

CANADA

SUPERIOR COURT

(Civil Division)

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PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

No.: 500-17-120468-221

KAHENTINETHA

KARENNATHA

KARAKWINE

KWETIIO

OTSITSATAKEN

KARONHIATE

Plaintiffs

v.

SOCIÉTÉ QUÉBÉCOISE DES  
INFRASTRUCTURES

ROYAL VICTORIA HOSPITAL

MCGILL UNIVERSITY HEALTH CENTRE

MCGILL UNIVERSITY

VILLE DE MONTRÉAL

ATTORNEY GENERAL OF CANADA

and

ATTORNEY GENERAL OF QUEBEC

Defendants

INDEPENDENT SPECIAL  
INTERLOCUTOR FOR MISSING  
CHILDREN AND UNMARKED GRAVES  
AND BURIAL SITES ASSOCIATED WITH  
INDIAN RESIDENTIAL SCHOOLS

Intervenor

## AFFIDAVIT OF KWETIIO IN SUPPORT OF THE PLAINTIFF'S APPLICATION FOR A DECLARATORY RELIEF AND TO OBTAIN A SAFEGUARD ORDER

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I, the undersigned, Kwetio, residing at PO Box 991, J0L 1B0, Kahnawake, Quebec, solemnly affirm the following:

### Introduction

1. I am a plaintiff in this application for a declaratory relief and to obtain a safeguard order in Quebec Superior Court on April 6th, 2023, case no. 500-17-120468-221.
2. I have been nurtured in the Kaianere'kó:wa (Great Peace) from the beginning of my life. As Kahnistensera (Mohawk mothers), we are directed by the inner core of our knowledge system and traditions of the Kanien'kehá:ka culture. According to our ancestral constitution, the Kaianerehkowa, the Kahnistensera are the progenitors of the soil, whose duty is to protect our territory and the children of past, present and future generations.
3. Following the injunction of October 27<sup>th</sup> 2022, the co-Plaintiffs and I worked with the Defendants to reach an agreement on an archaeological plan. On April 20th, 2023, the Quebec Superior Court homologated a Settlement Agreement signed by all parties, following several months of negotiations and a series of Judicial Settlement Conferences (**Exhibit MM-3**). We were satisfied that the Settlement Agreement would allow the investigation to follow the recommendations of a jointly-selected panel of independent expert archaeologists
4. As Kahnistensera our objective from the start has been to engage in good faith discussions with the other parties, and rely on qualified experts to determine the best approach to be followed on the ground.
5. However, in the months that followed the homologation of the Settlement Agreement, it is my understanding that the Defendants have demonstrated their foremost priority was to rush through the process we agreed upon, pick and choose which terms to honor properly and which to exploit, and minimize collaboration wherever possible.

6. There have been issues, such as site security and proper treatment of archaeological artifacts, that we have repeatedly tried to raise with McGill and SQI because they are urgent issues. However, we have been facing resistance for months with no solutions reached.
7. It is my understanding that the following issues threaten the integrity of the investigation:
  - i. Disbanding of the panel
  - ii. Breaches to the terms of the Settlement Agreement
  - iii. Disrespecting the spirit of the Settlement Agreement
  - iv. Security of the site and Cultural Monitors
  - v. Developments not covered in the Settlement Agreement

### **Defendants' Failure to Negotiate Solutions Out of Court**

8. In the months that followed the homologation of the Settlement Agreement, it is my understanding that the Defendants have exploited all its loopholes and gray zones to their sole advantage in order to control the entire process of the investigation and cut us off.
9. In a Case Management Conference held June 29th, 2023, we shared cultural, technical, and safety concerns, including the information not being shared by the Defendants, the neglect of our role in the investigation, security issues on the site, the scope of the panel's mandate, and the need to protect the chain of custody of evidence resulting from the investigation. Justice Moore provided three options: 1) Extending the mandate of the panel that was set up pursuant to Rectified Settlement Agreement; 2) Convening a further judicial settlement conference; and 3) Litigation (**Exhibit MM-4**).
10. On June 29th, 2023, we signaled via email to all parties our decision to negotiate an extension of the mandate of the panel instead of using court resources for a judicial settlement conference or litigation (**Exhibit MM-5**).
11. On July 7th, 2023, we sent an email to all parties (**Exhibit MM-27**) announcing that we would follow the recommendation made by Justice Moore during the Case Management Conference (hereafter, "**CMC**") on June 29th, 2023, to try to negotiate a solution to outstanding hurdles with the Defendants before using mediation or litigation. We proposed to negotiate:

12.
  - a. The expansion of the panel's composition to include a security expert who could address numerous security deficiencies which the Plaintiffs had notified the Defendants about since May 2023. This included notifying the SQI and McGill about the looting of archaeological artifacts, cinema trailers being parked next to the pool area, and a "ghostbuster" video being filmed inside the pool, whose fence was broken; and
  - b. A 3-month extension of the panel's employment contracts with the SQI to allow it to complete its mandate, and continue offering recommendations to ensure the integrity and professionalism of the investigation. This last proposal would also allow to provide the panel with information from archival research and survivor statements, undertaken under section 5 of the Settlement Agreement.
13. The Defendants waited one month, on July 28th, 2023, to formulate a negative response to our proposal to extend and expand the panel's mandate (**Exhibit MM-6**).
14. In the meantime, these problems worsened to the point of compromising the integrity of the investigation. Security issues boiled over to a shocking, racially-charged confrontation and verbal assault by the SQI's hired security guards to Kahnistensera Elders and Cultural Monitors (**Exhibit MM-10**). The failure to collaborate on the panel's contracts led to a sudden resignation of a panelist, and the ensuing unilateral disbanding of the panel by the SQI on August 3rd, 2023, in an attempt to control the investigation (**Exhibit MM-7**).
15. On August 10th, 2023, Me. Julian Falconer, counsel for the Office of the Special Interlocutor, sent a letter to counsel for all parties providing details on several breaches of the Homologated Settlement Agreement stemming from the Defendants' refusal to negotiate solutions out-of-court (**Exhibit MM-73**). On August 23rd, 2023, Me. Doug Mitchell, counsel for McGill University, squarely dismissed the numerous concerns raised by the Special Interlocutor, deeming it "counter-productive" to even provide a response, citing developments in negotiations between the parties (**Exhibit MM-74**). The SQI also failed to respond to these concerns except for a blanket denial (**Exhibit MM-76**).

16. While it is true that we are continuing to attempt to find solutions with the SQI and McGill, there has been no progress whatsoever on the overwhelming majority of the points raised by counsel for the Special Interlocutor.

### **Disbanding of the panel**

17. It was our understanding when signing the Agreement that the independent, expert panel would be kept in place until the investigation was complete. This is an essential term for us, so that the panel can preside over any gray areas, offer recommendations, and ensure all sides are respecting the process.
18. However, it was clear from the employment contracts of Justine Bourignon-Tétreault (**Exhibit MM-25**, dated April 15, 2023), Lisa Hodgetts (**Exhibit MM-35**, dated April 15, 2023) and Adrian Burke (**Exhibit MM-34**, dated April 27, 2023), that the Defendants position was that the panel's role was solely for the mapping report, with no oversight over any other aspect of the investigation, no time allotted to oversee their recommendations being implemented, or to review the results from their archival search. We sought to raise this discrepancy directly with McGill and SQI.
19. We also raised this concern in a letter addressed to Justice Moore on June 30th, 2023 (**Exhibit MM-22**). The Defendants did not disclose contracts signed with the panel, or any and other service providers, without the Plaintiffs being able to review. Contradictorily, the panel was under the assumption that the Plaintiffs had approved their contracts given that they were parties to the Settlement Agreement (see email by Lisa Hodgetts on April 26th, 2023, **Exhibit MM-23**). While the contract with the panel was shared with the Plaintiffs on April 27th, 2023, McGill closed the door to any possible modifications, notably regarding a non-disclosure clause included in the contract and an end date which the Kahnistensera Plaintiffs did not endorse (**Exhibits MM-24, MM-25 and MM-26**).
20. On July 7th, 2023, we sent an email to all parties (**Exhibit MM-27**) announcing that we would follow the recommendation made by Justice Moore during the CMC on June 29th, 2023, to try to negotiate a solution to outstanding hurdles with the Defendants before using mediation or litigation. We proposed a 3-month extension of the panel's contracts to allow them to oversee the implementation of their recommendations, provide additional recommendations if necessary, and take into account the results of archival research and survivor testimonies, pursuant to section 5 of the Settlement Agreement.

