Court of Appeal File No. M51618 / C68407
(Superior Court File No. 00-CV-192059CP)

COURT OF APPEAL FOR ONTARIO

BETWEEN:

LARRY PHILIP FONTAINE, *et al.*

Plaintiffs

- and –

THE ATTORNEY GENERAL OF CANADA, *et al.*

Defendants/Respondents

**IN THE MATTER OF THE REQUEST FOR DIRECTION
BY DR. EDMUND METATAWABIN
AND BY IAP CLAIMANTS T-00185, S-20774 and S-16753
PERTAINING TO ST. ANNE'S INDIAN RESIDENTIAL SCHOOL**

Requestors/Appellants/Moving parties

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

FACTUM OF INDEPENDENT COUNSEL

Date: July 21, 2020

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PART I: Overview

1. The Appellants are survivors of childhood physical and sexual abuse suffered in the Respondent's Indian residential school located in Fort Albay, Ontario; all of them reside in this province. By their Request for Direction (RFD) in the court below, they are seeking enforcement of a 2015 Ontario Superior Court order for Canada to produce reports summarizing the documents in Canada's possession about the Appellants' alleged abusers.

2. The Indian Residential School Settlement Agreement (IRSSA or "the Agreement") of 2006 is the identical settlement of nine class actions approved by the superior courts of the three territories and six provinces. The class in each jurisdiction is composed of those living in the province or territory on the date of the last approval order. Each jurisdiction has a supervising judge for the IRSSA: two of them are chosen to be Administrative Judges, currently the supervising judges for Ontario and British Columbia. Parties to the IRSSA and class members may file an RFD to obtain judicial supervision of Agreement's implementation. A protocol attached to the implementation orders provides that individual class members' RFDs "will" be assigned to the court with jurisdiction over them.

3. The supervising judge for Ontario recused himself from hearing the Appellants' RFD and assigned it to the supervising judge for British Columbia; she signed an identical Direction. They relied on the general power to "be guided by any other consideration that he or she deems to be appropriate in the circumstances" as overriding the mandatory rule.

4. The plain meaning of the protocol's text is that Ontario class members are entitled to be heard in their own jurisdiction; the basic rules of territorial jurisdiction, civil procedure and the IRSSA dictate that they cannot be ordered to seek enforcement of the Ontario Superior Court's orders in British Columbia. The Implementation Order's objective should be understood to be: that the same court that approved the Agreement for a given class will be the court that carries out the court's supervisory duty to ensure that those class members receive the benefits they bargained for in the IRSSA.

PART II: Relevant facts

A. Independent Counsel

1. Independent Counsel's role

5. Independent Counsel participates in this RFD in order to speak for the interests of all Claimants in the proper application of the Indian Residential School Settlement Agreement (IRSSA, or the "Agreement").[1]

6. At the time the IRSSA was signed, Independent Counsel was made up of the law firms other than class action counsel (the "National Consortium") or the Merchant Law Group; in other words, Independent Counsel were the firms other than Merchant Law whose clients' individual civil actions were discontinued by operation of the Agreement.[2]

7. Since the settlement, the IRSSA has been administered by a National Administration Committee (NAC) that includes one representative each for: Canada; the Church Organizations; the Assembly of First Nations (AFN); the National Consortium; the Merchant Law Group; the Inuit Representative organizations; and Independent Counsel.[3] Thus, post-settlement, Independent Counsel remains a distinct party to IRSSA with ongoing duties and rights in the Agreement's administration.

8. With respect to RFDs in particular, the Request for Direction Service Protocol of February 2014 provides that the "affected parties" entitled to service are the Chair and Secretary of the NAC.[4] The Chair (a position occupied by the head of Independent Counsel) ensures that each RFD is distributed to NAC members and the entities they represent then choose whether to exercise a right to participate in the RFD.

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[1] *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585 ["*In Rem Order* ONSC"], para. 57, aff'd. 2016 ONCA 241 ["*In Rem Order* ONCA"] and 2017 SCC 47.
[2] Indian Residential School Settlement Agreement ["IRSSA"], Art. 11.01; *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283 [*St. Anne's #I*"], para. 36.
[3] IRSSA, ss. 4.09(4), 4.11(1).
[4] Request for Direction Service Protocol, February 2014.

9. As one of those represented entities, Independent Counsel therefore participates as of right in any RFD, as do the National Consortium, Merchant Law, the Inuit, the AFN, the Churches and Canada.

10. While Independent Counsel participates to advance the interests of claimants, Independent Counsel has generally been accorded status like that of an *amicus curiae*. As Justice Perell noted, its involvement "is largely if not totally altruistic."[5]

2. Signatory law firms do not participate as of right

11. Every law firm that is a signatory to the IRSSA falls within the definition of a "Party" to the Agreement.[6] These signatory law firms include firms such as Wallbridge that signed in 2006 because they represented plaintiffs in existing civil actions that were discontinued by the IRSSA; they also include dozens of firms that signed the Agreement in subsequent years as part of their work in the Independent Adjudication Process (IAP).

12. However, no party and no court have ever before suggested that every one of the 81 signatory law firms may participate as of right in an RFD. On the contrary, it has always been assumed that they are represented in RFDs in the same way that they are represented in the NAC: either by Independent Counsel or, if they are class action counsel, by the National Consortium; the only exception is Merchant Law.

13. In this appeal, with Canada's support, Wallbridge asserts for the first time that it may participate as of right because it is a party to the Agreement and need not apply for leave to intervene. Independent Counsel takes no position on an intervention by Wallbridge, but it does take the position that the firm may participate in this appeal or the underlying RFD only with leave.

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[5] *Fontaine v. Canada (Attorney General)*, 2014 ONSC 5292, para. 16.
[6] IRSSA, s. 1.01, "Parties."

