

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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 ATHABASCA, THE SYNOD OF THE
 DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF
 BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE
 SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE
 DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW
 WESTMINSTER, THE SYNOD OF THE DIOCESE OF YUKON, THE
 TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE
 BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE
 PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S MISSIONARY
 SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF
 CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF
 CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS
 SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL
 CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-
 AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES
 SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-
 HYANCITHE, LES SOEURS DE JESUSMARIE, LES SOEURS DE
 L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE
 L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE
 LA CHARITE DE ST.-HYACINTHE, LES OEUVRES OBLATES DE
 L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC, LA
 CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE
 JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES
 BAY), THE CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE
 MONTRÉAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY
 NUNS) OF ALBERTA, LES SOEURS DE LA CHARITÉ DES T.N.O., HOTEL-
 DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS
 GRISES DU MANITOBA INC., LA CORPORATION EPISCOPALE
 CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON - THE ROMAN
 CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY,
 MISSIONARY OBLATES - GRANDIN 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 MACKENZIEFORT SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.

Defendants

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

AFFIDAVIT OF LARRY PHILIP FONTAINE, O.C.

I, LARRY PHILIP FONTAINE, O.C., of the City of Winnipeg, in the Province of Manitoba, AFFIRM THAT:

1. I was born on September 20, 1944 at the Fort Alexander reserve in Manitoba, about 150 kilometres northeast of Winnipeg.
2. I am the former National Chief of the Assembly of First Nations (hereafter "AFN"). I was elected to that position three times and held the position from 1997 to 2000 and from 2003 to 2009.
3. I was first elected as National Chief of the AFN in 1997 and was re-elected in 2003 after a term in which I was not the National Chief and was the Chief Commissioner on the Indian Claims Commission. I was re-elected National Chief in 2006.

4. The AFN, at the time that I was its leader, was comprised of 633 First Nations represented by their respective elected Chiefs. The AFN was the national representative of the First Nations of Canada. The AFN's mandate was to communicate, advance and protect the legal and political rights of its constituents.

5. In 1989 I first stood up and spoke about residential schools as the Regional Chief of the Assembly of First Nations at a Special Chiefs Assembly in Whitehorse, Yukon Territory. I described it as a large black cloud looming over First Nations and hampering our efforts to describe a vision for the future of First Nations.

6. Subsequently at a meeting of journalists in Toronto I discussed the same problem indicating that on my return to Winnipeg I intended to meet with the Archbishop of the St. Boniface Diocese to talk about the sexual abuse I was familiar with in the Indian Residential schools in Manitoba specifically.

7. As a result of this disclosure, the issue of sexual abuse in Indian Residential Schools became a huge front page story across the country.

8. I was then invited to appear on CBC national television to be interviewed by Barbara Frum. In that interview I disclosed that I too, had been sexually abused as a child at the Fort Alexander Indian Residential School in Manitoba. I decided that it was time to publicize the history of abuse that the aboriginal people of Canada suffered at Indian residential schools and that I had to come forward myself as an Aboriginal leader. Since that first disclosure I made, I have spoken publicly about the abuse Indian children suffered at Indian residential schools for many years right up until the present time.

Negotiation of Indian Residential School Settlement Agreement

9. As the leader of the Assembly of First Nations, I campaigned throughout all of my three terms for the government of Canada to recognize, compensate and apologize to survivors of the Indian residential schools for the abuse that they suffered. In May, 2005, after my meetings with former Prime Minister Paul Martin, numerous Cabinet ministers, and legal representatives for survivors, Canada appointed former Supreme Court of Canada Justice Frank Iacobucci as Canada's representative to negotiate an all encompassing residential school settlement with aboriginal nations.

10. During my second term as National Chief of the AFN from 2005 through 2007 I participated in the negotiations and completion of the settlement regarding the Indian Residential Schools Settlement Agreement (hereafter the "Settlement Agreement").

11. One element of the Settlement Agreement is the Independent Assessment Process ("IAP"), an out of court process designed to resolve claims of sexual and serious physical abuse, and other wrongful acts suffered at Indian Residential Schools.

12. There were three key elements that I had fought for in the negotiations:

- i. Compensation to all of the survivors for the loss of their language and culture as a result of being forcibly taken from their families and being punished in the residential schools for speaking their languages and being denied access to their cultures;
- ii. Compensation for survivors who suffered physical or sexual abuse while at the residential school; and
- iii. A Truth and Reconciliation Commission ("TRC") which would document the history of the Indian residential schools.