21. It is also the understanding of the panel members Adrian Burke and Lisa Hodgetts that the Settlement Agreement did not provide an expiration date for the panel's mandate, whose impartial expertise would obviously be required until the end of the investigation.
22. The Defendants' behavior later made it obvious that their intention was to terminate the jointly-selected panel completely after 3 months, and control the entire process afterwards. This is a breach of the spirit of the agreement, which included establishing an independent and impartial panel working jointly for the Defendants and the Plaintiffs. This breach of trust caused great stress to the Kahnistensera and myself, because we never would have signed the Settlement Agreement if the independent panel was going to be terminated at the soonest opportunity.
23. On July 4th, 2023, Dr. Lisa Hodgetts from the panel wrote: "It's almost 4 weeks since the panel has received an update on the implementation of our recommendations. We would like to know whether any Ground Penetrating Radar (hereafter, "**GPR**") survey has taken place and/or any further investigation of the locale where the HHRDD dogs alerted. We would appreciate copies of the reports from any such work so that we can ensure that our recommendations are being fulfilled appropriately" (**Exhibit MM-37**). It is my understanding that the SQI and McGill did not wish to inform the panel which would allow them to make recommendations on the ongoing implementation of the Techniques.
24. The Defendants failed to follow up on our offer to negotiate a solution to the expansion of the panel raised during the CMC on June 29th, 2023. McGill's lawyers stated in an email dated July 7th, 2023, that their instructing counsel was on vacation for at least one week. The SQI's counsel stated in an email sent on July 10th, 2023, that they would wait for McGill to formulate a response before making their own (see correspondence in **Exhibit MM-27**).
25. On July 17th, 2023, we followed up on our request for a response to our proposal, asking "for both the panel and the Kahnistensera to be provided with all documents and information concerning archaeological work on the site and McGill campus, including contracts and permit applications, before they are sent away. The documents must be reviewed and approved by the Kahnistensera to make sure they respect Indigenous protocol, and by the panel to make sure they respect archaeological best practices" (**Exhibit MM-27**). On July 21st, 2023, the SQI's counsel simply responded that the request had been submitted to their clients and

that “they will get back to you directly if there is anything that they can help you with” (**Exhibit MM-27**).

26. On July 26th, counsel for the Special Interlocutor sent a letter to all parties asking once again for a response to the Plaintiff’s request, made close to one month earlier, on June 29<sup>th</sup>, 2023, to expand the panel and extend its contract (**Exhibit MM-30**). On July 28th, 2023, Me Coulombe, counsel for the SQI finally responded in a letter to all parties, but failed to offer solutions to the issues raised by the Kahnistensera (**Exhibit MM-31**).
  
27. On behalf of McGill University, Angela Campbell, Associate Provost (Equity and Academic Policies), responded on July 28th, 2023, that McGill University would “gladly look at” extending the contract of the panel “with a view to ensuring that the panel can carry out effectively its established mandate”, but refused additions to the panel composition to address ongoing security issues (**Exhibit MM-32**). This refusal to negotiate a solution out-of-court was confirmed by McGill’s counsel’s letter on the same day (**Exhibit MM-33**). No follow up or concrete proposal to extend the contracts was made by the Defendants.
  
28. On July 26th, 2023, the panel shared updated recommendations regarding urgent issues raised by the ongoing searches. The panel’s message stated that “the archaeologists on site need clearer direction and guidelines that are coming from a single source, which should be agreed upon by all the parties (**Exhibit MM-9**). On August 1st, 2023, the SQI rejected every new recommendation from the panel recommendations, indicating that the “single source”, albeit not agreed by all the parties, would be SQI and McGill – in a clear attempt to take complete control of the entire investigation (**Exhibit MM-8**).
  
29. In the wake of the Defendants’ refusal to implement the panel’s recommendations, panel member Justine Bourguignon-Tétrault tendered her resignation on August 3rd, 2023 (**Exhibit MM-12**).
  
30. On August 2<sup>nd</sup>, 2023, a GPR survey was submitted by GeoScan in the “Priority Zone”. The GPR survey made significant findings, with nine (9) potential burials in the small zone which the Defendants considered to be a priority area for starting the New Vic project, in addition to numerous “unknown” anomalies which the report deemed to possibly be smaller graves or graves without coffins (**Exhibit MM-13**, p.8).

31. On the same day, panel member Adrian Burke wrote a message stating: “I assume that the panel will now have some time to look at the results and make recommendations” (**Exhibit MM-7**). The next day, on August 3<sup>rd</sup>, 2023, Sophie Mayes wrote back, stating that “we consider that the panel has fulfilled its mandate described in section 11 of the Settlement Agreement and that such mandate has ended when producing the final report on the recommendations of the Techniques” (**Exhibit MM-7**), unilaterally terminating the panel’s mandate by refusing to extend its contract.
32. In the same message, Mrs. Mayes indicated that “Should the advice of the panel be required in accordance with section 17 of the Settlement Agreement, we will inform you without delay and will provide a new letter of mandate and service contract” (**Exhibit MM-7**), presenting section 17 as an hypothetical eventuality that did not align with the current findings: “Should the advice of the panel be required in accordance with section 17 of the Settlement Agreement, we will inform you without delay and will provide a new letter of mandate and service contract.” This reflected a sharp dealing in interpreting the words of section 17 as pertaining only to the case where “some unexpected discovery” would be made during the monitoring of non-archaeological excavation work.
33. However, in an email sent on August 1st, 2023 (**Exhibit MM-8**), Sophie Mayes had already explicitly rejected the possibility of seeking the advice of the panel in such a context of an “unexpected discovery” of human remains: “If Ethnoscop’s professionals identify human bones on site, the latter (and/or any person who is aware of this discovery) will be legally obligated to immediately inform the Ministère de la Culture et des Communications (the ‘MCC’) and the Montreal Police Department (‘SPVM’) (including the Coroner). Consequently, in the event of such discovery, neither Ethnoscop, the SQI, the panel, McGill nor the Kahnistensera will have control over the following steps.” Therefore, the SQI sought to annul any possibility of seeking the advice of the panel in the future, thus breaching section 17 of the Settlement Agreement.
34. This is beyond a provocation from the perspective of the Kahnistensera. We raised our concerns about how we mistrust the legal frameworks and institutions that govern these processes. We need to be involved and informed at every stage and for the process to be transparent and credible. Eliminating the panel and telling us to trust the laws in place is a significant step backwards. This is the reason why we sought the injunction in the first place.
35. It is my understanding that a large number of unexpected discoveries were made from the Human Remains Detection Dogs (hereafter, “**HHRDD**”) and GPR reports



concerning the “Priority Zone” (**Exhibits MM-13 and MM-49**), as well as findings of potentially forensic artifacts during ground excavations on the site. This is a crucial point in the investigation, and currently, the Defendants have dismissed our security concerns, dismissed our chain of custody concerns, and disbanded the independent panel we trusted to provide oversight.

36. It is my understanding and that of the Kahnistensera that the panel was jointly selected by all parties to guide them in implementing a proper archaeological plan. Limiting the panel’s mandate to three (3) months as unilaterally determined by the Defendants causes a grave prejudice to the investigation and to searches for unmarked burials of Indigenous children throughout Canada by cutting off the necessity of relying on qualified professionals to determine the protocols to follow. It is my understanding, and that of the Kahnistensera, that several “unexpected discoveries” have occurred that require involving the panel as provided by section 17 of the Settlement Agreement.