B. The Agreement and Canada's disclosure obligations

14. The IRSSA constitutes the identical settlement of nine class actions in the superior courts of the three territories and in the six provinces from British Columbia to Québec. It was approved by orders of each court; all but one were rendered in December 2006, like the order of Chief Justice Winkler of the Ontario Superior Court;[7] the last order was granted by the Northwest Territories Supreme Court on January 15, 2007.[8]

15. The IRSSA has three main components: a Truth and Reconciliation Commission (TRC), whose work is completed; a Common Experience Payment (CEP) or lump sum payable to all former students who resided at an Indian residential school (IRS), which has been paid; and the Independent Adjudication Process (IAP or "the Model"), meant to compensate those who suffered sexual or serious physical abuse, which is not yet complete.[9]

16. Canada has document disclosure obligations under the IAP that include:

a. the person of interest (POI) named as an abuser in a Claimant's application, about whom Canada must, upon receipt of the application, search for information including their "jobs at the residential school and the dates they worked or were there, as well as any allegations of physical or sexual abuse committed by such persons, where such allegations were made while the person was an employee or student";

b. the school the Claimant attended, for which Canada has an obligation to:

i. gather documents about the school in general and those "that mention sexual abuse by individuals other than those named in an application as having abused the Claimant"; and

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[7] *Baxter v. Canada (Attorney General)*, (2006) 83 O.R. (3d) 481 (SC) ["*Baxter*"].
[8] *Kuptana v Canada (Attorney General)*, 2007 NWTSC 1.
[9] IRSSA, Articles 5, 6 and 7.

ii. prepare a report (commonly referred to as the "school narrative") to be made available to the Claimants that summarizes those documents, especially those describing abuse, though without identifying the individuals.[10]

17. The documents and reports or narratives are prepared by Canada and provided to the IAP Secretariat, which in turns makes them available to adjudicators and claimants or their counsel. No claim should proceed to a hearing until Canada has made the required mandatory document disclosure because the Model requires that Adjudicators should receive these documents before the hearing and should "inform themselves from this material."[11]

18. The POI documents corroborate important threshold issues for the admissibility of a claim, such as whether the alleged abuser was an adult lawfully on the premises of the school or a student. If Canada's documentary disclosure on these threshold issues is incomplete, then a meritorious claim may well be denied.

19. As Justice Perell has explained:

> …[B]oth the Narratives and the POI Reports must identify all of the allegations or incidents of physical or sexual abuse at the school in a meaningful way that facilitates and makes it easier for Claimants, not all of whom will be represented by lawyers, to advance their claims and that makes it more efficient for the adjudicators to decide claims.
>
> Making it easier for Claimants, who are not relieved of the burden of proving their claims, and making it more efficient for the adjudicators to decide their claims, and putting a burden on Canada to prepare School Narratives and POI Reports was not an act of generosity or a magnanimous gesture by the Defendants settling the class actions and the numerous individual actions; it was a bargained-for term of the IRSSA.[12]

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[10] IRSSA, Schedule D, p. 30, Appendix VIII.
[11] IRSSA, Schedule D, pp. 40-41, Appendix X.
[12] *Fontaine v. Canada (Attorney General)*, 2015 ONSC 4061 [*St. Anne #2*], para. 65-66 (emphasis added).

C. The breach of Canada's obligations with respect to St. Anne's IRS

1. The OPP documents in Canada's possession

20. St. Anne's IRS in Fort Albany, Ontario, on James Bay, "was the site of some of the most egregious incidents of abuse within the Indian Residential School system."[13] The Ontario Provincial Police (OPP) conducted an investigation of St. Anne's between 1992 and 1996, during which they obtained approximately 992 signed statements from about up to 750 individuals and collected over 7,000 documents seized from church organizations. In 1997, the OPP laid charges against seven former employees, all but one of whom were convicted.[14]

21. The abuse at St. Anne's also led to civil litigation in the form of some 154 civil actions filed in 2000 by Wallbridge in the Superior Court in Cochrane, Ontario. As Justice Perell noted, none of them ever proceeded to trial and under the IRSSA, all were deemed to be dismissed pursuant to the Agreement.[15]

22. In 2003, Canada had obtained a court order for production of the OPP records for use in those civil actions on the basis they were "relevant and necessary" to its civil defence and that it would be "unfair" to require Canada to proceed to trial without the records.[16]

23. Before the January 2014 Order, however, Canada failed to disclose the documents in its possession:

a. in 2004, when Canada prepared a school narrative about St. Anne's for the Alternative Dispute Resolution process (the predecessor of the IAP), it did refer to the criminal charges against employees and their convictions;

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[13] *St. Anne's #1* [*St. Anne's #1*"], *supra* note 2, para.105.
[14] *St. Anne's #1*, para. 109-110.
[15] *St. Anne's #1*, para. 36; IRSSA, Article 11, "Releases."
[16] *St. Anne's #1*, para.111-115.

b. after the IRSSA, however, when Canada prepared a new narrative about St. Anne's for the IAP in 2008, it incorrectly stated the government knew about only four incidents, none of which related to the OPP investigation;[17]

c. after questions were raised by claimants, Canada produced yet another new narrative in 2013 in which it referred to the OPP investigation and the resulting criminal charges and convictions, but did not refer to the transcripts from the criminal trials, nor to the documents from the OPP investigation in Canada's possession.[18]

24. In September 2013, after having objected to the admissibility at IAP hearings of victims' statements previously made to the OPP, Canada finally acknowledged that it was already in possession of records including the OPP documents. Nevertheless, Canada refused to disclose those records to the Truth and Reconciliation Commission (TRC) or to Claimant counsel, alleging they were subject to the implied undertaking.[19]

25. At that point, the TRC and a group of 60 St. Anne's claimants each brought an RFD to compel disclosure, heard jointly by Justice Perell in December 2013.

2. The Superior Court's 2014 order to disclose

26. In his judgment, Justice Perell made the following important points:

> […] It happens that Canada has material from third parties but based on its own narrow interpretation of the IAP, it has decided that it need not produce those documents and transcripts.
>
> As I see the matter, Canada has already gone down the road of compliance with its IAP disclosure obligations, but it has not gone far enough to reach the destination prescribed by the IRSSA. I do not see the request that Canada honour its disclosure obligations as a means to change the harms compensable under the IAP; rather it is a means of ensuring that the IAP facilitates the expeditious resolution of serious claims in the manner agreed to by the signatories of the IRSSA.

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[17] *St. Anne's #1*, *supra* note 2, para. 125-126.
[18] *St. Anne's #1*, para. 129.
[19] *St. Anne's #1*, para. 146.

> Canada has too narrowly interpreted its disclosure obligations. I do not need to decide whether Canada did this in bad faith, and I rather assume that its officials mistakenly misconstrued their obligations and misread the scope of their obligations. That said, in my opinion, there has been non-compliance, and Canada can and must do more in producing documents about the events at St. Anne's.[20]

27. The result was the Order issued by the Superior Court on January 14, 2014, including the following provisions:

> 6. THIS COURT ORDERS that Canada shall by June 30, 2014, produce for the IAP:
>
> (a) the OPP documents in its possession and/or received from the OPP about the sexual and/or physical abuse at St. Anne's IRS;
>
> (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 [to Schedule "D" to the IRSSA];
>
> 7. THIS COURT ORDERS that that Canada shall by August 1, 2014 revise its Narrative and POI [Person of Interest] Reports for St. Anne's IRS….[21]

28. Canada neither appealed nor sought to vary the 2014 order.

29. In recent years, the Attorney General has suggested that the 2014 order was implicitly overturned by a subsequent decision of this Court. However, that appeal merely held that transcripts from pre-IRSSA examinations for discovery did not have to be disclosed, notwithstanding the 2014 order, due to the implied undertaking.[22] The Superior Court has explicitly rejected Canada's argument, pointing out that this Court never put in doubt Justice Perell's conclusion in 2014 that Canada had breached its disclosure obligations under the IRSSA with respect to St. Anne's IRS.[23]

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[20] *St. Anne's #1*, para. 210-212 (emphasis added).
[21] Appellant's Appeal Book and Compendium ["A.B.C."], Volume 1 of 4, Tab 5, page 59 of 185, Order of January 14, 2014, para. 5 (emphasis added).
[22] *Fontaine v. Canada (Attorney General)*, 2018 ONCA 421 [*Metatawabin #1*].
[23] *IAP Claiming H-15019 v. P. James Wallbridge*, 2019 ONSC 1627, para. 38.

