

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

Nº.: 500-17-120468-221

S U P É R I O R C O U R T

(Civil Division)

KAHENTINETHA

KARENNATHA

KARAKWINE

KWETTIIO

OTSITSATAKEN

KARONHIATE

Plaintiffs

vs.

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES

ROYAL VICTORIA HOSPITAL

MCGILL UNIVERSITY HEALTH CENTRE

MCGILL UNIVERSITY

VILLE DE MONTRÉAL

STANTEC INC.

ATTORNEY GENERAL OF CANADA

Defendants

and

**OFFICE OF THE INDEPENDENT SPECIAL
INTERLOCUTOR FOR MISSING CHILDREN AND
UNMARKS GRAVES AND BURIAL SITES
ASSOCIATED WITH INDIAN RESIDENTIAL
SCHOOLS, 225 & 227 – 50 Generations Drive, Six
Nations of the Grand River Territory in the city of
Ohsweken and the province of Ontario, N0A 1M0**

**DECLARATION OF VOLUNTARY INTERVENTION FOR CONSERVATORY
PURPOSES**

(Article 185 and following, *Code of Civil Procedure*)

**IN SUPPORT OF THIS INTERVENTION, THE THIRD-PARTY INTERVENOR
DECLARES THE FOLLOWING:**

1. The Plaintiffs have instituted proceedings against the Defendants in the present matter *Kahentinetha et al. v Société Québécoise des Infrastructures et al.* for declaratory relief and an interlocutory and permanent injunction. The dispute centers around a repurposing project for a site poised to be demolished and redeveloped by the Defendants.
2. The site is located on land to which the Plaintiffs claim ownership and indicate there is “high possibility” of unmarked burials of Indigenous people, including children, being located on this site that are related to past atrocities committed against Indigenous peoples.
3. On June 8, 2022, Kimberly R. Murray was announced by the Attorney General and Minister of Justice of Canada as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools (“Special Interlocutor Murray”). Special Interlocutor Murray was appointed for a two-year term pursuant to an Order-in-Council with a mandate (the “Mandate”) to assist in the identification and protection of the remains of Indigenous children who were taken to Indian Residential Schools and did not return.
4. Special Interlocutor Murray respectfully submits this Declaration to act as a third-party intervenor for conservatory purposes to assist the Plaintiffs in the legal issues in this proceeding, for the reasons set out hereafter. Special Interlocutor Murray is requesting from this Honourable Court the opportunity to make submissions and contribute to the trial record.

MATTER OF PUBLIC INTEREST

5. Special Interlocutor Murray submits there is a significant interest in public law grounding her request to intervene in these proceedings. The Plaintiffs’ claims engage their own constitutional rights, and the issues at stake have a direct correlation with the Mandate and interests of Special Interlocutor Murray. With respect, this Honourable Court can set an example that burial sites of Indigenous children should be treated with the utmost integrity and respect.
6. As an intervenor for conservatory purposes, Special Interlocutor Murray can provide highly specialized contributions through her knowledge and expertise relevant to all issues of this proceeding and contribute in a useful way to the legal debate. Special

Interlocutor Murray also submits that, in this time of Reconciliation, and both national and provincial commitments to advancing the same, the issues in these proceedings have a significant public interest component and the interests of Special Interlocutor Murray are implicated.

INTEREST IN THE OUTCOME

7. Special Interlocutor Murray has a genuine interest in the issues being argued before this Honourable Court. Her Mandate is to “identify needed measures” from a legal perspective regarding the process of identifying, recovering, and protecting unmarked burial sites.
8. This is the first opportunity available to the Special Interlocutor to engage in the legal process and ensure legal disputes exercise sufficient, culturally appropriate, and effective means to locate, investigate, identify, protect, and repatriate the missing children who were taken and never returned home from Indian Residential Schools. As the proposed redevelopment site may contain remains of Indigenous children, Special Interlocutor Murray’s interest in the proceedings is both direct and genuine.