37. In addition, it is my understanding that terminating the panel’s mandate also results in breaching section 13 of the Settlement Agreement, which provides that SQI, McGill and the Kanien’keha:ka Kahnistensera agree to be bound by the recommendations of the panel as to the Techniques and agree to be guided by the recommendations of the panel as to the specialists to carry out the techniques and analyze the relevant data, but McGill and SQI retain discretion to retain other providers with the appropriate qualifications and expertise if the circumstances warrant.” I understand that it is impossible to implement the following recommendations from the panel’s final report if it is disbanded:

- A. The panel recommended that “At least one member of the panel has to be present when investigation work is taking place – at least on first day – to ensure recommendations are clearly understood by all the involved parties and ensure consultants have all the necessary information. The panel representative will also be able to provide support and additional information if needed” (**Exhibit MM-15**, p.13). This will no longer be possible if the panel’s contract is terminated.
- B. The panel recommended an “ongoing review of recommendations”, providing that “the recommendations formulated in this final report are based on current knowledge (July 17th, 2023) and as such must be reassessed if and when new information and/or data becomes available through other research endeavors relating to the RVH site (e.g. archival research) and/or through the implementation of the

recommended techniques” (**Exhibit MM-15**, p.13). This will not be possible if its mandate is terminated.

- C. The panel’s recommended that “the panel needs to be informed of the outcome of any related work – Archival research, HHRDD investigations, GPR survey, S4 probe and monitoring. The panel will review these reports and provide updated recommendations (if warranted) within 1 month of receipt of each report. This will be done through short complementary reports from the panel sent to all the parties” (**Exhibit MM-15**, p.13). This recommendation cannot be implemented if the panel’s mandate is finished.
- D. The panel suggested that, “Because it is impossible to anticipate all possible outcomes of the HHRDD, GPR and S4 Probe surveys and make recommendations for appropriately ground-truthing and investigating the results through invasive techniques like manual excavation, the panel must be provided with copies of the reports from the implementation of the survey techniques. The panel will review the reports and provide recommendations for next steps within 1 month of receipt of the S4 Probe report. The panel will provide these recommendations through a short report provided to all the parties” (**Exhibit MM-15**, p.13). This will not be possible if the panel’s mandate is terminated.
- E. The panel suggested on July 25, 2023 that a new member be added to oversee chain-of-custody concerns and ensure the forensic investigation follows best practices.

38. To summarize, the unilateral termination of the panel’s mandate is not just bad faith and a breach of trust from the perspective of the Kahnistensera, it is a breach of the terms of the Settlement Agreement that impedes their ability to perform their mandate outlined in sections 11, 13 and 17 . The panel have been denied the right to follow-up on the implementation of their recommendations and work done on-site. The panel has made repeated requests to be present during the execution of the Techniques to make further recommendations regarding best practices, notably in the panel’s Final Report (**Exhibit MM-15**, p.13).

39. The Defendants have explicitly refused to be guided by the recommendations of the panel as to specialists to analyze the relevant data. On August 2<sup>nd</sup>, 2023, panel member Adrian Burke asked to review GeoScan’s report and the discovery of

numerous grave-like anomalies following a GPR survey conducted in the “Priority Zone” (**Exhibit MM-13**) in order for the panel to make recommendations (**Exhibit MM-7**).

40. The Defendants also explicitly refused to be guided by panel’s recommendation, in section 5.2.B of the Final Report (**Exhibit MM-15**), to ask the Canadian Archaeological Association Working Group on Unmarked Graves (hereafter, “CAAWGUG”) to analyze and provide a peer review of the GPR data in GeoScan’s report, deeming it “not advisable” (**Exhibit MM-14**). In effect, the GPR report was interpreted by SQI managers without any involvement from any professional archaeologist, breaching section 13 of the Settlement Agreement.
41. Disregarding the panel’s suggestions of specialists to analyze GeoScan’s data, the SQI proceeded to file an application (**Exhibit MM-19**) with the MCC for an archaeological permit to excavate only nine (9) “potential” graves detected by the GPR, outright silencing the far more numerous “unknown” anomalies found in the Priority Zone, regardless of the fact that GeoScan’s report stated that “It is possible that some of the unknown features may be unmarked graves, particularly in the case of older burials without coffins and also possibly child-size graves” (**Exhibit MM-13**). This permit was shared with the Plaintiffs on August 4th, 2023, two days after GeoScan produced its report (**Exhibit MM-17**). The Plaintiffs immediately asked the Defendants to rescind the application, but it had already been sent to the MCC (**Exhibits MM-20** and **MM-21**).
42. On August 6th, 2023, panel member Dr. Adrian Burke renewed his request to review the GPR data, insisting in an email that “The panel needs time to read the GPR report and to evaluate it” (**Exhibit MM-66**). Dr. Burke explained that the interpretation of GPR data must be done by professional archaeologists with relevant expertise and experience in reading GPR data, but that the technicians from GeoScan are not trained to identify anomalies as they are not archaeologists, “either in theory or in practice.”
43. Dr. Burke stated that he had spoken with GeoScan technicians on the site, and they had told him that they would not be making interpretations in their report, but would simply identify anomalies, which would then be interpreted by “archaeologists with experience in both GPR and identifying burials”. Dr. Burke also stated that neither the SQI, nor McGill, Ethnoscop inc. or Pomerleau (hired as engineers on the site) have any expertise to interpret the GPR data, suggesting that “it seems obvious to me that at this moment any interpretations of the GPR data and any decisions on how to go forward on the ground in terms of

archaeological excavations are not being based on the advice of people with the necessary background and training. This is very troubling.”

44. Finally, Dr. Burke wrote “It is imperative that the panel have a chance to look at the report and make its own informed interpretations. It is my understanding that one of the reasons that the Parties chose Dr. Hodgetts and myself for this panel was because of our past experience using GPR in this kind of context. By this I mean being trained in GPR, having experience in the field applied to archaeology, and having the theoretical background to interpret the GPR results.” Adrian Burke shared his outrage that his professional ethics are violated by the SQI’s uninformed decisions, stating that “it seems obvious to me that at this moment any interpretations of the GPR data and any decisions on how to go forward on the ground in terms of archaeological excavations are not being based on the advice of people with the necessary background and training. This is very troubling. To be clear, this is contrary to what the panel recommended.”
45. On August 16th, 2023, Sophie Mayes responded to Adrian Burke on behalf of the SQI, dismissing his comments by stating that they “do not share the view that the panel's mandate extends to reviewing the work that GeoScan – one of the panel's own recommended experts – has carried out, we invite you to contact the professionals of GeoScan directly if you wish to discuss the points you have raised below and alleviate concerns that you might have” (**Exhibit MM-66**).
46. This answer is unacceptable to us. When the panel raises concerns, makes recommendations, and explains that GeoScan cannot provide the required expertise to answer our concerns, referring us to consult GeoScan on our own is not a serious solution.
47. On August 17th, 2023, panel member Dr. Lisa Hodgetts reacted to Sophie Mayes’ email the previous day to offer clarifications about the panel’s recommendation to have the CAAWGUG peer review GeoScan’s data. Dr. Hodgetts first explained that “The panel's mandate was to recommend appropriate archaeological techniques for searching for unmarked graves. Any such recommendations must by necessity also include recommendations regarding best practices for deploying the techniques, since the same technique can be deployed in different ways with very different results” (**Exhibit MM-67**). Dr. Hodgetts indicated that standard archaeological approaches are insufficient in unmarked graves investigations, and that the body with the most experienced in such contexts, the CAAWGUG (Canadian Archaeological Association Working Group on Unmarked Graves), “stresses the importance of having all GPR data produced in unmarked graves investigation reviewed by other experts.” Dr. Hodgetts insisted that she “stand by

our recommendation that the GPR results should be independently reviewed by the experts from the CAA Working Group on Unmarked Graves.” Finally, Dr. Hodgetts flagged deficiencies in GeoScan’s report, notably regarding the absence of a detailed methodology explaining how the data was collected, processed and interpreted, the absence of “confidence’ terms used in the report”, and the lack of raw, processed and interpreted data allowing to assess the method used.