3. The Superior Court's 2015 order and Canada's non-response

30. Justice Perell held that Canada subsequently failed to meet its "obligation to produce meaningful reports summarizing documents that speak about incidents of physical or sexual abuse" required by his January 2014 order. For instance, he noted that the school narrative did "not state that children were forced to eat vomit," a detail that could only be found among the 12,213 supporting documents, listed on a 300-page appendix.[24] Similarly, the two-page POI Report for Father A.L. did "not mention any allegations of abuse," even though the 2,472 pages of source documents revealed that, in Justice Perell.'s words, "Father L. was a serial sexual abuser of children at St. Anne's IRS."[25]

31. The group of 60 claimants therefore brought a further RFD and on June 23, 2015, Justice Perell ordered:

> that Canada shall revise each of the following reports required by the Indian Residential Schools Settlement Agreement ("IRSSA"), Schedule "D", Appendix VIII, namely, the reports summarizing documents about St. Anne's IRS (the "School Narrative"), and the reports about the persons named in claimants' IAP application forms for St. Anne's IRS as having abused a claimant (the "POI Reports")…[26]

32. Specifically, Justice Perell ordered that Canada was to revise the documents so as to summarize in chronological order all available information about alleged physical or sexual assaults or other wrongful acts committed at St. Anne's or committed by a person identified in a POI Report while that person was an employee or student at St. Anne's.[27]

33. Canada neither appealed nor sought to vary the 2015 order.

34. The Attorney General did finally reveal in pleadings served on the parties to this appeal on June 25, 2020, that its interpretation of Justice Perell's 2015 order was that Canada is under no obligation to revise POI reports for an alleged abuser who was named

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[24] *St. Anne's #2*, *supra* note 12, para. 69, 44-45.
[25] *St. Anne's #2*, para. 56-57.
[26] A.B.C., Volume 1 of 4, Tab 6, page 64 of 185, Order of June 23, 2015, para. 1 (emphasis added).
[27] A.B.C., Volume 1 of 4, Tab 6, page 64 of 185, Order of June 23, 2015, para. 1.

in a claim that had already been concluded – presumably, not even if the claim had been refused on the basis of an inaccurate POI report. The affidavit in support of Canada's pleadings has not yet been filed, but the Attorney General does not allege that any POI report was ever revised pursuant to Justice Perell's order.[28]

D. The Rules governing Requests for Direction

1. The role of supervising and administrative judges

35. All nine superior courts that had approved the IRSSA subsequently granted identical implementation orders in 2007 that included, as a schedule, the "Court Administration Protocol" ("Protocol").[29]

36. Pursuant to the Protocol, each jurisdiction was assigned a "supervising judge" to oversee IRSSA implementation and enforcement in its province or territory. No order "that would constitute an amendment of the Agreement or the Approval Orders… shall be effective unless it is approved by all 9 (nine) supervising courts."[30]

37. The Protocol provided for two regional "Administrative Judges" to work with the supervising judges. Justice Paul Perell is currently the Eastern Administrative Judge and Justice Brenda Brown is the Western Administrative Judge.[31] Both justices are also the supervising judges of their respective provinces. The Administrative Judges are assisted by Court Counsel.[32]

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[28] A.B.C., Volume 1 of 4, Tab 8, page 89 of 185, Request for Directions of Canada to Summarily Dismiss/Strike Metatawabin RFD #2, para. 23.
[29] A.B.C., Volume 1 of 4, Tab 4, page 46 of 185, Order of March 8, 2007, Schedule Court Administration Protocol ["Protocol"].
[30] Protocol, ss. 1, 5(d).
[31] *Fontaine v. Canada (Attorney General)*, 2018 ONSC 5197, para. 7.
[32] *Fontaine v. Canada (Attorney General)*, 2018 ONCA 1023, para. 6.

2. Requests for Direction and jurisdiction

38. The approval orders issued by each superior court give parties the right to seek judicial supervision of the Agreement's administration and implementation by filing a "request for direction".[33]

39. An RFD is referred first to the Administrative Judges who decide where it will be heard, subject to the rules in the Protocol. The jurisdiction to hear an RFD is divided among the nine supervising courts as follows:

a. if the issues affect all jurisdictions, the Administrative Judges have full discretion ("the hearing may be directed to any court supervising the Agreement");

b. if the issues affect some but not all jurisdictions, the Administrative Judges have discretion to choose from among those courts ("the hearing will be directed to a supervising court in one of the affected jurisdictions");

c. if "the issue(s) involve relief for a particular class member or particular class," then the Administrative Judges must refer it to the class or class member's court ("the hearing will be directed to the supervising court with jurisdiction over the class member or class pursuant to the terms of the Agreement and the Approval Orders").[34]

40. Under the IRSSA, class membership in each of the nine class actions is "determined by reference to the province or territory of residence of each Class Member on the Approval Date," which was January 15, 2007, except that former students residing in the Atlantic provinces and outside of Canada are deemed to be members of Ontario class.[35]

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[33] *J.W. v. Canada (Attorney General)*, 2019 SCC 20 [*J.W.*], para. 17 (Abella J.) and para. 79 (Côté J.); *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 ["*Canada v. Fontaine* SCC"], para. 64.
[34] Protocol, para. 5(a) to (c) (emphasis added).
[35] IRSSA, s. 4.04 "Class Membership."

41. The IRSSA has both an English and a French version, which have "equal weight and force at law."[36] While the English text designates the superior court of the province or territory where a class member lived on January 15, 2007 as the "Appropriate Court," the French text designates that court as being "compétent," that is, having jurisdiction:

"*Appropriate Court*" means the court of the province or territory where the Class Member resided on the Approval Date […]	« *Tribunal compétent* » désigne la cour de la province ou du territoire où réside le membre du recours collectif à la date d'approbation […][37]

E. The fate of the Appellants' Request for Direction

1. The RFD on the merits

42. Dr. Metatawabin was one of the claimants in the RFDs that led to the 2014 and 2015 orders, while the other Appellants are survivors of St. Anne's IRS who learned about the orders from him in March 2019. Since the previously undisclosed documents could have affected the result in their IAP claims, the other appellants retained counsel and requested the revised POI reports about their abusers from the IAP Secretariat.