RESOLUTION OF ISSUES

9. As a member of the Kahnnesatake Mohawk Nation, who has held several leadership roles in various organizations such as Aboriginal Legal Services in Toronto, Ontario, and the Truth and Reconciliation Commission of Canada (“TRC”), Special Interlocutor Murray not only has knowledge and information to contribute to these proceedings, but her responsibilities as the Special Interlocutor are also directly implicated.
10. Special Interlocutor Murray’s experience in overseeing the data collection process as Executive Director of the TRC and the challenges faced therein, support her interest in the proceedings before this Honourable Court. Special Interlocutor Murray oversaw the TRC’s investigation into missing children and unmarked burials, and in that role gained experience navigating the challenges faced in the collection of records and gaps in information. The Executive Summary of Volume 4 of the TRC report that details this investigation is attached as **Exhibit I-1**.
11. The issues at stake in these proceedings involve the rights of Indigenous peoples and Special Interlocutor Murray has directly relevant experience engaging with Indigenous communities as Executive Director of the TRC and Assistant Deputy Attorney General of Ontario’s Indigenous Justice Division. This latter position was created as a result of recommendations from the Ontario Juries Report authored by the Honourable Frank Iacobucci, an excerpt of which is attached as **Exhibit I-2**.
12. Special Interlocutor Murray offers specialized knowledge and a perspective to ensure that the Plaintiffs and all others affected by this dispute have their voice heard in these proceedings.
13. In 2021, the recovery of unmarked burials of Indigenous children at the site of a former Indian Residential School in British Columbia gained national attention. Special Interlocutor Murray was appointed to assist in coordinating searches and investigations

for missing Indigenous children, and reviewing the current legal framework applied to unmarked burials.

14. As Executive Oversight Lead of the Survivors' Secretariat at Six Nations of the Grand River, Special Interlocutor Murray became deeply familiar with and utilized various techniques and technologies in death investigations and the identification of unmarked burials. Attached as **Exhibit I-3** is the mandate and announcement of the Survivors' Secretariat.
15. Special Interlocutor Murray is knowledgeable and experienced in using the various forms of technology used to identify potential burial sites, including ground penetrating radar, light detection and ranging, cadaver dogs, and underwater side scan sonar. **Exhibit I-4** is a blog post authored by Special Interlocutor Murray entitled "How Technology is Helping Survivors Uncover the Truth", dated March 25, 2022. The post provides greater detail on technology's use in this process. These skills and areas of knowledge are directly related to the issues before this Honourable Court.
16. Special Interlocutor Murray has direct knowledge of the consequences of the lack of records and documentation that has led to the search for unmarked graves and burials of Indigenous children across Canada as a result of the Indian Residential School system. This understanding supports her interest and belief that there are burials potentially located on the reconstruction site of the Royal Victoria Hospital and thus, her direct and substantial interest in the proceeding.
17. Regarding the investigation required to examine the sufficiency of the Plaintiffs' claims that there is a "high possibility" of the site at issue containing an unmarked burial site, Special Interlocutor Murray can offer her expertise and knowledge in determining this question. Special Interlocutor Murray oversaw the collection and interpretation of large quantities of documents that led to the discovery of unmarked burial sites while in her role at the TRC. Special Interlocutor Murray has extensive experience using the latest technology to discover burial sites, as recently as 2021-2022 in British Columbia and with Six Nations of the Grand River. Special Interlocutor Murray has engaged with communities, institutions, archaeological experts, and others involved in determining the location of unmarked burial grounds.

INADEQUATE DEFENCE OF PLAINTIFFS' INTERESTS

18. The Plaintiffs in this matter have not retained legal counsel, and there is no indication they intend to retain legal counsel for this matter. Special Interlocutor Murray's conservatorship would provide the Plaintiffs afflicted in this dispute much needed resources and assistance whether or not the Plaintiffs retain counsel. Special Interlocutor Murray can provide a broader perspective of the unmarked burial sites issue based on her extensive experience. This perspective, from both a legal and factual context, exceeds the capabilities of the Plaintiffs in contributing to the legal debate.
19. Special Interlocutor Murray shares in the Plaintiffs' interests for a full investigation regarding the presence of Indigenous remains on the disputed site. Special Interlocutor Murray submits that this Honourable Court will be in a better position to rule on the merits with the benefit of her submissions and contributions included in the evidentiary record. The interests of justice will be better served if the request to intervene is granted.