48. On August 21st, 2023, the Kahnistensera repeated Dr. Hodgett’s request to access the data from GeoScan’s survey. McGill’s response on August 22nd, 2023, avoided addressing this request. We asked again for the GPR data to be shared on August 22<sup>nd</sup>, 2023. Pierre Major from McGill University deferred to the SQI on this question, while Sophie Mayes’ response on behalf of the SQI failed to address the request, from our part and from the part of the panel, to access the data from GeoScan’s survey in the “Priority Zone”. back to the Defendants, stating: “We take note that you do not mention whether you agree to share the data from the GPR conducted in front of the Allan Memorial Institute, in addition to the lack of data within GeoScan’s report, flagged by panel member Lisa Hodgetts. We ask you again to share this data with the panel and us in a timely manner” (**Exhibit MM-63**).

49. Finally, it is my understanding that the Defendants McGill University, the Attorney General of Canada and the McGill University Health Center breached sections 1, 2 and 3 of the Settlement Agreement, where they committed expedited access to their archives, including restricted records. As detailed in the document access reports by *Know History* (**Exhibits MM-43, MM-44 and MM-45**) , the Defendants have failed to provide access to restricted records as provided in the Settlement Agreement. As a result, *Know History’s* interim report states that “in the abbreviated timeline permitted for this research, Know History was only able to address the first three of the seven research questions set out in the research plan. As a result, our findings related to the research questions raised by the archaeology panel are inconclusive” (**Exhibit MM-46**, p.40).

### **Disrespecting the spirit of the Settlement Agreement**

50. I am aware that the Settlement Agreement sets out the task of an archaeological investigation to be undertaken “in a spirit of reconciliation” Furthermore, the words of Justice Moore in the Court Order pronounced on October 27th, 2022, outlined this as an “Indigenous-led” plan using “archaeological best practices” in an “amicable” spirit of reconciliation, recognizing the standing of the Kahnistensera as

proper to protect the public interest and expectation that public and para-public institutions such as SQI and McGill will heed concerns about protecting unmarked burials before excavating them for development purposes.

51. It is my understanding that following the admission of genocide by Canada and the Calls for Action of the Truth and Reconciliation Commission, reconciliation includes that Canadian institutions repair the legacy of violent acts of genocide, dispossession, and intergenerational trauma it subjugated Indigenous peoples to in order to establish new and better relationships, and a new legal framework to make these relationships possible.
52. It is my understanding that SQI and McGill University have consistently breached the spirit of reconciliation on which the Settlement Agreement was based.
53. For example, the panel's recommendations (**Exhibit MM-15**, p.9) to follow proper Indigenous protocols "concerning ceremonies and behaviours when working with ancestors" did not translate into any action whatsoever from the part of the Defendants, except allowing ceremonies to take place.
54. A first occasion when the spirit of the Settlement Agreement was manifestly breached was when panel member Dr. Adrian Burke requested one extra week to submit the panel's mapping of the "Priority Zone", given professional obligations that most panel members had before becoming involved, in an email sent on May 1st, 2023. The next day, Pierre Major responded that McGill University was "unable" to agree to the panel's request, alleging that the May 8, 2023 deadline for the preliminary mapping was an "essential component of the agreement from the University's perspective" (see correspondence in **Exhibit MM-42**).
55. The SQI also failed to heed commonsense recommendations from the panel and Cultural Monitors regarding unsuitable weather conditions for conducting GPR searches. On July 9th, 2023, Cultural Monitor Karonhianoron wrote an email regarding the GPR survey planned for the next days, noting that the weather forecast indicated rain. Karonhianoron, a Kanien'keha:ka archaeologist who studies at McGill University, indicated that while "I am not a member of the panel but in speaking my opinion as an archaeologist, as well as within my duty as a cultural monitor to ensure that best practices are being upheld, I would highly recommend postponing the GPR scan if it does indeed seem certain that it's going to rain", because "Wet earth makes unideal conditions for the ground penetrating radar to work properly. I'm sure all of the parties involved would prefer only the

best data to be gathered given the importance of the work in the Priority Zone and the recent findings of the HHRDD” (**Exhibit MM-68**).

56. The same day, panel member Dr. Adrian Burke wrote that he agreed with Karonhianoron that a heavy 20mm rain forecast meant that the ground would be saturated with water, which causes potential challenges for GPR. The same evening, Lior Ancelevicz from the SQI wrote that the Cultural Monitors should “assume that the operations will take place as planned” (**Exhibit MM-68**). As a result of the GPR survey being conducted in inappropriate weather conditions, GeoScan’s report indicates that although survey coverage was not seriously hampered, there were some areas where “soil saturation was notably increased, which causes some interference in GPR signal, such as horizontal banding in profile view. Soil conditions did allow for interpretation to proceed but data clarity was not as good as we have seen elsewhere.” The report also indicated that “significant portions” of zone 1 “displayed widespread high amplitude signal responses likely due to increased water saturation of the shallow geology” (**Exhibit MM-13**, p.9-10).
57. The Defendants also failed to respond to the panel’s request to share information to allow them to make recommendations and follow their professional obligations. On June 5<sup>th</sup>, 2023, the panel asked for “clarification from the parties on the mechanisms in place to ensure that our recommendations are implemented correctly. If appropriate plans for oversight are not already in place, we recommend that at least one member of the panel be present on site at the start of any and all HHRDD and GPR work to ensure that our recommendations are fulfilled. Such work should be scheduled so that at least one of us is available for consultation if needed throughout the work. We ask that we be promptly informed of all steps taken to implement our recommendations” (**Exhibit MM-71**). It is my understanding that the latter recommendations were not followed by the Defendants.
58. Following the detection of the scent of human remains by HHRDD on June 10<sup>th</sup>, 2023 (**Exhibit MM-49**), we expected consultation from the Defendants about the next steps of the process and for potential adjustments to the plan. Instead, their actions have demonstrated their commitment to rush through excavation permits without our input, choose the company to conduct the excavation, neglect to establish proper protocol for discoveries that impact the integrity of an investigation, and overall, insist they are respecting reconciliation.

- A. On July 12th, 2023, we attempted to make submissions to the MCC regarding an intervention concerning the SQI's application for excavating the zone where the HHRDD detected evidence of human remains. We argued that the application did not include or mention Indigenous protocols, despite the respect of such protocols being recommended by the panel. Additionally, the Defendants had contracted Ethnoscop to complete this work without consulting us.
- B. As Plaintiffs we were not informed of the qualifications and identity of the archaeologists who would be carrying out the ground searches and could therefore not assess whether they were qualified experts that could be trusted. On July 14th, the MCC, represented in this Honorable Court's proceedings by the Defendant Attorney General of Quebec, rejected our request and offered no alternative to address our concerns (as seen in full in **Exhibit MM-41**).

59. On July 17th, 2023, we officially asked the Defendants to provide all contracts and permit applications regarding the archaeological work on the site before they are sent away (**Exhibit MM-27**). The SQI's response sent on July 21st, 2023 failed to address this request (**Exhibit MM-27**). However, Sophie Mayes wrote on July 28th, 2023, that "Where a contract has been signed by SQI and professionals hired for the execution of the Techniques, we agree to provide you with copies of said contract". Yet, the SQI did not agree that the Plaintiffs or the panel could review and approve such contracts (**Exhibit MM-36**). Despite Mrs. Mayes' promise, contracts with GeoScan and Ethnoscop were only shared with the Kahnistensera later on, after they had been signed, without the opportunity for any input.

60. These actions by the Defendants are adding up. When you combine the fact that they signed the panel's contracts without us, remove us from the process of vetting contractors, rush through permit applications, dismiss our concerns regarding security and the chain of custody, and then disband the panel suddenly and prematurely, this is certainly not a collaborative, Indigenous-led process operating in the spirit of reconciliation.