43. However, the Chief Adjudicator informed the Appellants that he had no such POI reports, nor any power to order their disclosure and referred them to Canada. The Attorney General gave no response other than to state that the Appellants could file an RFD if they wished to reopen their claims.[38]

44. The Appellants filed their RFD with Court Counsel on of May 12, 2020, seeking enforcement of Justice Perell's 2014 and 2015 orders concerning POI reports for St. Anne's IRS in Fort Albany, Ontario.[39] The Appellants were all residents of Ontario on January 15, 2007.[40]

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[36] IRSSA, s. 18.09 "Official Languages."
[37] IRSSA, s. 1.01 "Appropriate Court."
[38] A.B.C., Volume 1 of 4, Tab 1, page 6 of 185, Notice of Appeal, para. 17-19.
[39] A.B.C., Volume 1 of 4, Tab 7, page 69 of 185, Amended RFD, para. 1.
[40] A.B.C., Volume 1 of 4, Tab 1, page 6 of 185, Notice of Appeal, para. 9.

45. The RFD does not seek to re-open any IAP claims, but merely: a declaration that Canada is in breach of its obligation under the 2014 and 2015 orders; a new order compelling Canada to file the revised POI reports with the IAP Secretariat within 30 days, together with a list of affected claimants; and a direction to the Chief Adjudicator to report to the Court within a reasonable time thereafter.

2. The Order under Appeal

46. On May 30th, Court Counsel informed the parties that Justice Brown of the British Columbia Supreme Court would preside over a case management conference on June 26, 2020.[41] In answer to a request from Appellant counsel, on June 5th, Justice Perell issued a direction in which he recused himself from hearing the RFD and directed that the RFD would be heard by Justice Brown in the British Columbia Supreme Court; on the same day, Justice Brown signed an identical direction.[42]

47. In the Order under appeal, Justice Perell relied on the Administrative Judges' general discretion in applying the Protocol's principles "also [to] be guided by any other consideration that he or she deems to be appropriate in the circumstances."[43]

3. Proceedings before the BC Supreme Court

48. On June 8th, Independent Counsel made a request to the Administrative Judges to adjourn the Appellants' RFD and await the decision of the Québec Court of Appeal, which but for the pandemic, would have heard an appeal in April on the same issue, namely, the Administrative Judges' jurisdiction to direct an RFD by a Québec class member to British Columbia for hearing. On June 9th, the Administrative Judges declined that request.[44]

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[41] A.B.C., Volume 4 of 4, Tab 20, page 202 of 230, Email of Mr. Gover dated Saturday, May 30, 2020.
[42] A.B.C., Volume 1 of 4, Tab 2, page 21 of 185 (neutral citation: *Fontaine v. Canada (Attorney General)*, 2020 ONSC 3497) ["Order under appeal"] and A.B.C., Volume 1 of 4, Tab 3, page 33 of 185 (neutral citation: *Fontaine v Canada (Attorney General)*, 2020 BCSC 850).
[43] Order under appeal, para. 27, citing the Protocol, para. 5(f).
[44] A.B.C., Volume 4 of 4, Tab 23, page 213 of 230, Letter from Mr. Schulze to Mr. Gover dated June 8, 2020 and Volume 4 of 4, Tab 24, page 216 of 230, Letter from Mr. Gover to Mr. Schulze dated June 9,

49. The Appellants served a Notice of Appeal from Justice Perell's order on June 15, 2020, and the Notice of Appeal was issued by the Registrar on June 19, 2020, as appears from the record.

50. The Appellants served a motion on June 29th for a stay before this Court, which was granted on July 10, 2020, as appears from the record. Justice Simmons ordered that the Order under appeal "is stayed pending appeal on terms that the appeal be prosecuted diligently."[45]

PART III: Argument on the issues raised by the Appellant

A. Jurisdiction over this Appeal

51. It is settled law that the Direction under appeal is a final order within this Court's jurisdiction because it removes the issues raised in the RFD to another tribunal outside the jurisdiction of the Ontario courts and finally determines the forum for the dispute.[46]

B. The standard of review on appeal

52. The Supreme Court of Canada has held that decisions concerning the jurisdiction of a supervising judge to hear and decide an RFD are subject to review on the standard of correctness.[47] This Court has held: "The propriety of the RFD process depends upon the correctness of the [Administrative Judge's] Direction."[48]

53. In the alternative, since the Direction under appeal removes the issues raised in the RFD from the jurisdiction of the Ontario courts, the applicable standard of review should

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2020.

[45] *Fontaine v. Canada (Attorney General)*, Reasons for Decision, Endorsement of the Motion for a Stay, Ontario Court of Appeal Docket no. M51618 (C68407), 10 July 2020, para. 35.

[46] *Fontaine v. Canada (Attorney General)*, 2018 ONCA 832, para. 7.

[47] *J.W.*, *supra* note 33, para. 110-112 (Côté J. writing for the majority on this issue; see also Brown J., para. 175).

[48] *Fontaine v. Canada (Attorney General)*, 2018 ONCA 832, para. 16.

be correctness, just as it would be on an appeal from an order dismissing a claim as disclosing no reasonable cause of action.[49]

54. In the further alternative, the Protocol is an appendix to a court order that assigns the Superior Court's jurisdiction, which is not a matter on which the Administrative Judge is allowed to err. As this Court has held: "The question of whether the Superior Court has jurisdiction is a legal determination that also attracts a correctness standard."[50]

C. Rules for interpreting a court order

55. The IRSSA itself may be subject to the principles of contract interpretation,[51] but this Appeal concerns a different instrument: the Superior Court's Implementation Order, which incorporates the Protocol as a schedule.