20. On June 6, 2022, Special Interlocutor Murray was appointed by Order-in-Council for the purpose of acting as a special advisor to the Minister of Justice, as described in the Order-In-Council attached as **Exhibit I-5**. Part of the Mandate is to “identify needed measures” and develop a new “legal framework” for the protection of unmarked graves and burial sites of Indigenous children. The Special Interlocutor’s Mandate is attached as **Exhibit I-6**. By intervening for conservatory purposes in the proceedings before this Honourable Court, Special Interlocutor Murray respectfully submits that she will be directly impacted by the conclusions made by the Court as it will affect the work required of her position.
21. Special Interlocutor Murray’s Mandate also states that she is to “facilitate listening and action by engaging in conversations” that include “provinces, territories, local communities, as well as other relevant institutions.” Special Interlocutor Murray proposes to intervene for conservatory purposes to provide her perspective and knowledge to this Honourable Court on a matter that will have a impact on both her role over the next two years and how potential burial sites of Indigenous children are dealt with going forward.
22. This Honourable Court is being called to make determinations which would affect the site identified as containing potential burials of Indigenous children. The Mandate of Special Interlocutor Murray clearly sets out the responsibility to assist in the identification of burial sites of Indigenous children, as well as the preservation and protection of these remains. The central issue to be determined by the Court is whether demolition and construction may continue at the site of the Royal Victoria Hospital. Should this occur before an adequate and complete search of the grounds for unmarked burials has occurred, it affects the work of Special Interlocutor Murray and triggers her interest in the proceedings before this Honourable Court.
23. As set out in the Mandate of Special Interlocutor Murray, part of her role is to “examine existing federal, provincial and territorial laws, regulations, tools, and practices that currently apply and have applied to protect unmarked graves and burial sites.” Special Interlocutor Murray therefore has a direct interest in the proceedings in order to be able to examine, analyze, and provide comment on the practices currently used when dealing with the potential burials of Indigenous children – in this case, in the City of Montreal.
24. Not only are the procedures and policies followed by the Defendants and this Honourable Court in reference to the potential burials of Indigenous children a concern which invokes the Mandate of Special Interlocutor Murray, but her work may also assist the Court in considering what procedures should be used going forward..
25. As part of its determinations, this Honourable Court must decide whether it is probable that the proposed site of redevelopment may contain the remains of Indigenous children. Special Interlocutor Murray respectfully supports all reasonable measures of inquiry to ensure there are not any remains on the site, and therefore address the legitimate and important concerns of the Plaintiffs.
26. The Exhibits attached to this application demonstrate Special Interlocutor Murray’s background, knowledge, and expertise as it relates to the identification and protection of unmarked graves and burial sites associated with Indian Residential Schools and other public institutions, and her responsibilities and rights that are affected by these proceedings.

27. Special Interlocutor Murray has retained legal counsel for this proceeding from Donald Worme and Julian N. Falconer, both of whom have retained special authorization from the Barreau du Québec to provide legal counsel in this matter, as confirmed in the authorizations issued by the Barreau du Québec attached hereto as **Exhibit I-7**.

28. As it is in the public interest and given the importance of the issues in dispute, Special Interlocutor Murray respectfully requests to be added as a third-party intervenor, authorized to intervene for conservatory purposes and:

- a. Make submissions at trial;
- b. Add to the record; and,
- c. Take any other steps as appropriate.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ALLOW the intervention of the Third-Party Intervenor for conservatory purposes according to the modalities foreseen in its declaration of intervention or according to the modalities of intervention that the court shall fix; or

ALLOW the intervention of the Third-Party Intervenor as a friend of the court, in the alternative.

THE WHOLE without legal costs.

TORONTO, August 31, 2022

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AFFIDAVIT OF KIMBERLY R. MURRAY, SPECIAL INTERLOCUTOR

1. I the undersigned, Kimberly R. Murray, domiciled and residing at the city of Toronto, province of Ontario, do solemnly affirm that:
 - a) I am proposing to intervene for conservatory purposes, as proposed in the Declaration of Voluntary Intervention;
 - b) All the facts set out therein are true; and
 - c) I respectfully submit that I have knowledge, experience and expertise related to the issues before this Honourable Court and that I have a direct interest therein.