### **Concerns about irreparable harm to the investigation**



61. I have witnessed that renovation and/or demolition work is currently being done inside several buildings throughout the site of the Royal Victoria Hospital, including in the nurse's residence building directly in front of which HHRDD have detected human remains, inside the 10-meter radius surrounding the target identified by three HHRDD, currently excavated to find the burial (**Exhibit MM-49**). It is my understanding that despite numerous requests made in person on the site, the Defendants denied access inside the building for the purposes of the investigation. Yet Defendants' staff and subcontractors are active inside and outside the building for purposes unrelated to the investigation, including roof repair work on the east facade of the Hersey Pavilion expected to end at the end of August (**Exhibit MM-70**). On August 18th, 2023, the Kahnistensera asked the Defendants to "stop any and all renovation work in buildings that are in the 10-meter radius around the target identified by Kim Cooper's HHRDD team." The Defendants failed to respond to this request (**Exhibit MM-63**).
62. On August 15th, 2023, the SQI informed us that they had sent a request to the MCC to modify an archaeological permit to include new areas as a "Priority Zones" for infrastructural work (**Exhibit MM-38** and **MM-39**). The SQI did not notify the panel of this modification, which affects the recommendations they had done. This modification may be related to GPR work conducted by the SQI in front of the Allan Memorial Institute on July 28th, 2023, without informing the Plaintiffs and conducted in the absence of Cultural Monitors. We discovered this GPR work being done without our knowledge by coincidence on the site (see video, **Exhibit MM-53**), and asked for explanations to the Defendants in an email sent on July 31st, 2023 (**Exhibit MM-40**).
63. Finally, we learned that GeoScan had not been informed by the Defendants, who monopolized contacts with service provider, of the presence of Cultural Monitors on the site, resulting in unnecessary frictions on the site. On behalf of McGill University, Pierre Major sent us a message on August 22<sup>nd</sup>, 2023, where he partially quoted a message from GeoScan's Geophysics Division Manager, Brian Whiting. Mr. Whiting's message seemed to allude to his staff experiencing difficulties working in the presence of witnesses asking questions and cameras filming (**Exhibit MM-72**). As a matter of fact, McGill University were the first parties who set out to send video crews to film the HHRDD search on June 10<sup>th</sup>, 2023. Afterwards, Cultural Monitors also started filming.
64. In addition, Mr. Whiting referred to media being present and filming GeoScan's survey without being cordoned off by the Defendant's security. As the

Kahnistensera, we wrote to Mr. Whiting to ask for explanations about his crew's experience, given that our Cultural Monitors recalled having experienced good relationships with GeoScan. Mr. Whiting responded that "I was unaware the presence of press, monitors, filming etc. beforehand. In fact I was unaware of the court cases and the Indigenous interest in the site until after that initial site visit. Had I known all this, I would most certainly have taken a very different approach from the outset. For example, I normally hold a meeting(s) with community members and leadership to explain what we will be doing, take questions, and to invite community members' participation directly in our work" (**Exhibit MM-77**). Such a detrimental misunderstanding could easily have been avoided if the Defendants had taken an approach based on reconciliation as provided by the Settlement Agreement and cooperated in sharing communications with service providers, instead of managing all communications without even informing us or the service providers of what is going on.

65. The Kahnistensera, Cultural Monitors and I are undergoing extreme stress and exhaustion caused by a constant need to run after basic information regarding the investigation, even though it was instigated by our efforts alone. The Defendants' lack of good faith in matters of communicating, scheduling and reviewing contracts and permits creates enormous anxiety, stress and despair to us, and are clear obstacles to agreeing on a proper protocol to follow in the spirit of reconciliation prescribed in the Settlement Agreement.
66. I am aware that on July 26<sup>th</sup>, 2023, the panel has shared recommendations with all parties resulting from observations of work that had taken place so far.
67. On July 26<sup>th</sup>, 2023, the panel shared updated recommendations regarding urgent issues raised by the ongoing searches. These recommendations were to add "a forensic expert to the panel to advise on best practices for chain of custody for all future phases of the investigation that involve excavation", notably to ensure safe storage of recovered artifacts, to screen sediments from the excavations immediately instead of letting them accumulate on the site, exposed to the rain, and to determine a "single source", "agreed upon by all the parties", from which service providers would take direction (**Exhibit MM-9**). On August 1<sup>st</sup>, 2023, the SQI rejected all the panel's updated recommendations, indicating that the "single source" would be SQI and McGill, in a clear attempt to take complete control of the entire investigation (**Exhibit MM-8**).
68. Following the excavation being conducted in response to the Historic Human Remains Detection Dogs (hereafter, "**HHRDD**") discoveries of potential human

remains between July 10<sup>th</sup> and 12<sup>th</sup>, 2023, contractors were observed improperly leaving soil unprotected and exposed to elements, as well as their concerning treatment of artifacts discovered on the site, such as a young woman's dress and children's boots from the first half of the 20th century (**Exhibits MM-55 and MM-56**).

69. This led the panel to share updated recommendations stemming from observations on the site on July 26<sup>th</sup>, 2023. These recommendations included adding "a forensic expert to the panel to advise on best practices for chain of custody for all future phases of the investigation that involve excavation", notably to ensure safe storage of recovered artifacts using tamper-proof bags. It was also suggested to screen sediments from the excavations immediately instead of letting them accumulate on the site, exposed to the rain adding a forensic expert to the panel to oversee chain of custody matters (**Exhibits MM-8 and MM-9**).
70. On August 1<sup>st</sup>, 2023, the SQI rejected all the panel's updated recommendations, including the addition of a forensic expert (**Exhibit MM-8**). It is my understanding that the forensic evidence uncovered from the ground on the site would therefore not stand as evidence in criminal courts if need be.
71. I am also aware that the government of Quebec has recently changed the Chief Coroner, hiring Me Reno Bernier (**Exhibit MM-69**), who has recently acted as a deputy minister within the party currently in power in Quebec, which may place him in a conflict of interest with the ongoing investigation at the Royal Victoria Hospital site, following court proceedings in which the Attorney General of Quebec is a party.
72. The credibility of the investigation is at stake. The panel requested additional expertise, which validated the issues we raised regarding the forensic investigation and the chain of custody issues. The Kahnistensera do not trust this investigation now that these concerns have been ignored and work is being pushed ahead without offering a solution for these issues.

### **Security of the Site and Cultural Monitors**

73. I am aware that section 9 of the Settlement Agreement provides: "In addition the Kanien'keha:ka Kahnistensera will appoint a Cultural Monitor(s), who can be present during the execution of the Techniques and conduct appropriate ceremonies paid at the rate of \$50 per hour by McGill University/the SQI."

74. It is my understanding that the Defendants have caused serious prejudice to the Cultural Monitors' and Kahnistensera's right to be present during the execution of the Techniques.
75. I recall that concerns regarding security were first voiced by the Kahnistensera during the very first meeting with the Defendants following the injunction, which happened in Kahnawake in November 2022. We were primarily concerned that the Defendants would unilaterally control the security of the entire site, which may lead to situations of neglect and/or lack of cultural sensitivity regarding Indigenous protocols when working in sacred burial sites. The Defendants maintained a constant denialist approach to the allegations of unmarked graves, hoping to disprove evidence gathered thus far that may be incriminating for their institutions, whose staff members may have been responsible for in the past. These concerns were consistently dismissed by the Defendants, which resulted in the absence of security parameters being defined in the Settlement Agreement.
76. Months later, many of these essential conditions remained unfulfilled by the Defendants. For example, our request to use an independent security firm to monitor the site was rejected, notably in an email sent by the SQI on January 19th, 2023, commenting our Draft Archaeological Plan (Affidavit of Angela Campbell on behalf of McGill University, signed on February 9, 2023, **Exhibit AC-39**). However, we reiterated the need for independent security to monitor the site afterwards, including on January 26th, 2023 (**Exhibit AC-42**).
77. After the Settlement Agreement was signed, we witnessed several deficiencies in the Defendants' approach to securing the site. In addition to cinema trailers being parked in the pool area, on April 25th, 2023, panel member Justine Bourguignon-Tétrault informed all parties that "While walking the grounds in the wooded area behind the Ross Pavilion, we came across what looks like amateur dig units, with an abundance of historical artifacts on the surface scattered about. They were very shallow pits, but this is concerning, as it would be considered looting" (**Exhibits MM-47 and MM-48**).
78. On May 26<sup>th</sup>, 2023, we wrote both to the Defendants and to the panel to ask for recommendations regarding pressing security issues on the site. We explained that "Residential School sites under investigation across the country have been cordoned off and monitored by Indigenous security. But the Royal Victoria Hospital site is not being treated that way at the moment. The SQI has stated that additional security guards patrol the site, but we have witnessed firsthand that it is possible