56. The principles to apply when interpreting the language of a court order are that:

a. a broad and liberal interpretation is to be used to achieve the court's objective in making the order;

b. the language must be construed according to its ordinary meaning and not in some unnatural or obscure sense;

c. a certain flexibility must be available in recognition of the fact that life is not static; developments beyond the contemplation of the parties often arise;

d. the court must examine the context in which the order was issued, evaluate the order in accordance with the circumstances of the case, and question whether the acts or omissions could reasonably have been contemplated to fall under the terms of the order; and

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[49] *Grand River Enterprises Six Nations Ltd. v. Canada (Attorney General)*, 2017 ONCA 526, para. 18.
[50] *Grand River Enterprises Six Nations Ltd. v. Canada (Attorney General)*, para. 18.
[51] *Canada v. Fontaine* SCC, *supra* note 33, para. 35.

e. a party cannot hide behind a restrictive and literal interpretation to circumvent the order and make a mockery out of the administration of justice.[52]

57. In an oft-cited judgment, the British Columbia Court of Appeal offered these rules:

> In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.[53]

D. The Appellants' RFD falls under Ontario jurisdiction

1. Jurisdiction is not acquired by waiver or consent

58. All RFDs concerning individual class members in Ontario[54], Quebec[55] and Manitoba[56] seem to have been heard by their respective supervising courts. The British Columbia Supreme Court has heard RFDs by one claimant from Alberta[57], one from the Maritimes,[58] and several from Saskatchewan,[59] but until the Direction under appeal, the Administrative Judges have never given reasons to justify the practice. This issue was not raised, much less argued, in any of those earlier RFDs.

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[52] *Royal Bank of Canada v. 1542563 Ontario Inc.*, 2006 CanLII 32639 (ONSC), para. 4.
[53] *Yu v. Jordan*, 2012 BCCA 367, para. 53 (emphasis added).
[54] *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26 ("*Spanish IRS*").
[55] *Fontaine c. Procureur général du Canada*, 2018 QCCS 998; *Fontaine c. Procureur général du Canada*, 2018 QCCS 997; *Fontaine v. Canada (Attorney General)*, 2013 QCCS 1293; *Fontaine c. Canada (Procureur général)*, 2013 QCCS 553.
[56] See *J.W.*, para. 86; *Fontaine et al. v. Canada (Attorney General) et al.*, 2014 MBQB 200; *Fontaine et al. v. Canada (Attorney General) et al.* 2014 MBQB 209; *Fontaine et al. v. Canada (Attorney General) et al.* 2014 MBQB 113.
[57] *Fontaine v. Canada (Attorney General)*, 2019 BCCA 178.
[58] *Tourville v. Fontaine*, 2017 BCCA 325, para. 11.
[59] See, for example, Brown J.'s decisions that it was reasonable for IAP adjudicators to deny compensation to claimants from Saskatchewan who were raped by Canada's employees while being transported to Indian residential school or who were molested by other students in a school bus parked on the Indian residential school premises: *Fontaine v Canada (Attorney General)*, 2020 BCSC 21; *Fontaine v. Canada (Attorney General)*, 2018 BCSC 375.

59. In British Columbia, the jurisdiction to hear an RFD concerning a class member from the Maritimes was challenged on appeal, after the judgment at first instance; the British Columbia Court of Appeal declined to consider the issue because it had not been raised until after Justice Brown had rendered judgment.[60]

60. In 2019, the Québec Supervising Judge accepted, without reasons, the Administrative Judges' direction to assign an RFD by an individual class member to Justice Brown for a hearing, over the claimants' objections; the Québec Court of Appeal granted leave to appeal her decision, in a case that has not yet been heard.[61]

61. It is a basic principle that "parties cannot confer by consent jurisdiction on a court where jurisdiction does not lie."[62] Similarly, this Court has held that "acquiescence does not confer jurisdiction through waiver of a condition that cannot be waived."[63]

62. As a result, past practice provides little legal support for the Order under appeal and, moreover, such practice could not confer jurisdiction contrary to the rules of statute, the Agreement or the Implementation Order.

2. The Appellants must receive the IRSSA's promised benefit

63. The fundamental question in every RFD, as the Supreme Court of Canada has confirmed, is whether class members have received the benefits that the IRSSA promised to them.[64]

64. In this case, the IRSSA promised that for individual class members, the court where they could seek relief would be their own local court in the province or territory where they

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[60] *Tourville v. Fontaine*, *supra* note 58, para. 33. The claimant was a St. Anne's survivor but lived in the Maritimes, which made him a deemed Ontario resident under the IRSSA, s. 4.04 "Class Membership".
[61] *Fontaine c. Procureur général du Canada*, 2019 QCCA 1989,.
[62] *MacLeod v. Harrington (Guardian of)*, 1995 CanLII 2345 (BC CA), para. 185. See also: *Ontario New Home Warranty Program v. Chevron Chemical Company*, 1999 CanLII 15098 (ONSC) ["*Ontario New Home Warranty Program"*], para. 49.
[63] *Ontario (Provincial Police) v. Mosher*, 2015 ONCA 722, para. 67.
[64] *J.W.*, *supra* note 33, para. 15 (Abella J.); para. 80 and 116 (Côté J.).

resided when the Agreement was approved.[65] The parties have never altered that bargain and the two Administrative Judges do not have the power to change the Agreement on their own.[66]

3. The Implementation Order allows for only one interpretation

a) The Order's objective

65. When Chief Justice Winkler approved the IRSSA, he pointed out:

> […] The court has an obligation under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("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. […] Once the court is engaged, it cannot abdicate its responsibilities under the CPA.[67]

66. The Protocol is a schedule to the Implementation Order, issued by the same court that approved the Agreement and by the same judge: its objective remains that in overseeing the administration and implementation of the Agreement, the court fulfils its duty to ensure that class members receive the benefits they bargained for.[68]

67. In a recent Québec decision, the Superior Court in that province had to decide whether it has jurisdiction over a class member seeking review of a claim administrator's decision under the national settlement of three class actions about the same defective hip implant, approved in British Columbia, Ontario (by Justice Perell) and Québec.[69]

68. The agreement provides that the parties "may apply to the BC Court for directions in respect of the implementation and administration of this Settlement Agreement." It

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[65] IRSSA, s. 1.01, "Appropriate Court."
[66] Protocol, ss. 1, 5(d).
[67] *Baxter*, *supra* note 7, para. 12.
[68] *J.W.*, *supra* note 33 para. 30 (Abella J.) and 162 (Côté J.).
[69] *McSherry v Zimmer GMBH*, 2016 ONSC 4606; *Jones v. Zimmer GMBH*, 2016 BCSC 1847; *Major c. Zimmer inc.*, 2017 QCCS 5041.

further provides that: "The BC Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement."[70]

69. Nevertheless, Justice Gouin, who both approved the settlement and heard the class member's motion, ruled that the Supreme Court of Canada's judgment in *J.W.* stands for the proposition that in a multijurisdictional class action, the Québec Superior Court did not give up its duty to ensure the proper administration and implementation of the settlement for the benefit of Québec class members.