Introduction

2. To assist this Honourable Court, I propose to provide background information on my professional history and qualifications.
3. I am a Mohawk and a member of Kahnésatake Mohawk Nation. I earned my law degree in 1993 and am presently completing a Master of Laws in Constitutional Law, both at Osgoode Hall Law School. In my legal practice over the past three decades, I have developed expertise in Indigenous legal principles and systems, Aboriginal law, and the challenges faced by Indigenous people and communities when they interact with the Canadian judicial system. Of particular relevance to this proceeding, I have developed significant expertise with respect to:
 - The circumstances leading to the deaths of children who were required to attend Indian Residential Schools;
 - Where the missing children's remains are likely to be located; and
 - Understanding the practical and legal considerations and frameworks in the context of searching, investigating, protecting, commemorating and, where desired, repatriating the missing children.
4. Early in my career, I worked from 1995 to 2010 as a staff lawyer and then Executive Director at Aboriginal Legal Services of Toronto. I then served in executive leadership roles with the Truth and Reconciliation Commission of Canada ("TRC"), the Indigenous Justice Division ("IJD") at Ontario's Ministry of the Attorney General ("MAG"), and as the Executive Lead of the Survivors' Secretariat at Six Nations of the Grand River. I am currently the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools ("Special Interlocutor") appointed by federal Order-in-Council.
5. In these roles, I have gained a unique perspective and experiences that can assist this Honourable Court in these proceedings. Further, this is a perspective that is currently not being provided to the Court. As part of my national mandate, I am required to review, analyze, and provide comment on the procedures being applied to the identification, protection, and in some cases repatriation of the remains of Indigenous children that

were taken to Indian Residential Schools. This means that my rights are directly engaged by the proceedings therein.

Role with the Truth and Reconciliation Commission

6. While at the TRC, I served as the Executive Director. In this role, I reported to the three (3) Commissioners and was responsible for overseeing the implementation of Schedule "N" of the Indian Residential School Settlement Agreement (the "Settlement Agreement"). This included overseeing the entirety of the document collection process related to unmarked burials and missing children who died while being forced to attend Indian Residential Schools. More than five (5) million documents were collected from both the federal government and various church/religious institutions that operated Indian Residential Schools. These documents detailed the experiences of First Nations, Inuit, and Métis children that were forced to attend these institutions across Canada, many of whom were taken and never returned home.
7. Part of my role as the Executive Director was ensuring that all the records received were properly tagged and categorized. I organized the review of the records by the appropriate individuals, and directed the academic research done by writers of the final reports. It is through this review and research that I oversaw the writing and editing of the TRC's Final Report which is split into six (6) volumes. Volume 4 specifically describes the missing children and unmarked burials, as well as the challenges faced in the collection of records and gaps in information. The Executive Summary of Volume 4 is attached to this affidavit as **Exhibit I-1**.
8. As Executive Director, I supervised the compilation of a master list of Indigenous children who had died during their mandatory attendance at Indian Residential Schools across the country. Many of the children whose deaths were recorded were taken from Indian Residential Schools to hospitals.
9. In addition to overseeing the work to identify the names of children that had died while being forced to attend Indian Residential Schools, I retained the services of an archaeologist to determine possible locations of unmarked burials based on various factors, including the history of the institutions, the grounds they were located on, the proximity of churches and cemeteries, and information from archival records and historical photographs.
10. Unfortunately, pursuant to the Settlement Agreement, it was only the federal government and certain religious entities that were required to provide records relating to Indian Residential Schools to the TRC. As a result, I witnessed a significant gap in the records provided to the TRC – a serious gap in information that strongly suggests there are unmarked burials across Canada that have yet to be confirmed. This gap has continued since the end of the TRC's mandate notwithstanding its Call to Actions that called on other institutions, including provincial governments, to search for records of deceased children. Not all of the federal government and church records were provided to the TRC, and many municipal/provincial organizations and other institutions that were involved in administering or overseeing Indian Residential Schools were not required to provide their documents. I provide these comments in order to contextualize the real possibility that the Royal Victoria Hospital may be one such site with unmarked burials.

11. As referenced in **Exhibit I-1**, the TRC found that “the tragedy of the loss of children was compounded by the fact that burial places were distant or even unknown,” and these sites are commonly “abandoned, disused, and vulnerable to accidental disturbance.” The report calls for “a national strategy for the documentation, maintenance, commemoration, and protection of residential school cemeteries,” and my appointment as Special Interlocutor is an initiative to address that.
12. As a result of my experience overseeing and coordinating the work related to Volume 4 of the TRC Report, I have first-hand knowledge of the steps required to identify unmarked burials and the possible identities of missing children. I also have a concrete understanding of the link between hospitals, universities, and Indian Residential Schools. Through the review of records collected by the TRC, I have knowledge that certain hospitals were utilized to send sick children from Indian Residential Schools to and, as a result, it is a reasonable possibility that the remains of children may be found on these sites.
13. Through my experience with the TRC, I not only navigated challenges relating to record collection and informational gaps, but I also liaised between First Nations, Inuit and Métis communities and public institutions. I worked to resolve a wide variety of challenges related to these gaps. As such, I learned where to look for relevant information relating to the location of unmarked burials and the identities of the missing children; how to analyze and draw inferences from the vast number of records received; and some of the best practices with respect to searching and investigating sites for unmarked burials.
14. My extensive experience at the TRC can save the parties significant time and resources in searching, collecting, and analyzing this information. I can also provide information relating to the importance of respecting Indigenous principles, laws, and cultural protocols so that the spirits of the children and their remains are treated with dignity and respect. The information that I am well-positioned to share will assist this Honourable Court in this hearing.

