale for the narrowness of the Court's fourth source of jurisdiction in administering the IRSSA at paras. 56 and 63 as follows:

> 56. In *Fontaine v. Canada (Attorney General)*, 2016 BCSC 2218, at para. 180, Brown J., who has many years of experience administering the IRSSA, explained the rationale for a judicial "hands-off" approach to IAP fact finding: "Despite my years of administering the IRSSA, it would be impossible for me to know better than those who have been immersed in the IAP...The Courts are simply not well-placed to make findings of fact." See also *Fontaine v Canada (Attorney General)*, 2016 MBQB 159, at para. 59, confirming the exclusive jurisdiction of independent adjudicators to

> make findings of fact, upholding "the parties' clear intention as reflected in the IRSSA that IAP adjudicators, and not judges, should find facts and determine amounts of compensation in accordance with the IAP."
>
> ....
>
> 63. In *Fontaine v. Canada (Attorney General)*, 2016 BCSC 2218, at para. 180, Brown J., who has many years of experience administering the IRSSA, explained the rationale for a judicial "hands-off" approach to IAP fact finding: "Despite my years of administering the IRSSA, it would be impossible for me to know better than those who have been immersed in the IAP...The Courts are simply not well-placed to make findings of fact." See also *Fontaine v. Canada (Attorney General)*, 2016 MBQB 159, at para. 59, confirming the exclusive jurisdiction of independent adjudicators to make findings of fact, upholding "the parties' clear intention as reflected in the IRSSA that IAP adjudicators, and not judges, should find facts and determine amounts of compensation in accordance with the IAP."

(d) Discussion and Analysis – The Jurisdiction Issue

[181] With the above legal background, I can now address the jurisdiction issues associated with Mr. Metatawabin's, PKKA's, and Claimant K-10106's RFD.

[182] Insofar as Mr. Metatawabin's, PKKA's, and Claimant K-10106's RFD concerns the matter of the Cochrane documents and the re-opening of IAP hearings, these matters have already been addressed in St. Anne's RFD-1, St. Anne's RFD-2, and in Claimant H-15019's RFD in the immediate case. The subject matter of the court intervening in IAP hearings has also been directly addressed in *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26 and in several cases that the Ontario Court of Appeal approved of in its judgment. These are strong judgments directing the court to not intervene in the IAP process.

[183] Further, as noted above, it has already been judicially determined that the court does not have the power to vary the deadline for filing IAP applications that was set out in the IRSSA: see *Myers v. Canada (Attorney General)*, *supra*.

[184] Further, the court does not have the jurisdiction to determine the use in the IAP of documents comprising the evidence of former St. Anne's IRS students. In St. Anne's RFD-1, I stated at paras. 244-246:

> 244. In my opinion, these parts of the Applicants' RFD go too far, and the court does not have the jurisdiction to, in effect, interfere with or appropriate how the adjudicators carry out their adjudicative assignment under the IRSSA.
>
> 245. What the Applicants are seeking is for the court to take back and claim as its own the role of the adjudicators. What the Applicants seek goes beyond administering or implementing the IAP and amounts to rewriting the agreement to have the court and not the adjudicator determine what can be done with the evidence presented to the adjudicator.
>
> 246. .... the court's jurisdiction is constrained and has its limits. I agree with Canada's and the Chief Adjudicator's arguments that the Applicants' RFD requests would disrupt and impede the IAP and replace it with something that the parties did not bargain for. I conclude that the Applicants' requests for evidentiary rulings go far beyond what the court has the jurisdiction to do.

[185] In the immediate case, the same reasoning applies with respect to the request to have the court order Canada to make admissions or for the court to order the Chief Adjudicator to make certain findings of fact. The court has no such jurisdiction.

[186] Further, it is not the court's role under the IRSSA or under its general jurisdiction to conduct investigations or pseudo-commissions of inquiry. The court cannot invent a procedural

template for such an inquiry or investigation out of whole cloth and to do so would amount to an amendment to the IRSSA.