70. He reasoned:

> [TRANSLATION]
>
> As *J.W.* confirmed, it is the Court's view that it has an "ongoing duty to supervise the administration and implementation" of the Settlement as the supervising judge for the Quebec class action.
>
> Thus, the Court may intervene in order to implement the conditions of the Settlement, to ensure that the advantages promised to Quebec Class Members are actually received.[71]

71. The IRSSA, unlike the settlement agreement before Justice Gouin, does not purport to assign supervisory jurisdiction in a multi-jurisdictional class action to a single court. It does provide that the "Appropriate Court" is "the court of the province or territory where the Class Member resided on the Approval Date."[72] The Protocol attached to the Implementation Order provides that an RFD seeking "relief for a particular class member… will "be directed to the supervising court with jurisdiction over the class member or class pursuant to the terms of the Agreement and the Approval Orders".[73]

72. The Implementation Order's objective should therefore be understood to be: that the same court that approved the Agreement for a given class will be the court that carries out the duty to ensure that those class members receive the benefits they bargained for.

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[70] *Major c. Zimmer inc.* 2019 QCCS 1831 ["*Major c. Zimmer RFD*"], para. 6.
[71] *Major c. Zimmer RFD*, para. 29-30 (citations omitted).
[72] IRSSA, s. 1.01, "Appropriate Court."
[73] Protocol, para. 5(a).

b) The Protocol is clear on its face

73. A court order must be construed according to its ordinary meaning and not in some unnatural or obscure sense.

74. In Justice Simmons' succinct summary, the ordinary meaning of paragraph 5 of the Protocol is that the Appellants' RFD is assigned to the Ontario Superior Court:

> The language of para. 5(a) is mandatory: "Where the issue(s) involve relief for a particular class member or particular class, the hearing *will* be directed to the supervising court with jurisdiction" [emphasis added]. Arguably, the discretion conferred by para. 5(f) is constrained by principles of contractual interpretation (e.g. the specific overrides the general) as well as its arguably restrictive language (in applying the guiding principles of para. 5, Administrative Judges may be guided by other considerations – but query whether this authorizes them to departing from an arguably mandatory guiding principle such as para. 5(a)).[74]

75. The specific rule under para. 5(a) of the Protocol is a mandatory assignment of individual class members' RFDs to the courts of their respective jurisdiction: "the hearing will be directed."[75] The general rule under para. 5(f) of the Protocol is that Administrative Judges may "be guided by any other consideration that he or she deems to be appropriate in the circumstances."[76]

76. Paragraph 5(f) recalls the court's powers under s. 12 of the *Class Proceedings Act* (*CPA*), "on the motion of a party or class member," that it "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."[77]

77. Chief Justice Winkler held that s. 12 is procedural and does not confer jurisdiction to derogate from the substantive rights of the parties.[78] The issue of a court's territorial

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[74] *Fontaine v. Canada (Attorney General)*, Reasons for Decision, Endorsement of the Motion for a Stay, Ontario Court of Appeal Docket no. M51618 (C68407), 10 July 2020, para. 26 (emphasis in the original).
[75] Protocol, para. 5(a).
[76] Protocol, para. 5(f).
[77] *Class Proceedings Act, 1992*, SO 1992, c 6, s. 12.
[78] *Ontario New Home Warranty Program*, *supra* note 62, para. 40-41, 49-50.

jurisdiction is a specific substantive matter,[79] which could not have been superseded by the procedural power under para. 5(d) of the Protocol to make such orders as are necessary to ensure the fair and expeditious determination of an RFD.

c) The context in which the order was issued

78. The IRSSA may be a national class action settlement, but it settled separate class actions in nine provinces and territories, albeit on identical terms: each superior court retains jurisdiction over a class composed of those residing in that province or territory upon approval.

79. Viewed in that context, the rule in para. 5(a) of the Protocol merely states the obvious: individual class members are to be heard on an RFD by the superior court that actually has jurisdiction over them. It is difficult to see how any other court would have the power to determine whether the individual class members had received the benefits promised to them when the superior court of their province or territory approved the settlement of their class action in the form of the IRSSA.

80. An additional part of the context is that, as Justice Perell has noted, the purpose of class proceedings in general and the IRSSA in particular is access to justice.[80]

81. The utility of the mandatory rule in para. 5(a) of the Protocol for providing access to justice should be readily apparent: an individual class member is to be heard on an RFD by the superior court in the jurisdiction where he or she lived when the IRSSA was approved and which is likely to be the most convenient for him.

82. The logic of the Administrative Judges' approach is much less apparent. If their general discretion under para. 5(f) to "be guided by any other consideration that he or she deems to be appropriate in the circumstances"[81] can suffice to direct class members who

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[79] *Parsons v. Ontario*, 2015 ONCA 158, para. 194; aff'd. *Endean v. British Columbia*, 2016 SCC 42.
[80] *St. Anne's #1*, *supra* note 2, para. 185.
[81] Order under appeal, para. 25, citing Protocol, para. 5(f).

live on James Bay in northern Ontario to be heard in British Columbia, presumably it would also allow them to direct a class member from Vancouver to be heard in Iqaluit or a class member from Québec City to be heard in Whitehorse. Class members would see their access to justice reduced, not improved, by such an approach.

d) No new developments justify a new interpretation

83. This is not a case where the language of the Protocol must be interpreted in light of developments beyond the contemplation of the parties when they consented to the Implementation Order. On the contrary, RFDs by individual class members were clearly contemplated and the Protocol specifically provided for them to be heard by the superior court of those individual class members' province or territory.

84. Nor can the argument be made that an unexpected development arises from the "Sunset RFD" that provides for the IAP to be concluded this year, "subject to any further order of this Court."[82] No-one expected the IAP to continue indefinitely, so the procedural rules governing RFDs cannot be altered merely because the process is coming to a close.

85. If any new development was unexpected, it is surely that Canada would remain in breach of its disclosure obligations with respect to St. Anne's IRS from 2007 till 2015 and, upon being ordered to comply, that it would wait until responding to the survivors' RFD in 2020 before revealing an interpretation of the disclosure order so narrow that it appears to constitute further non-compliance.

86. In any event, the Supreme Court of Canada has been clear that the rules of interpretation assist in "*discerning the meaning* of the words that the parties chose to express their agreement; it is not a means by which to *change* the words of the contract in a manner that would modify the rights and obligations that the parties assumed

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[82] Order under appeal, para. 16.

thereunder."[83] In this case, the words of both the Agreement itself and s. 5(a) of the Protocol are clear and cannot be changed.