Indigenous Justice Division (“IJD”)

15. Following my work with the TRC, I was appointed by Ontario’s MAG to lead the implementation of the recommendations from the First Nation Representations on Ontario Juries Report authored by the Honourable Frank Iacobucci (“Iacobucci Report”). Attached to this my affidavit as **Exhibit I-2** is a copy of the recommendations from the Iacobucci Report. The creation of my position as the Assistant Deputy Attorney General at IJD was recommendation number five (5).
16. Part of the mission of the IJD was to support the reclamation of ‘Indigenous legal principles and systems and strengthen justice for Indigenous communities within Ontario’. Throughout my appointment, I helped to move this mandate forward by incorporating different methods to facilitate a higher level of participation by Indigenous people in the judicial system, including their involvement on juries.
17. The importance of an engagement process with First Nation, Inuit, and Métis communities cannot be overstated. For generations, the justice system has shut communities out of the process and made decisions concerning their affairs with woefully insufficient input and participation. In the case of potential unmarked burial

sites, engagement with Indigenous communities is required to carry out its fact-finding mission and appropriately consider the legal issues at hand.

18. At IJD, with the guidance of the IJD's Elders' Council, I built relationships with First Nation, Inuit, and Métis communities to address systemic barriers facing Indigenous people and communities in the Canadian legal system. The experience I have gained through these relationships and the work I did in that role to assist Indigenous communities in searching for and identifying the burials of missing children will assist this Honourable Court with a better understanding of the issues to be dealt with in these proceedings.
19. In addition to my professional role with MAG, I have developed relevant experience as an educator. I co-facilitated the Intensive Program in Indigenous Lands, Resources and Governments at Osgoode Hall Law School at York University for several years. This program focuses on revitalizing and assisting communities with exercising and applying Indigenous laws and systems. My involvement co-facilitating this program increased my knowledge and understanding of community-level concerns.
20. These collective experiences enable me to provide expertise and knowledge from a broader perspective, which is currently not being provided in these proceedings and would be useful to this Honourable Court in its determinations.

Unmarked Burials: Survivors' Secretariat (Mohawk Institute)

21. Following the May 2021 announcement by Tk'emlúps te Secwépemc First Nation that they had potentially identified over 200 unmarked burials of children at the former Kamloops Indian Residential School in British Columbia, I was approached by the elected Chief and Council of Six Nations of the Grand River ("Six Nations") to assist in coordinating the work to search for missing children and unmarked burials at the former Mohawk Institute Residential School ("Mohawk Institute").
22. The Mohawk Institute, located in Brantford, Ontario, operated for over 136 years and was the longest running Indian Residential School in Canada. During this time, countless Indigenous children from over 30 different communities were forced to attend the Mohawk Institute. There are over 600 acres of land to search at various sites associated with the Mohawk Institute, including the site of the old Lady Willingdon Hospital.
23. Through discussions with the leadership at Six Nations, and later with a group of Survivors, I was hired as the Executive Oversight Lead and assisted them in beginning the death investigation and search for unmarked burials, and to establish the Survivors' Secretariat.
24. During my work for the Survivors' Secretariat, I was guided directly by the Survivors of the Mohawk Institute. There are several components of the mandate of the Survivors' Secretariat, including the gathering of statements, research, and document collection, and monitoring the death investigations. As the Executive Oversight Lead, I was involved in all aspects of this work. Attached to this my affidavit as **Exhibit I-3** is the mandate of the Survivors' Secretariat.
25. In this role, I oversaw the search for missing children and unmarked burials. Using information and statements from Survivors, records provided to the TRC (and then

transferred to the National Centre for Truth and Reconciliation), and maps of the grounds relating to the Mohawk Institute, I worked collaboratively with Survivors and other community members to determine the best approach to searching the 600 acres where potential burials might be found. As such, I thoroughly researched and became familiar with the various techniques and technologies that can be used for these types of searches, including ground penetrating radar (“GPR”), light detection and ranging (“LiDAR”), cadaver dogs, and underwater side scan sonar.