13. During these negotiations and this campaign for a settlement I had the support of all of the First Nations who were represented by the Assembly of First Nations.

14. In November, 2005, just before the fall of the government of Paul Martin, an agreement in principle was finalized and a final agreement was completed under the new government of Stephen Harper in May, 2006. The agreement was finalized and approved by the courts in nine jurisdictions in 2007.

Impact of Disclosures on Survivors

15. During the course of the negotiations, I had direct meetings with Frank Iacobucci on critical issues in the agreement as it was being negotiated. One of the most critical issues for me was that there should be compensation for student on student abuse that did not require actual knowledge and that constructive knowledge would suffice. We were successful in negotiating this as part of the Settlement Agreement. However, during the course of those negotiations, I argued that the names of the children who abused other children should not be disclosed to the adjudicators in the IAP process. The reason I argued this was because I knew myself from my own community and other aboriginal communities across Canada that both abusers and abused lived in the same communities and that there would be ongoing trauma within entire communities if these individuals were identified by name.

16. The solution to this and other problems was the confidentiality of the IAP process to ensure that no person could identify a perpetrator by name outside of the IAP process and everybody had to agree to that at the beginning of the IAP process. Furthermore, nobody except the survivor would have access to the story of the survivor. The IAP hearings were to be held in the strictest confidence.

17. This was built into the Settlement Agreement specifically by confidentiality provisions and requirements in the IAP process set out in Schedule D of the Agreement.

Intention in the Creation of the Truth and Reconciliation Commission

18. The Assembly of First Nations through its negotiating team, prepared extensive research papers and reviewed Truth and Reconciliation Commissions in other countries of the world to address and document historic horrific traumatic events. We demanded that a Truth and Reconciliation Commission be in the Settlement Agreement to ensure that the history of the residential schools tragedy would be known and protected for future generations and never repeated.

19. In negotiating the TRC it was always understood that the individual stories of survivors would only become part of that record if survivors themselves decided to speak to the TRC and advise that they wished their story to be made public.

Personal Impact on Me of Archiving IAP Files

20. Although I have publicly stated on many occasions since 1989 that I was a victim of abuse as a child while at the residential school in Fort Alexander, I have never publicly provided any of the details of that abuse. This is because I consider my story to be private.

21. Notwithstanding that I have spoken publicly for over twenty-five years about the abuse that I suffered in general terms, I have consistently refused to allow the details of the abuse that I suffered to ever be made public even though I have been repeatedly asked by media outlets to disclose the specifics of the abuse I suffered.

22. I filed an IAP application to commence the process for a claim for the abuse that I suffered. My particular case was referred to the Negotiated Settlement Process (“NSP”) but my application which was filed with the Adjudication Secretariat was filed on condition that it be kept confidential. If the IAP files go into the Archives of either Canada or the National Research Centre (“NRC”), they will include my IAP Application. Such documents will eventually be made available to the public.

23. It was also my understanding that any personal documents that were filed in support of my claim also were guaranteed to be kept confidential.

24. I wish all those documents held by the Adjudication Secretariat, Canada and the Churches related to my IAP Application to be destroyed at the conclusion of the process. I understand that is what would occur in court litigation.

Student on Student Abuse Disclosures


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

26. It was for this reason that I strongly argued that in cases of student on student abuse the names of alleged perpetrators never be made public to any person. The assurance that this information would never be disclosed outside of the IAP process and the guarantees in the Settlement Agreement were the protections that we obtained as a compromise in the Settlement

Agreement. If any of this information is placed into an archive, even if it is sealed for ten years, fifty years, a hundred years or longer, the identities of these perpetrators and their victims will some day become available to their descendants or researchers who may publish information. Within our communities, such knowledge even in future generations would continue the legacy of dysfunction and trauma that was created by the residential schools.

27. I make this Affidavit in support of an order that no documents from the IAP process be delivered to any archive but rather that they be destroyed at the conclusion of the Settlement Agreement process unless a survivor has specifically consented that their information should go to an archive centre. Even in such cases, the identities of student on student perpetrators, and all other persons mentioned therein, and any information which could be used to identify them, should not be disclosed.

SWORN BEFORE ME at the City of
Vancouver, in the Province of British
Columbia on May 1, 2014



Commissioner for Taking Affidavits



LARRY PHILIP FONTAINE