87. The goal in the Order under appeal of "achieving judicial economy and efficiency… in the final stage of the IRSSA's administration"[84] is important. But as the Federal Court of Appeal recently held, such goals do not allow judicial decision-makers to override the choices made by the text of their governing rules, simply "because we think administrative efficiency, adjudicative economy and conservation of scarce administrative resources are good things."[85]

4. Class actions do not change the substantive law

88. The Supreme Court of Canada recalled that in class actions, "recourse to this procedural vehicle does not change the legal rules relating to subject-matter jurisdiction" and it approved the conclusion of the Québec Court of Appeal that "provisions… respecting class actions are purely procedural and do not create substantive law."[86]

89. Nothing in the *Class Proceedings Act, 1992* allows the Superior Court's jurisdiction to be assigned to the court of another province, still less upon the decision of two Administrative Judges. Moreover, it should be noted that nothing in the Protocol requires the IRSSA's Eastern Administrative Judge to be from the Ontario Superior Court; as a result, on Canada's interpretation, the Protocol could allow two judges from other provinces to remove RFDs brought by individual Ontario class members from the Ontario court's jurisdiction.

90. Moreover, there is no apparent legal basis for the notion that in the case of the Appellants' RFD, the 2014 and 2015 orders of the Ontario Superior Court could be

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[83] *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60, para. 78 (emphasis in the original; citations omitted).
[84] Order under appeal, para. 28.
[85] *Hillier v. Canada (Attorney General)*, 2019 FCA 44, para. 36.
[86] *Bisaillon v. Concordia University*, 2006 SCC 19, para. 19, 20. See also: *Ontario New Home Warranty Program*, para. 50.

enforced by the British Columbia Supreme Court: the general rule is that the orders of one Canadian superior court are unenforceable by another unless the order is registered in the second jurisdiction,[87] which is not the case here.

91. Nor is it apparent by what authority the British Columbia court could reinterpret the Ontario court's orders, as the Attorney General would invite Justice Brown to do.[88]

92. The fundamental rule is that "each province administers justice within its borders."[89] It would be an entirely new principle of law for a pair of judges to be able to assign to one superior court the task of resolving disputes arising in another's jurisdiction, especially without the parties' consent. Such a result would be the exact opposite of the rule in criminal procedure where the court of another province may not hear a case concerning an offence entirely committed in another province, except with the consent of the prosecution and if the accused pleads guilty.[90]

93. In the words of Chief Justice Lamer: "The superior courts have a core or inherent jurisdiction which is integral to their operations." If this is the reason that a legislature may not affect the fundamental jurisdiction of the superior court when transferring jurisdiction to the inferior courts,[91] then a judge of the superior court also cannot dispossess himself of his own fundamental jurisdiction. It is therefore difficult to understand by what authority the Superior Court could transfer its own jurisdiction over a case to the superior court of another province.

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[87] *Enforcement of Canadian Judgments and Decrees Act*, SBC 2003, c 29, ss. 2-4.
[88] A.B.C., Volume 1 of 4, Tab 8, page 89 of 185, Request for Directions of Canada to Summarily Dismiss/Strike Metatawabin RFD #2, para. 23.
[89] *Reference to the Court of Appeal of Quebec pertaining to the constitutional validity of the provisions of article 35 of the Code of Civil Procedure*, 2019 QCCA 1492, para. 37; appeal pending, *Conférence des juges de la Cour du Québec, et al. v. Chief Justice, et al.*. SCC docket no. 38837.
[90] *Criminal Code*, RSC 1985, c C-46, para. 478(3); *R. v. Webber*, 2018 NSSC 343, para. 50.
[91] *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725, para. 15, 27.

PART IV: Costs

94. Justice Perell has held that the courts should be extremely reticent to award costs against any individual class member bringing an RFD under the IRSSA[92] and has even provided advance costs immunity in appropriate cases.[93] No costs should therefore be awarded against the Appellants in any event of the cause.

95. Independent Counsel is entitled to its costs because, as Justice Perell has held, a party is entitled to costs for the legal services needed to implement and to enforce the IRSSA.[94] Since the IRSSA facilitates access to justice,[95] its proper functioning in general and the IAP in particular are *prima facie* in the public interest.

96. The Supreme Court of Canada granted costs against Canada to Independent Counsel on a different RFD,[96] effectively endorsing Justice Perell's award, approved by this Court, which noted "the important role played by Independent Counsel in the proceedings for IAP claimants."[97] This Court has done the same even when Independent Counsel was unsuccessful.[98]

PART V: Proposed Order

97. Independent Counsel asks that this Court:

a. grant the Appeal and set aside the Order (Direction) under appeal;

b. make any other order or decision that by this Court is considered just; and

c. award costs payable to Independent Counsel by the Respondent.

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[92] *Fontaine v. Canada (Attorney General)*, 2017 ONSC 5174, para. 65, 69.
[93] *Fontaine v. Canada (Attorney General)*, 2016 ONSC 7913.
[94] *St. Anne's #1*, *supra* note 2, para. 249, 252.
[95] *St. Anne's #1*, para. 185.
[96] *Canada v. Fontaine* SCC, para. 64.
[97] *In Rem Order* ONCA, para. 243.
[98] *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26 ("*Spanish IRS*"), para. 71.

All of which is respectfully submitted.

Montréal, July 21, 2020

David Schulze
DIONNE SCHULZE
On behalf of Independent Counsel

INDEPENDENT COUNSEL CERTIFICATE

1. Independent Counsel estimates that 45 minutes will be required for Independent Counsel's oral argument.

July 22nd, 2020

David Schulze

DIONNE SCHULZE

Counsel for Independent Counsel

SCHEDULE A
List of Authorities

A. Case law

1. *Baxter v. Canada (Attorney General)*, (2006) 83 O.R. (3d) 481 (SC)
2. *Bisaillon v. Concordia University*, 2006 SCC 19
3. *Canada (Attorney General) v. Fontaine*, 2017 SCC 47
4. *Endean v. British Columbia*, 2016 SCC 4
5. *Fontaine v. Canada (Attorney General)*, 2018 BCSC 375
6. *Fontaine v Canada (Attorney General)*, 2020 BCSC 21
7. *Fontaine v Canada (Attorney General)*, 2020 BCSC 850
8. *Fontaine v. Canada (Attorney General)*, 2019 BCCA 178
9. *Fontaine et al. v. Canada (Attorney General) et al.*, 2014 MBQB 200
10. *Fontaine et al. v. Canada (Attorney General) et al.* 2014 MBQB 209
11. *Fontaine et al. v. Canada (Attorney General) et al.* 2014 MBQB 113
12. *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283 ["*St. Anne's #1*"]
13. *Fontaine v. Canada (Attorney General)*, 2014 ONSC 4585 ["*In Rem Order* ONSC"]
14. *Fontaine v. Canada (Attorney General)*, 2014 ONSC 5292
15. *Fontaine v. Canada (Attorney General)*, 2015 ONSC 4061 [*St. Anne #2*]
16. *Fontaine v. Canada (Attorney General)*, 2016 ONSC 7913
17. *Fontaine v. Canada (Attorney General)*, 2017 ONSC 5174
18. *Fontaine v. Canada (Attorney General)*, 2018 ONSC 5197
19. *Fontaine v. Canada (Attorney General)*, 2020 ONSC 3497
20. *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241 ["*In Rem Order* ONCA"]
21. *Fontaine v. Canada (Attorney General)*, 2017 ONCA 26 ("*Spanish IRS*")
22. *Fontaine v. Canada (Attorney General)*, 2018 ONCA 421 [*Metatawabin #1*]