[187] To the extent that Requestors seek the re-opening of settled IAP claims of former St. Anne's IRS students, while the court does not have a generalized power to re-open claims, in St. Anne's RFD-1, I held that the jurisdiction to re-open settled claims must be exercised on a case-by-case basis. At para. 228, I stated: "Each case will have to be decided on its own merits and a variety of factors may have to be considered in any given case including some demonstration that the prejudice from non-disclosure was more than a theoretical miscarriage of justice". Compensation for counsel in respect of re-opened claims would have to be determined on a case-by-case basis as well.

[188] There is nothing in the IRSSA that envisions paying compensation to PKKA personnel for performing various duties in connection with the IAP and this would require an amendment to the IRSSA.

[189] There is nothing in the IRSSA that envisions providing funding at $500,000 per year to PKKA in trust (or a charitable organization to be created) to support programs for the survivors of St. Anne's IRS and their families. While the Requestors rely on Article 8.02 of the IRSSA, that provision does not oblige Canada to provide the funding requested. Rather, it obliges Canada to continue to provide existing mental health and emotional support services and to make them available to beneficiaries of the IRSSA. The requested relief would amount to an amendment of the IRSSA.

[190] Thus, acting in its role under the IRSSA, the court does not the jurisdiction to grant the relief set out in the following paragraphs of the Amended RFD: 9 (i), (ii), (iv), (v), (vi), (vii), (ix), (x), and (xiii) [other than sub-item (1), an order granting standing, which is the subject of this hearing]. Of the remaining items, the court may have jurisdiction, but there is no good reason to exercise that jurisdiction in aid of the Requestors who, of course, do not have standing.

[191] Insofar as the relief requested involves the IAP and the role of the lawyers of Nelligan, Wallbridge, or the DOJ, the requests for relief go beyond the court's jurisdiction, which is to supervise the Monitor, who is the entity responsible for investigating and responding to complaints against lawyers acting for IAP claimants.

[192] In the last regard, to date there have been three major RFDs about allegations against lawyers and those cases have involved allegations that the lawyers exploited the claimants. See: *Fontaine v. Canada (Attorney General)*, 2012 BCSC 839 (Blott); *Fontaine v. Canada (Attorney General)*, 2013 BCSC 1888 (Bronstein); and *Fontaine v. Canada (Attorney General)*, 2016 ONSC 5359 (Keshen). The essential allegations in these cases were not allegations of incompetence (professional negligence) but rather allegations of the lawyers having misappropriated their clients' entitlements under the IAP. The allegations against Nelligan, Wallbridge, or the DOJ lawyers are of a far different nature and question whether or not the lawyers diligently pursued their clients' IAP claims.

[193] It may be the case that Claimant K-10106 has a professional negligence or breach of fiduciary duty claim or a claim for the remission of any fees she paid or that were paid to Nelligan but those claims should be brought pursuant to the *Rules of Civil Procedure* for claims in Ontario's Superior Court of Justice and not by way of proceedings that might be brought by the Monitor under the IRSSA.

[194] As for Claimant K-10106's complaints about the IAP, she has already had her IAP

hearing, and there is no reason to believe that the outcome of the IAP process was unjust or that the extraordinary circumstances for court intervention exist. What can be said is that at Claimant K-10106's hearing, some documents from an enormous universe or database of possibly relevant documents were not put before the Adjudicator, which is a common phenomenon in any type of litigation, but there is no basis to believe that the absence of the Cochrane documents affected the outcome of the IAP process. Claimant K-10106 was successful, and she received a substantial award within the parameters of the IAP.

[195] The personal stories of persons who settled their claims outside of the IAP process were not necessary for her own story to be believed, and she was believed; and the personal stories of other claimants outside the IAP process were not relevant to the determination of the amount of her award. The amount of her award was determined by her own story, her own experience, her own injuries, and this evidence was before the Adjudicator because Claimant K-10106 had the courage and the perseverance to tell her story. That she had to undergo the agony of retelling her story to prove her claim is what the parties that signed the IAP bargained for when they agreed to on-going adversarial proceedings between Canada and the survivors of the IRSs.

F. CONCLUSION

[196] For the above reasons, I dismiss both RFDs without costs.

Perell, J.

Released: April 24, 2017

CITATION: Fontaine v. Canada (Attorney General), 2017 ONSC 2487
COURT FILE NO.: 00-CV-192059
DATE: 20170424

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, et al.

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA et al.

Defendants

REASONS FOR DECISION

Perell, J.

Released: April 24, 2017