

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LARRY PHILIP FONTAINE and others

Plaintiffs

AND:

THE ATTORNEY GENERAL OF CANADA and others

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER

BEFORE the Honourable	)	) Monday, the 23 <sup>rd</sup> day of
Madam Justice B.J. Brown	)	)
	)	) June, 2014

THE HONOURABLE MADAM JUSTICE B.J. BROWN HAVING BEEN DESIGNATED BY THE ADMINISTRATIVE JUDGES TO ADDRESS THE WITHIN MATTER PURSUANT TO PARAGRAPH 5(c) OF THE COURT ADMINISTRATION PROTOCOL WHICH IS SCHEDULE "A" TO THE IMPLEMENTATION ORDER OF THE HONOURABLE CHIEF JUSTICE BRENNER, DATED MAY 8, 2007;

AND ON THE RECOMMENDATION OF COURT COUNSEL AFTER CONSULTATION WITH CANADA, THE CHIEF ADJUDICATOR, THE COURT MONITOR, THE NATIONAL ADMINISTRATION COMMITTEE AND THE IAP OVERSIGHT COMMITTEE, THIS COURT ORDERS THAT:

1. Pursuant to paragraph 23 of the Implementation Order of the Honourable Chief Justice Brenner dated March 8, 2007, the Honourable Ian Pitfield is appointed as Independent Special Advisor ("ISA") to the Court Monitor to review complaints relating to the conduct of claimants' counsel and others purporting to act on behalf of claimants under the IAP brought to the attention of the Court Monitor or to the Chief Adjudicator;

2. The ISA shall perform his duties to the limits set out in the “Administrative Protocol” for addressing complaints to the integrity of the Independent Assessment Process (IAP)” attached as Schedule “A” to this Order;
3. The ISA’s fees and expenses shall be paid by Canada, upon approval by order of this Court;
4. The Court Monitor shall provide office and other resources as required by the ISA in the fulfillment of his duties pursuant to this order;
5. No action or judicial proceeding of any nature or kind whatsoever lies against the ISA acting in the performance of his or her duties save and except in respect of gross negligence or willful misconduct, and no action or proceeding alleging actionable conduct may be commenced without leave of the Court.

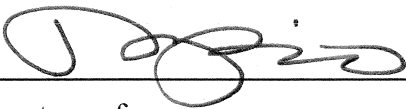
Signature of

---

☐ Party

☒ Lawyer for the Attorney General of Canada

**Catherine Coughlan**




---

Signature of

☐

☒ Chief Adjudicator

**Dan Shapiro, Q.C.**

---

Signature of

☐ Party

☒ Lawyer for Court Monitor

**Louis Zivot**

---

Signature of

---

**Brian Gover**, Court Counsel

By the Court:

---

**The Honourable Madam Justice  
Brenda J. Brown, J.**

## **Schedule “A”**

### **Indian Residential Schools Settlement Agreement (IRSSA)**

#### **Administrative Protocol for addressing complaints related to the integrity of the Independent Assessment Process (IAP)**

##### **A. Purpose**

The purpose of this administrative protocol is to clarify the process for handling complaints relating to the conduct of claimants’ counsel and others purporting to act on behalf of claimants under the IAP.<sup>1</sup>

The administrative protocol is intended to expedite the investigation and resolution of complaints, prevent conflicting roles from arising, and manage costs.<sup>2</sup>

The administrative protocol will be reviewed six (6) months after it becomes operational, to assess its implementation and to consider what further can be done to improve the protocol.

##### **B. General Principles**

1. All parties to the Indian Residential Schools Settlement Agreement (IRSSA), as well as the Court Monitor, the Chief Adjudicator, and the Supervising Courts, have a responsibility to protect and promote the integrity of the IAP.
2. It is acknowledged that the “integrity of the IAP” may be threatened by the conduct of claimant counsel and others purporting to act on behalf of claimants that:
  - a. Encourages, supports, condones or is complicit in the bringing or advancement of fraudulent claims; and/or

---

<sup>1</sup> Nothing in this administrative protocol limits the Court Monitor’s ability to initiate such preliminary or other investigations as it deems appropriate within its role as Court Monitor.

<sup>2</sup> As a practical matter, issues are likely to continue to be brought to the attention of the Chief Adjudicator in the first instance. It is anticipated that the Chief Adjudicator will continue to resolve the vast majority of complaints informally. However, there are some situations which require more in-depth assessment pursued by an individual who operates independently from the Chief Adjudicator and the parties, and under the authority of the Court Monitor.

- b. amounts to financial exploitation of claimants, including conduct that deprives or seeks to deprive claimants of the benefits or protections to which they are entitled under the IRSSA, Implementation Orders or any applicable statute or law.

### **C. Independent Special Advisor(s)**

- 3. It is acknowledged that the Integrity of the process is advanced by the involvement of one or more independent individuals contracted by the Court Monitor, to be known as the “Independent Special Advisor” (ISA) to the Court Monitor. To avoid any concerns about conflict of interest, the ISA will work in conjunction with, and provide independent advice to, the Court Monitor.
- 4. After consulting with the Chief Adjudicator and the Court Monitor, the Administrative Judges<sup>3</sup> will appoint one or more appropriate individuals, preferably knowledgeable of the IAP or similar processes, to act as ISA(s).
- 5. The ISA(s) will be contracted by the Court Monitor pursuant to the existing Orders governing the Court Monitor’s role in the IRSSA. The costs of the ISA(s), when combined with the other invoices of the Court Monitor, may not exceed the agreed upon amount as per Annex A of the Order appointing the Court Monitor, unless authorized in writing by Court Counsel and communicated to Canada.

### **D. Complaints Process**

- 6. Any person may bring a complaint to the Chief Adjudicator or Court Monitor.
- 7. The ISA will review complaints brought to him/her by the Chief Adjudicator or Court Monitor.
- 8. Upon review of such complaints, the ISA will determine appropriate next steps. In particular, the ISA may:
  - a. Determine that the complaint(s) warrants no further action;
  - b. determine that further information is required in order to fully assess the complaint(s) and, in such case, and where he/she deems appropriate, gather

---

*3 This consultation will occur through Court Counsel.*

such information as is necessary to determine whether further action may be required;<sup>4</sup> and,

- c. determine that the complaint(s) can be dealt with through response and/or explanation and/or other measures outside the IRSSA, such as referral to a law enforcement agency or a provincial or territorial law society.
9. If the ISA determines that the complaint(s) warrants further action that cannot adequately be addressed through response, explanation, or referral to a law enforcement agency or law society, he/she will recommend that the Court Monitor bring a Request for Direction before the Supervising Courts, seeking a more complete investigation and/or other interim or permanent remedial measures.
10. The Court Monitor will act on the ISA's recommendations in accordance with its responsibilities under the Implementation Orders, as it deems appropriate.

#### **E. Reporting**

11. The Court Monitor will provide quarterly reports on complaints, fact finding, ISA recommendations and Requests for Direction, to Court Counsel and the Supervising Judges.
12. The Court Monitor will regularly inform the Oversight Committee and the Chief Adjudicator.

---

<sup>4</sup> Subject to an expenditure cap of \$25,000. If, however, an expenditure may exceed \$25,000, the ISA will draft a budget for the consideration of the Court Monitor and approval of Court Counsel.