23. *Fontaine v. Canada (Attorney General)*, 2018 ONCA 832

24. *Fontaine v. Canada (Attorney General)*, 2018 ONCA 1023

25. *Fontaine v. Canada (Attorney General)*, Reasons for Decision, Endorsement of the Motion for a Stay, Ontario Court of Appeal Docket no. M51618 (C68407), 10 July 2020

26. *Fontaine c. Canada (Procureur général)*, 2013 QCCS 553

27. *Fontaine v. Canada (Attorney General)*, 2013 QCCS 1293

28. *Fontaine c. Procureur général du Canada*, 2018 QCCS 997

29. *Fontaine c. Procureur général du Canada*, 2018 QCCS 998

30. *Fontaine c. Procureur général du Canada*, 2019 QCCA 1989

31. *Grand River Enterprises Six Nations Ltd. v. Canada (Attorney General)*, 2017 ONCA 526

32. *Hillier v. Canada (Attorney General)*, 2019 FCA 44

33. *IAP Claiming H-15019 v. P. James Wallbridge*, 2019 ONSC 1627

34. *J.W. v. Canada (Attorney General)*, 2019 SCC 20

35. *Kuptana v Canada (Attorney General)*, 2007 NWTSC 1

36. *Jones v. Zimmer GMBH*, 2016 BCSC 1847

37. *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 SCR 725

38. *McSherry v Zimmer GMBH*, 2016 ONSC 4606

39. *MacLeod v. Harrington (Guardian of)*, 1995 CanLII 2345 (BC CA)

40. *Major c. Zimmer inc.*, 2017 QCCS 5041

41. *Major c. Zimmer inc.* 2019 QCCS 1831 ["*Major c. Zimmer RFD*"]

42. *Ontario New Home Warranty Program v. Chevron Chemical Company*, 1999 CanLII 15098 (ONSC)

43. *Ontario (Provincial Police) v. Mosher*, 2015 ONCA 722

44. *Parsons v. Ontario*, 2015 ONCA 158

45. *R. v. Webber*, 2018 NSSC 343

46. *Reference to the Court of Appeal of Quebec pertaining to the constitutional validity of the provisions of article 35 of the Code of Civil Procedure*, 2019 QCCA 1492

47. *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60

48. *Royal Bank of Canada v. 1542563 Ontario Inc.*, 2006 CanLII 32639 (ONSC)

49. *Tourville v. Fontaine*, 2017 BCCA 325

50. *Yu v. Jordan*, 2012 BCCA 367

B. IRSSA Documents

51. Indian Residential Schools Settlement Agreement, 2006

52. IRSSA, Schedule D, Independent Assessment Process (IAP) for Continuing Indian Residential School Abuse Claims

53. Implementation Order of March 8, 2007, Schedule Court Administration Protocol

54. Request for Direction Service Protocol, February 2014

SCHEDULE B

Statutes, Regulations, and By-laws

A. *Enforcement of Canadian Judgments and Decrees Act*, SBC 2003, c 29, ss. 2 to 4

Right to register Canadian judgment

2 (1) Subject to subsection (2), a Canadian judgment, whether or not the Canadian judgment is final, may be registered under this Act for the purpose of enforcement.

(2) A Canadian judgment that requires a person to pay money may not be registered under this Act for the purpose of enforcement unless it is a final judgment.

(3) A Canadian judgment that also contains provisions for relief that may not be enforced under this Act may be registered under this Act except in respect of those provisions.

Procedure for registering Canadian judgment

3 (1) A Canadian judgment is registered under this Act by paying the fee prescribed by regulation and by filing in the registry of the Supreme Court

(a) a copy of the Canadian judgment, certified as true by a judge, registrar, clerk or other proper officer of the court that made the Canadian judgment, and

(b) the additional information or material required by the applicable Rules of Court.

(2) [Repealed 2011-25-329.]

Effect of registration

4 Subject to sections 5 and 6, a registered Canadian judgment,

(a) subject to paragraph (b), may be enforced in British Columbia as if it were an order or judgment of, and entered in, the Supreme Court, or

(b) in the case of a registered Canadian judgment that is a domestic trade agreement award, may be enforced in British Columbia as if it were an order or judgment of, and entered in, the Supreme Court, but only if and to the extent that that enforcement or entry is not restricted by the applicable domestic trade agreement.

B. *Class Proceedings Act, 1992*, SO 1992, c 6, s. 12

Court may determine conduct of proceeding

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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.

C. *Criminal Code*, RSC 1985, c C-46, para. 478(3)

Offence committed entirely in one province

478 (1) Subject to this Act, a court in a province shall not try an offence committed entirely in another province.

Exception

(2) Every proprietor, publisher, editor or other person charged with the publication of a defamatory libel in a newspaper or with conspiracy to publish a defamatory libel in a newspaper shall be dealt with, indicted, tried and punished in the province where he resides or in which the newspaper is printed.

Idem

(3) An accused who is charged with an offence that is alleged to have been committed in Canada outside the province in which the accused is may, if the offence is not an offence mentioned in section 469 and

(a) in the case of proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government, if the Attorney General of Canada consents,

or

(b) in any other case, if the Attorney General of the province where the offence is alleged to have been committed consents,

appear before a court or judge that would have had jurisdiction to try that offence if it had been committed in the province where the accused is, and where the accused consents to plead guilty and pleads guilty to that offence, the court or judge shall determine the accused to be guilty of the offence and impose the punishment warranted by law, but where the accused does not consent to plead guilty and does not plead guilty, the accused shall, if the accused was in custody prior to appearance, be returned to custody and shall be dealt with according to law.

COURT OF APPEAL FOR ONTARIO
FILE NO: C68407

LARRY PHILIP FONTAINE, ET AL.

PLAINTIFFS
- AND –

THE ATTORNEY GENERAL OF CANADA, ET AL.

DEFENDANTS/RESPONDENTS

IN THE MATTER OF THE REQUEST FOR DIRECTION BY DR. EDMUND METATAWABIN AND BY IAP CLAIMANTS T-00185, S-20774 AND S-16753 PERTAINING TO ST. ANNE'S INDIAN RESIDENTIAL SCHOOL

REQUESTORS/APPELLANTS/MOVING PARTIES

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