

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPÉRIOR COURT

(Civil Division)

---

N<sup>o</sup>.: 500-17-120468-221

**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

**OFFICE OF THE INDEPENDENT SPECIAL  
INTERLOCUTOR FOR MISSING CHILDREN AND  
UNMARKED 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**

Third-Party Intervener

**CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET  
DE SERVICES SOCIAUX DU CENTRE-SUD-DE-  
L'ÎLE-DE-MONTRÉAL 155, boulevard Saint-Joseph  
East Montreal QC H2T 1H4**

Impleaded Party

---

**APPLICATION BY THE THIRD-PARTY INTERVENOR FOR ACCESS TO THE  
HEALTH SERVICES AND SOCIAL SERVICE RECORDS PURSUANT TO S. 19(1) OF  
THE *ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES*, Ch. 4.2 LRQ**

(Article 158(5), *Code of Civil Procedure*)

---

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

1. On April 22, 2023, the Honourable Justice Gregory Moore homologated the Rectified Settlement Agreement at the Superior Court of Quebec. This document established the roadmap for a search for unmarked burials to commence “in the spirit of Reconciliation” in the matter of *Kahentinetha et al c. SQI et al.*
2. Special Interlocutor Murray is assisting the Honourable Court and the parties in fact-finding, issue-narrowing, and facilitating dialogue in accordance with the role of a conservatory intervenor pursuant to her mandate as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools.
3. In concert with the technical archaeological search, the Rectified Settlement Agreement outlines the process for an archival search for relevant records to the investigation into unmarked burials, agreed to based on the best practice recommendations from the Canadian Archaeological Association (“CAA”). The relevant terms of which are:
  1. The parties agree that archival and testimonial work will begin immediately and the results of such work will be communicated to the Panel (defined below) on an ongoing basis to inform their work.
  2. McGill University will provide, on a best-efforts basis, expedited access to their archives, including restricted files as permitted by law, and will provide a McGill archivist to work with Dr. Marion-Patola of *Know History*.
  3. The McGill University Health Centre (“MUHC”) provides a similar undertaking, also as permitted by law, with regard to its archives.
  4. The Attorney-General of Canada (“Canada”) will provide, on a best-efforts basis and as permitted by law, expedited access to Library and Archives Canada, including restricted files.
  5. Canada agrees to fund the two contracts between the Plaintiffs and *Know History* (“Statement Gathering” dated February 16,

2023 for an amount of \$60,678.06 and “Statement of Work Contract” dated February 22, 2023 for an amount of \$38,410.27). These contracts compose the preliminary phase of work to collect testimonies and design a detailed archival research plan and budget. Once a detailed archival research plan and budget is produced, Canada will give due regard to funding.

4. Archival records provide essential information for a credible search for unmarked burials. Access to these records will be used to confirm the identities of missing or deceased patients, determine where potential burial sites may be located, and answer critical questions for victims, families, and communities. Access to these records can also boost cost-effective and time-efficient measures for the investigation by providing information in order to narrow the archaeological search to find potential burials.
5. The following records are being sought under s. 19 of *An Act Respecting Health Services and Social Services*, Ch 4.2 LRW, and an *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information*:
  - a. Medical Registers, 1894-1963. Medical Records, 1894-1963. McGill University Archives ("MUA"), Royal Victoria Hospital, 1887-1971, Item no. c.246-c.286, c.288-c.291, and c.413;
  - b. Case Books, 1895-1940. Medical Records. The MUA, Royal Victoria Hospital, 1887-1971, Item no. c. 1-c.86, c.93-c.94-c.173, c.287, c.292-c.341, c.351-c.371, c.377, and c.415-c.416; and
  - c. All inventories of records held by Centre Intégré Universitaire en Santé et Services Sociaux ("CIUSSS"), MUA, and MUHC, for the purpose of particularizing document requests for relevant archival materials that the Respondents denied on the basis of being too broad.
6. The Respondents *McGill University* and the MUHC are withholding access to patient records (a and b) on the basis of patient confidentiality concerns. The records sought will be used for the purpose of the completion of the archival search by *Know History* as per their contract.
7. The archival search cannot be completed without this disclosure. *Know History* has offered to work around the Respondents' confidentiality concerns by accepting redacted records. The Respondents again denied the request.
8. The Respondent MUHC has denied *Know History* access to finding aids or internal inventories (c), refusing to provide a general overview of the records in their possession. This information is necessary to enable *Know History* to specify which records are available, and what records are required to complete

their mandate. *Know History's* requests for additional documents from the MUHC have been denied thus far on the basis that their requests are too general.

9. The parties in this litigation have a common interest in ensuring that a credible investigation into potential unmarked graves and burials is accomplished, which is the very basis of this request for the disclosure of these documents.
10. The Independent Special Interlocutor respectfully submits that the disclosure of these documents is in the public interest. The archaeological investigation was commenced so that former patients, their families, and their communities can know the truth. That information is contained in these records and the archive inventories.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**ORDER** that the Respondents and the Impleaded Party to provide to Know History, access to:

- a. Medical Registers, 1894-1963. Medical Records, 1894-1963. McGill University Archives ("MUA"), Royal Victoria Hospital, 1887-1971, Item no. c.246-c.286, c.288-c.291, and c.413;
- b. Case Books, 1895-1940. Medical Records. The MUA, Royal Victoria Hospital, 1887-1971, Item no. c. 1-c.86, c.93-c.94-c.173, c.287, c.292-c.341, c.351-c.371, c.377, and c.415-c.416; and
- c. All inventories of records held by Centre Intégré Universitaire en Santé et Services Sociaux ("CIUSSS"), MUA, and MUHC, for the purpose of particularizing document requests for relevant archival materials that the Respondents denied on the basis of being too broad.

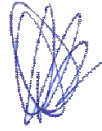
**THE WHOLE** without legal costs.

**TORONTO**, September 22, 2023



---

**Falconers LLP**  
Barristers-at-Law  
10 Alcorn Avenue, Suite 204  
Toronto, ON M4V 3A9  
Tel: 416-964-0495  
Julian N. Falconer  
[julianf@falconers.ca](mailto:julianf@falconers.ca), [mitchq@falconers.ca](mailto:mitchq@falconers.ca)  
Counsel for the Applicant



---

**Semaganis Worme Legal**

Barristers & Solicitors

#150 – 103C Packham Avenue

Saskatoon, SK S7N 4K4

Tel: 306-664-7175

Fax: 306-664-7176

Donald E. Worme

[dworme@swlegal.ca](mailto:dworme@swlegal.ca)

[mebert@swlegal.ca](mailto:mebert@swlegal.ca)

Counsel for the Applicant

---

**Paul V. Marcil**

1 Avenue Holiday, Tour Est, Suite 647

Pointe-Claire (Québec). Canada, H9R 5N3

Tel: 514-927-5158

[paul.marcil@marcilavocats.com](mailto:paul.marcil@marcilavocats.com)

Avocat-conseil,