to walk around the site for several hours without any security being visible.” We also noted that “Inappropriate activities such as filming and physical training are going on throughout the site, with no consideration for our protocols for burial sites as places of peace and mourning.” We indicated that there were holes in the fence around the pool, despite information that the SQI had provided to media stating that the fence had been repaired. (**Exhibit MM-71**). Finally, we suggested that “the private security guards currently hired by the SQI should be replaced by security guards from the Kahnawake-based firm T.D. Security who, in addition to monitoring the site to ensure no excavation takes place, would ensure that our traditional protocols concerning proper behaviours in potential burial sites are followed at all times.” We explained that “The T.D. Security firm has extensive experience and has worked for state institutions such as Hydro-Quebec, in addition to having Indigenous staff members who are knowledgeable of our traditional protocols and can ensure cultural monitoring of the site, by contrast with the current security guards who lack such an understanding. We wish to know the SQI's response concerning this issue as soon as possible, and note that the panel may also address the issue and make recommendations following best practices”.

79. While the Defendants did not respond to our request, on June 5<sup>th</sup>, 2023, the panel responded that they agreed with us that “the security of the site is very important, but are unfortunately not in a position to make security recommendations as that is outside our area of expertise” (**Exhibit MM-71**).
80. Given the panel's professional incapacity to provide recommendations regarding security and the Defendants' repeated refusal to respond to our demand, we sent a letter to Justice Moore on June 22<sup>nd</sup>, 2023, where we listed urgent concerns regarding security on the site, noting that “we witnessed that the Defendants SQI and McGill University were allowing the general public to access the site. Cinema trailers were parked for several weeks next to the pool area, and videos were posted online of people visiting the pool site” (**Exhibit MM-29**). We noted that we were notably worried about “recent episodes of denialists trying to dig up graves in Kamloops, British Columbia”. We proposed “that the Defendants should provide funding for a Kanien'keha:ka security firm, TD Security, to be hired to protect the site 24/7 and implement our traditional protocols regarding respect of burial sites.”
81. As previously stated, we suggested including a new member in the panel to make recommendations regarding security, given that the panel stated that it lacked expertise in the field of security. We tried to share this proposal out of court, as proposed by Justice Moore in the CMC on June 29<sup>th</sup>, 2023. However, the Defendants refused to consider the issue.

82. It is my understanding that the Kahnistensera and Cultural Monitors present on the site from the onset of archaeological work witnessed that the partial security measures put in place by the Defendants were not competent. On several occasions we raised the issue that there were almost no security measures put in place to protect the integrity of the site. During both the HHRDD and GPR surveys there were no fences put in place to prevent members of the public from intruding on the investigation. There were only fences put in place near certain buildings (for public safety), and fences whose placement had been recommended by the panel to prevent certain archaeological zones from being disturbed by machinery (**Exhibit MM-50, p.9**). Additionally, Cultural Monitors never saw more than two or three security guards on patrol while they were present on-site during the HHRDD and GPR surveys. Even then, the presence of these security guards did not stop bystanders from intruding onto the grounds.
83. Fences were originally intended, as per the panel's recommendations (**Exhibit MM-50, p.9, and MM-79, p.10**), to keep machinery from damaging archaeological zones during construction, but the fences installed by the SQI are much higher than what would be required for that use. They were also installed at a much too early stage – that is, during the deployment of basic archaeological Techniques, while the fences were intended for a much later stage during excavation work following the execution of the Techniques.
84. The security guards on the site were employees of Commissionaires, a private security firm that has been contracted by the SQI. The security guards that the Cultural Monitors interacted with did not possess any proficiency in English language comprehension, making communication between the Cultural Monitors and the security guards difficult. Additionally, interactions between Cultural Monitors and Commissionaires agents revealed that the latter had not been adequately informed about the nature of the site, the Settlement Agreement, or the on-going investigation.
85. When the excavation of the zone where HHRDD detected human remains began on July 19th, 2023, the Kahnistensera and Cultural Monitors saw that the Defendants had increased security measures considerably. Two layers of fencing had been installed. One fence wrapped around the section of the Priority Zone known as the "P2 Parking Lot" where the archaeological team from Ethnoscop were to conduct their excavations. Another fence lined the perimeters of a majority of the Royal Victoria Hospital site. This fence had two gated entry points. One was positioned at the entrance of the "P2 Parking Lot" on the corner of avenue Des

Pins and avenue du Docteur Penfield. The other was placed near an entryway on the south side of the Hersey Pavilion.

86. It is in this context that the Kahnistensera and Cultural Monitors were evicted, assaulted and given racist comments by the SQI's security guards on July 25th, 2023 (**Exhibit MM-10**).

- a. Mohawk Cultural Monitors were present on the lawn in front of the Hersey Pavilion, outside the gate where archaeologists were searching for human remains since 7:00AM, with no incident. They were present to observe work to uncover potential human remains at the old Royal Victoria Hospital as provided by the Settlement Agreement signed in April 2023 between the Kanien'keha:ka Kahnistensera (Mohawk Mothers) and the Defendants, including the Société québécoise des infrastructures (SQI) and McGill University. At approximately 3:00, I also came to the site with Kahnistensera Karennatha.
- b. At approximately 3:30PM as the workday was coming to an end (work usually finished at 4:00PM), three individuals presented themselves on the site, behind the lawn where the Cultural Monitors were sitting. These individuals did not produce any form of identification. All three security guards refused to disclose their names and occupations, which made it impossible to verify whether they were accredited security guards or vigilantes. They also refused to disclose the identity of their clients. Only one person had a security vest on, and nobody had security helmets. The only individual of the three that had been seen on site before was a blonde, white woman. This individual was present in the late afternoon on Thursday, July 20th, 2023, presenting herself as a chief of security working for the SQI (see picture, **Exhibit MM-52**).
- c. On July 25th, the Kahnistensera and the Cultural Monitors were packing up, and the security guards appeared asking Kahentinetha what she was doing there. Kahentinetha explained everything about the Settlement Agreement, as well as the reasons necessitating the Cultural Monitors' presence. This security guard insisted that she had no knowledge of the Settlement Agreement and did not believe what Kahentinetha was saying. The woman refused to disclose her full name, and at first refused to say what she was doing there. At one point she said she was the "head of security," although she did not wear any identification tag or apparel from any security firm. As discussion continued, the woman stated that her name was Antoinetta, that

she was Italian and had been in Canada for six years. Kahentinetha left the scene. The Cultural Monitors recalled Antoinetta displaying an aggressive attitude on July 20th, 2023, and that she did not seem aware that an archaeological and forensic excavation supervised by Indigenous Cultural Monitors was taking place.