26. GPR uses high frequency radio waves to document the distribution of features underground. LiDAR, on the other hand, uses laser light pulses to generate three-dimensional maps of the Earth’s surface. These three-dimensional maps can be used to look for subtle changes in the ground that indicate disturbances caused by humans—such as a burial. These forms of ground penetrating technology require training and specialized skills to analyse the data generated. Attached to this affidavit as **Exhibit I-4** is a copy of the blog post I co-authored entitled “How Technology is Helping Survivors Uncover the Truth”, dated March 25, 2022, describing the various technologies that are available to support searches and investigations for unmarked burials.
27. As noted, specialized skills are required to analyse the data generated from the various technologies that can be used to identify reflections or anomalies on or below the surface to identify potential burials. Many companies have GPR technology and have the experience in using the technology to locate utility lines, cables, and concrete. However, very few experts exist in Canada and around the world that have the experience and skill to identify burials. Through my work at the TRC, the Survivors’ Secretariat, and now as the Special Interlocutor, I have had the opportunity to meet and consult with many of these experts. The knowledge I gained from meeting these experts, and the resources I possess as a result, are key contributions that I can provide to this Honourable Court in making the determinations required in the present proceedings.
28. I further assisted the Survivors’ Secretariat by facilitating discussions with Six Nations Police, Brantford Police, and the Ontario Provincial Police to establish a police task force to investigate who died, how they died, and where they are buried. An Indigenous Human Rights Monitor and Indigenous Cultural Monitors were appointed to monitor the work of the police task force to ensure that Indigenous laws and protocols were respected. With the assistance of Survivors, I created the Terms of References for these Monitors.

Independent Special Interlocutor’s Mandate

29. On June 6, 2022, I was appointed by federal Order-in-Council as the Independent Special Interlocutor. I was tasked with producing an interim and final report with recommendations on a new federal legal framework to preserve and protect former Indian Residential Schools and other sites, and assist Indigenous communities in locating, identifying, investigating, protecting, preserving, commemorating, and, where desired, repatriating the remains of children buried in unmarked burials recovered at Indian Residential Schools or related institutions. Attached to this affidavit as **Exhibit I-5** is a copy of the Order-in-Council approving my appointment.
30. My Mandate states that, as part of my role as the Independent Special Interlocutor, I must work with First Nations, Inuit, and Métis communities to facilitate dialogue, engage

in discussion, and listen to the experiences of those trying to find and identify missing children. Attached to this affidavit as **Exhibit I-6** is a copy of my Mandate.

31. My Mandate requires me to evaluate and report on the strengths and weaknesses of the processes currently used to recover missing children and locate unmarked burials. Thus, my right and ability to intervene in these proceedings for conservatory purposes is set out as part of the obligations of my Mandate. I will be able to provide my nationwide perspective to assist this Honourable Court in its deliberations on the current processes that apply to the issues in these proceedings.
32. As is clear from my Mandate, I have a direct and substantial interest in the proceedings before this Honourable Court. The outcome of the proceedings will either result in the protection or destruction of potential burials of Indigenous children. As Special Interlocutor, I have been tasked with the significant responsibility of finding, identifying, and where possible returning Indigenous children to their rightful homes. As Special Interlocutor, I am also tasked with overseeing the respectful and culturally appropriate treatment of burial sites of children associated with residential schools. As such, the issues before this Honourable Court directly affect my ability to fulfil this responsibility.
33. It is crucial that these discussions are informed by Indigenous laws, customs, practices, and protocols, all of which I have developed an expertise in throughout my career. My understanding of Indigenous customs that I can impart to this Honourable Court can assist in facilitating the conversation between Indigenous organizations, communities, and all levels of government involved in these proceedings.
34. My contributions to these proceedings will be based on my experience and the responsibilities within my current Mandate. These contributions may include assistance with the collection and analysis of information, engaging in dialogue with First Nation, Inuit, and Métis communities, providing relevant information relating to the identification of burial sites based on my experience, and assisting on any other matters that arise before this Honourable Court.