- d. On July 25th, 2023, Antoinetta was accompanied by two younger individuals: a woman wearing a veil and a security vest, and a man wearing a shirt from the security firm Commissionnaires (see video, **Exhibit MM-51**). As visible in the video, the man seemed to be concealing an unknown object under his shirt, which he was holding with one hand. At the same time, two bystanders, a man and a woman, also appeared on the site. They were taking pictures. It is unknown how they entered the area within the fence. Kahentinetha approached these three individuals while the other Mohawk Mothers and Cultural Monitors were having a meeting on the grass. Antoinetta presented herself as the “boss” of security and told Kahentinetha that they had no right to be there. Kahentinetha said she does have the right because of the court order, and Antoinetta screamed “show me that court order”.
- e. Kahentinetha tried to explain who the Cultural Monitors were and what they were doing at the site. The rest of the group was not aware of the conversation, except one cultural monitor who joined Kahentinetha and remained calm without speaking. The woman responded that she knew nothing about the Settlement Agreement or the work taking place and insisted aggressively that everyone had to vacate the site immediately. She then took out her phone and started to dial 911 to call the police.
- f. Kahentinetha returned to the rest of the group to tell them what was happening. They had not been notified that they were expected to leave. One of the Cultural Monitors opened his telephone to record the incident. When the “boss” of security, Antoinetta, saw that she was being filmed, she brutally jumped on him, grabbed the telephone from his hands and gave it to her colleague. Antoinetta proceeded to tell her colleague to erase the video that was taken. This was an assault and destruction of property. Another cultural monitor present then realized the gravity of the situation and turned on his camera from afar. The video shows part of the hurtful and racist insults that the head of security made (**Exhibit MM-51**). I tried to calm Antoinetta who was acting very aggressively and smoking a vape while the rest of the group gathered their things and left the site.



- g. As they left Antoinetta threw insults at them, telling the Mohawk Elders that they should “go on and get a life” and have some babies, although she doesn’t even think they have babies or husbands. Finally, Kahentinetha said "we're here looking for our children who were murdered, and you continue to benefit from this", and Antoinetta responded, "that's right we benefit from it, that's exactly right".
  - h. The Kahnistensera and Indigenous Cultural Monitors understood that these were racist insults and they were shocked and very hurt. They were traumatized and cannot return on the site anymore because they feel threatened and targeted by the SQI’s security.
87. The next day, on July 26<sup>th</sup>, 2023, two Indigenous cultural monitors showed up at the site to inform Ethnoscop lead archaeologist Simon Santerre of the aggression of Elders and Cultural Monitors that happened the previous day, and that it would not be possible for Cultural Monitors to work on the site under such conditions. Present for the SQI was Lior Ancelevicz. Two other security guards from Commissionnaires immediately went to see the Cultural Monitors, asking them to leave the site. The Security Guards seemed very confused. One was apparently not informed of the situation and the right for Cultural Monitors to be on the site, while the other security guard, who had been present on the site the previous days, had trouble understanding why she had orders to oust them from the site. The conversation was recorded on video (**Exhibit MM-54**).
88. On July 26<sup>th</sup>, 2023, the Kahnistensera wrote to the SQI to explain what happened and how Cultural Monitors did not feel safe to return on the site after being assaulted, also asking the SQI to provide information on said agents, because “we do not know if these people were vigilantes or if they were working for one of the Defendants, as they refused to share their identity”. The SQI responded that security agents “have been informed of yesterday's situation and will make sure that this won't happen again”, but that “The work is scheduled to resume tomorrow morning”. (see correspondence in **Exhibit MM-57**).
89. On the same day of July 26<sup>th</sup>, 2023, the Special Interlocutor Kimberly Murray asked the SQI to provide: 1) The name of the Security Company; 2) The name of the security guards in question; 3) The details of the security contract; 4) The details of this company’s expertise or experience, and its employees, to work competently with Indigenous peoples and protocols. What, if any, cultural competency have they received; 5). The details of what their instructions were, and are, in relation to the site, what is occurring on the site, the settlement agreement, the role of the

Kahnistensera, and the purpose and importance of the Cultural Monitors. (**Exhibit MM-58**). The SQI only answered the first question, failing to provide responses to the other questions, despite repeated requests to do so by the Plaintiffs.

90. On the same day of July 26<sup>th</sup>, 2023, panel member Adrian Burke reacted to the SQI's insistence in resuming work without responding to the questions of the Special Interlocutor and Plaintiffs by reminding the SQI that the presence of cultural monitors is part of the panel's recommendations and that "if the cultural monitors do not feel that the security issue has been satisfactorily resolved then they will not be present and therefore archaeological work should not continue". Mr. Burke also indicated that "With all due respect, it is not sufficient for any of the participants to just accept a short email in which you assure everyone that things will be different since it has been less than 24 hours and I doubt that any new measures or protocols are already in place" (**Exhibit MM-57**) On the same day of July 26<sup>th</sup>, 2023, the Plaintiffs also renewed their request to hire an Indigenous security firm to keep them safe on the site "to avoid racist interactions".
91. On July 27<sup>th</sup>, Sophie Mayes from the SQI presented a security protocol which she alleged would address the Plaintiffs' concerns. However, the new protocol amounted to restricting access to the site through a single entrance and reinforcing the powers of security guards to allow Cultural Monitors on the site, also using Simon Santerre, the lead archaeologist from Ethnoscop, as an intermediary – even though security is not part of Mr. Santerre's qualifications or mandate. The SQI did not respond to Kimberly Murray's questions, bringing the Special Interlocutor to question whether Mrs. Mayes had instructions to ignore her inquiries. On July 28<sup>th</sup>, 2023, Kimberly Murray asked again for the license numbers of the agents who were present on the site, to no avail. On July 31<sup>st</sup>, we wrote an email "to pursue the dialogue regarding the security issues at the site", given that they had "received no communication since last Friday, but we think channels of communication should remain open to find a quick resolution". We asked to respond to the Special Interlocutors' questions, before negotiating possible solutions to the security issues such as hiring the Kahnawake-based security firm TD Security and offering cultural competency training. We also indicated that it was improper that the piles of soil excavated in the zone where the HHRDD detected the scent of human remains were left partially uncovered on the site, letting the rain in (see correspondence in **Exhibit MM-58**).
92. On August 1st, 2023, we met online with SQI representatives Denis Ratté and Sophie Mayes, and progress was made when the latter agreed to hire TD Security.

In the next days, SQI staff communicated with TD Security, who agreed to send five security guards on the site the following Monday so work could continue. The security guards set time aside and canceled other appointments to be present. On August 3<sup>rd</sup>, 2023, we sent an email to the SQI including links to TD Security's website and Tawatohni'saktha, Kahnawake's economic development institution under the Mohawk Council of Kahnawake, where TD Security is registered as an Indigenous business, stating that "If it can be confirmed that TD Security will be hired and that they will be the personnel allowed on the site where Ethnoscop and cultural monitors are working, we would be ready to resume work next Monday." **(Exhibit MM-58)**.

93. However, on August 4th, 2023, the SQI announced by email that it would not hire TD Security because it is not accredited with Quebec's Bureau de la sécurité privée (hereafter, "**BSP**"), alleging that such permit was necessary to hire the company. The SQI included a document describing the "Security protocol that will be implemented on the RVH site". Rather than describing measures to protect Cultural Monitors from the SQI's security guards, the document, written in French, describes the SQI's measures to control and monitor the presence of Cultural Monitors on the site. Moreover, the SQI indicated that it was rather negotiating a contract with GardaWorld, which would be provided self-taught training in Indigenous sensitivity consisting of watching online videos. The SQI's description of the training, prepared for the Quebec government by a non-Indigenous person and a Christian person, consisted of viewing videos online. **(Exhibit MM-59)**.

94. On August 5th, 2023, we indicated to the SQI that this is not what had been agreed upon in the meeting on August 1<sup>st</sup>, 2023. We stated that "After the attack by your security guards and given how the site is closed by fences all around we will only truly feel safe with people who truly understand us and what we are doing, which watching videos online cannot do." We also indicated that "TD Security is a business registered in Kahnawake, including ex-police agents and professional law enforcement who have never had any issues with BSP permits. They are not registered with the BSP because the BSP asks for proof of Canadian citizenship, whereas the Indigenous staff of TD Security are not enfranchised as Canadians". Finally, we noted that TD Security has previously worked outside of reservation territory for Quebec public institutions, such as a contract for Hydro-Quebec in Lasalle, through Valard Construction, and joined the invoice **(Exhibit MM-61)**. Finally, we joined a form, Annex 3 of the Quebec Private Security Act, which allows to hire non-accredited security personnel for the needs of a special investigation **(Exhibit MM-62)**.

95. On August 8th, 2023, the SQI simply responded that since “TD Security does not hold this required license, it is impossible for the SQI to hire them” (**Exhibit MM-58**), failing to address the form we had shared with them.
96. We responded in turn on August 9th, 2023, asking why Annex 3 of the Private Security Act had not been mentioned, protesting that the SQI’s unilateral decision to hire Garda was inappropriate, and that the cultural sensitivity training proposed by the SQI was largely insufficient and was not even accessible to us as Kahnistensera, who do not speak French (**Exhibit MM-63**). We explained that our offer to provide cultural competency training was made under the assumption that the SQI would “collaborate in providing crucial information concerning the instructions and orders that were given to the chief security guard who attacked us, the identity of the aggressors, and acknowledge the need for Indigenous security on site.” I Wet indicated that “Hiring another multinational security corporation under your orders will not be possible while investigations are underway to determine whether the SQI gave the order to attack us.” Despite our clear refusal to use Garda on the site, pictures taken on the same day of August 9th, 2023 show that Garda had actually already been hired by the SQI and were present on the site (**Exhibit MM-64**).
97. As attested by the owner of TD Security, Carla Diabo, TD Security is a “legally registered and recognized business in the laws of the Kahnawa:ke Mohawk Territory”. It employs former law enforcement officers, and has “operated in conjunction with other non-Indigenous companies outside of Kahnawa:ke in the Montreal area.” Mrs. Diabo states that her company and staff has never had any problems or issues with respect to BSP permits, and that her business’s right to operate under the laws of the Mohawk law is “well-established in law and in practice in many jurisdictional areas, and is constitutional entrenched in Canadian law” (**Exhibit MM-65**). Carla Diabo states that it was impossible for her staff to be accredited with the BSP since this permit required that the applicants declare Canadian citizenship, which would deprive Indigenous staff from their inherent rights as members of Indigenous peoples whose existence preceded the creation of Canada on their territories. A letter signed on August 5<sup>th</sup>, 2023, by traditional Kanien’keha:ka knowledge keepers and stamped with the seal of Akwesasne’s Longhouse Kanonhsesne states that “TD Security is allowed to operate on traditional Indigenous lands inside and outside of reservations”, that its members “abide by the ancestral constitution of the Rotinonshionni Confederacy, the Kaianerehko:wa”, that they are accountable to “the circle of 49 families, Teiotiohkwhanhakton”, and that they they “may be called upon to perform private security contracts on all traditional Onwehonweh lands, particularly to assist

Indigenous people in performing their traditional duties in accordance with their ancestral law (**Exhibit MM-75**)

98. On August 10<sup>th</sup>, 2023, we had an online meeting with Sophie Mayes and Denis Ratté from the SQI, as well as Wendy Johnson for the Office of the Special Interlocutor. The Defendants continued arguing that they would hire GardaWorld, while the Kahnistensera stated that they did not trust that company and asked the Defendants to find a solution to allow Indigenous security to protect Elders and Cultural Monitors on the site.
99. One week later, on August 17<sup>th</sup>, 2023, Sophie Mayes from the SQI finally proposed that for a 10-day trial period one (1) representative from TD Security could accompany the Plaintiffs and Cultural Monitors on the site, and that the Plaintiffs' expenses in hiring TD Security would be reimbursed by McGill University. On August 18<sup>th</sup>, 2023, the Plaintiffs responded that since the SQI originally planned to hire five (5) TD Security Guards, a more reasonable compromise would be to hire three (3) of them. We agreed with a 10-day trial period, after which the situation would be reassessed by all parties. We also insisted that "most important point for us and our Cultural Monitors to feel safe on the site is to guarantee that we will not have to interact with non-Indigenous individuals other than the archaeologists", and asked for the Defendants to use TD Security as an intermediary for communications on the field. On August 19<sup>th</sup>, Pierre Major from McGill University lowered the number to (2) TD Security guards, and also set out to limit the number of Cultural Monitors to two (2), even though the number of Cultural Monitors had never yet been the object of negotiations. Pierre Major also included an email from Brian Whiting of GeoScan who mentions a GPR survey planned for August 28<sup>th</sup>, 2023. The Plaintiffs had never been informed of this upcoming GPR survey. On August 21<sup>st</sup>, 2023, we accepted the temporary compromise of using two (2) TD Security representatives, but argued that three (3) Cultural Monitors would be necessary at certain times. We also asked why they were not provided with the information about the GPR survey planned for August 28<sup>th</sup>, 2023 (see corresponded in **Exhibit MM-72**).
100. Given the SQI's choice of incompetent security personnel, the strict measures of surveillance and monitoring of Indigenous Cultural Monitors, and the presence of high fences akin to open-air prison facilities around the site, Indigenous Cultural Monitors do not feel safe at all to be present on the site. This resulted in a very threatening working environment akin to a prison environment where Elders and Cultural Monitors could be trapped during an assault by racist security guards. The Plaintiffs, who include survivors of abuse by racist law

enforcement personnel, have been considerably re-traumatized and are scared of going to the site and being attacked. While the necessity of avoiding further damage to the archaeological site and its forensic evidence left unattended pushed us to accept a temporary 10-day trial with two (2) TD Security Guards on the site, this solution is far from adequate, and the security situation, which we have flagged since November 2022, must be resolved in a truly lasting matter to make sure that Elders and Cultural Monitors do not need to face retraumatizing experiences to accomplish their duties monitoring the site (**Exhibit MM-72**).

## Conclusion

101. While we hope that the 10-day trial plan for the security issues will go well and translate into a more lasting protocol to make our Elders and Cultural Monitors feel safe, it will not resolve the issues of the panel being disbanded, their recommendations not being implemented, the issues around the forensic investigation, and the constant lack of collaboration and communication we have been facing from McGill and the SQL.
102. As Kahnistensera we are facing constant hurdles and reluctance to cooperate from the Defendants. The need to constantly run after basic pieces of information, to repeat crucial concerns that remain unanswered, and the fear of facing violence and discrimination while accomplishing our duties on the archaeological site cause a great deal of stress, anxiety and trauma to the Kahnistensera and our Cultural Monitors. We should not have to risk our mental health and physical security simply to implement a Settlement Agreement that was agreed upon by all parties and accomplish our ancestral duties as Kahnistensera.
103. Above all, the current situation is tainting the investigation in a way that is prejudicial to all searches for the unmarked burials of Indigenous children throughout Canada, and to reconciliation in general. Our community hopes that this investigation will allow to renew the relationship between Indigenous people and Canada and repair the wrongs of the past. This is why the investigation must follow the best archaeological and forensic practices, and why it must be Indigenous-led.

SWORN BEFORE ME at Kahnawake  
this 27 day of August, 2023.

AND I HAVE SIGNED at Kahnawake  
this 27 day of August, 2023.

Commissaire à l'assermentation  
Commissioner for Oaths  
ELIZABETH MONTOUR 216757  
For all Québec judicial district and  
outside Québec Tous les districts  
judiciaires du Québec et extérieur



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COMMISSIONER OF OATHS

KWETIIIO

No: 500-17-120468-221

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SUPERIOR COURT (CIVIL DIVISION)  
DISTRICT OF MONTREAL

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KAHENTINETHA,  
KARENNATHA,  
KARAKWINE,  
KWETIIO,  
OTSITSATAKEN,  
KARONHIATE,  
Plaintiffs

vs.

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES,  
ROYAL VICTORIA HOSPITAL,  
McGILL UNIVERSITY HEALTH CENTRE,  
McGILL UNIVERSITY,  
VILLE DE MONTRÉAL,  
ATTORNEY GENERAL OF CANADA

-and-

ATTORNEY GENERAL OF QUEBEC  
Defendants

-and-

INDEPENDENT SPECIAL INTERLOCUTOR FOR MISSING CHILDREN AND  
UNMARKED GRAVES AND BURIAL SITES ASSOCIATED WITH INDIAN  
RESIDENTIAL SCHOOLS

Intervenor

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AFFIDAVIT OF KWETIIO IN SUPPORT OF THE PLAINTIFF'S APPLICATION FOR A  
DECLARATORY RELIEF AND TO OBTAIN A SAFEGUARD ORDER

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