Proposed Interest, Ramifications and Reconciliation

35. The issues that are before this Honourable Court have the potential to have widespread ramifications in respect of the processes for identifying, recovering, and protecting Indigenous child remains, not only in Québec but across the country. This is the first opportunity my office has had to participate in proceedings before a court since my Mandate began on June 13, 2022. This proceeding can set a precedent for future cases involving the national effort to locate, investigate, identify, and protect the missing children who were taken and never returned home from Indian Residential Schools.
36. My intervention will not create any undue delay or prejudice to the rights of other parties. I seek to intervene to provide necessary information and assistance to this Honourable Court on the determination of the issues in the present proceedings and to protect my rights therein. I intend to participate in the discussions/debate at trial, add to the record, and participate in any mediation/resolution discussions. The perspective which I seek to provide is unique, one which comes from my over 20 years of experience working with Survivors and Indigenous communities and considering the best approaches to the sacred work of locating unmarked burials and identifying the missing children buried on the sites of former Indian Residential Schools and related institutions.

37. In today's Canada, promises of doing more to advance the concept of Reconciliation with Indigenous peoples is no longer enough. Action is needed. It is crucial that governments, institutions, and the courts take concrete action to facilitate the meaningful, transparent investigations that Canada committed to when confirming my appointment. This Honourable Court can set an example that burial sites of Indigenous children should be treated with the utmost integrity and respect.

The Plaintiffs' Claim

38. As within the purview of my mandate, I have reviewed the court records and materials relevant to the claim by *Kahentinetha et al.* Based on this review and my analysis, I am concerned that there may indeed be unmarked burials at the site in dispute..

39. I note that I have arrived at this determination based on my experience as outlined above. Especially, my experience with the TRC and the Mohawk Institute Survivors' Secretariat, where I was involved in the efforts to recover unmarked burials and identify the missing Indigenous children who attended Indian Residential Schools. This experience has given me insight into indicators of potential burial sites.

40. The Royal Victoria Hospital was one of the few hospitals in Quebec approved to accept Indigenous children as patients. As alleged in the materials provided by the Plaintiffs, these Indigenous children were potentially victims of horrific psychiatric experimentation. As such, there is a reasonable possibility that there are unmarked burials of Indigenous children there and therefore the responsibilities within my mandate are invoked and will be affected.

41. In addition to my proposal to intervene for conservatory purposes as my rights in my role as Special Interlocutor will be directly affected, I believe that my contributions may also assist in finding practical solutions to the issues and be helpful to the Parties.

42. I have retained legal counsel from Donald Worme and Julian N. Falconer, both of whom have retained special authorization from the Barreau du Québec to provide legal counsel in this matter. The authorizations from the Barreau are attached hereto as **Exhibit I-7**.

Conclusion

43. Based on my prior experience and expertise gained from decades of work relating to the issues directly in dispute in this proceeding, I respectfully submit that I can assist this Honourable Court by providing information that will assist in determining the issues before it. Specifically, my knowledge and perspective will help this Honourable Court to better understand the history of the sites in question, how those sites relate to Indian Residential Schools, and the Plaintiffs' claim to ownership. By providing this information, I will be fulfilling the responsibilities set out in my mandate which demonstrate the interest I have in these proceedings.

44. If leave is granted, I commit to adhering to any deadlines and terms as established by this Honourable Court. My intervention will not cause any undue delay or prejudice to the parties.

45. I make this affidavit in support of my proposed intervention in these proceedings and for no other or improper purpose.

AND I HAVE SIGNED:



Kimberly R. Murray
Independent Special Interlocutor

SOLEMNLY AFFIRMED BEFORE ME
at Toronto this 31st day of August, 2022



Commissioner of Oaths
for the Province of Ontario
Mitchell Goldenberg
LSO #85215T

**SUPERIOR COURT
DISTRICT OF MONTREAL**

KAHENTINETHA, et al

Plaintiffs

vs.

**SOCIÉTÉ QUÉBÉCOISE DES
INFRASTRUCTURES, et al**

Defendants

and

**OFFICE OF THE SPECIAL
INTERLOCUTOR**

Third-Party Intervenor

- **DECLARATION OF VOLUNTARY
INTERVENTION FOR CONSERVATORY
PURPOSES**
 - **AFFIDAVIT**
-

Original

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