

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPÉRIOR COURT

(Civil Division)

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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

Ohswéken 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

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## AFFIDAVIT OF DR. NICOLE MARION-PATOLA

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I the undersigned, Nicole Marion-Patola, domiciled and residing at the Town of Okotoks.

1. I submit this affidavit for the purpose of providing an update on Know History's attempt to gain access to certain records relating to its mandate as outlined in the Rectified Settlement Agreement dated April 20, 2023 (the "Agreement") as part of the proceedings in *Kahentinetha et. al. v. SQI*.
2. I currently serve as Know History's Director of Litigation and Residential Schools and have served in this role since January 1, 2023.
3. Know History provides a range of historical services to assist in the research, presentation, and documentation of Canada's history. I specialize in Indigenous legal claims and oversee projects relating to treaty, land claims, and Indian Residential Schools research.
4. I manage multiple research projects on behalf of First Nations communities and Indian Residential School Survivor groups to identify, collect, and review archival materials related to their experiences with the institutions, particularly records that could help in the identification of missing and deceased children and the discovery of unmarked burial sites.
5. I coordinate research efforts with teams conducting forensic geophysics work to provide documentary evidence to inform their search efforts and to contextualize their findings. I am currently collaborating with Library and Archives Canada, Crown-Indigenous Relations and Northern Affairs Canada ("CIRNAC"), and the National Centre for Truth and Reconciliation ("NCTR") to access restricted archival records that could assist in these searches for our various clients.
6. Overall, records of key importance for fulfilling our mandate under the Agreement are not, and have not been made, accessible to Know History's researchers. Instead, privacy legislation has been used to prevent Know History from consulting any medical, patient, or staff records from the Royal Victoria Hospital ("RVH") and the Allan Memorial Institute ("AMI").
7. It is Know History's opinion that these records are necessary to assist in the search for any potential unmarked burials and in the determination of what happened to patients who never returned home after they were in care at the RVH and/or the AMI.
8. I also verily believe that the McGill University Hospital Centre ("MUHC") is in possession of additional relevant records that are impossible to identify. This is because I am being told that no finding aids, inventories, or even a broad overview of the records in their possession are available to review. This is unprecedented in my professional experience. All archives, no matter the size, have some form of inventory.

## **Overview: Mandate and Role**

9. On or about March 13, 2023, I prepared a proposal, on behalf of Know History, for the Kanien'kehá:ka Kahnistensera to conduct archival research that was necessary to inform an archeological plan for identifying unmarked burials on the sites of the RVH and the AMI. The proposal is attached hereto as **Exhibit KH-1**.
10. Included in the proposal, was Know History's agreement to collect and review available published sources and archival documents, file requests for access to private and restricted files from relevant repositories, and review such documents as they are provided.
11. The topics of focus were:
  - Identifying unmarked burials on the grounds of the RVH and the AMI;
  - Explaining the context of how unmarked burials on the grounds of the RVH and the AMI came to be;
  - Identifying patients who underwent psychological treatment and experimental tests at the AMI from the 1940s to the 1960s; and,
  - Collecting sources related to archeological artifacts from the site, which may include artifacts of a pre-contact Iroquois village.
12. The March 13, 2023 proposal became the basis for the Archival Research Plan dated April 14, 2023, attached hereto as **Exhibit KH-2**. The proposed outcome was to create a research package that included a brief historical background of the site, excerpts from archival sources, and a summary of any knowledge gaps that the research was not able to address and/or access. This research plan was based on the areas for archival research outlined in the Preliminary Archaeological Plan dated December 21, 2022 attached hereto as **Exhibit KH-3**.
13. Of particular interest was the period from 1946 until 1964, when Dr. Donald Ewen Cameron was head of the AMI. While at the AMI, Dr. Cameron conducted experimental treatments for the MKUltra project that involved the use of barbiturates, LSD, PCP, electroshock therapy, and sensory deprivation.
14. I was provided with the affidavit of Lana Ponting, dated August 25, 2022, and subsequently sought records relating to how Indigenous children were institutionalized, which may provide information relevant to this search. The sought-after documents included federal and provincial policies related to Indigenous children and the treatment of these children as juvenile delinquents in these institutions.

## **Records from McGill University Archives ("MUA") & the MUHC**

15. My purpose for engaging the MUHC was to seek archival records that could provide contextual information about whether Indigenous children were ever treated at the AMI.

16. It is my understanding through my attempts to navigate records held at the MUA and other institutions covered under the Centre Intégré Universitaire en Santé et Services Sociaux (“CIUSSS”) umbrella, that the MUHC has the authority to grant such record requests and have refused to grant them in this case.
17. The specific documents still being sought that are held by the MUA include:
- Medical Registers, 1894-1963. Medical Records, 1894-1963. McGill University Archives, Royal Victoria Hospital, 1887-1971, Item no. c.246-c.286, c.288-c.291, and c.413; and,
  - Case Books, 1895-1940. Medical Records. McGill University Archives, 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.
18. On April 6, 2023, I emailed all the parties to the instant matter to provide a list of documents that had been requested from the MUA, (attached hereto as **Exhibit KH-4.**)
19. On April 25, 2023, Know History was advised that the McGill legal team was reviewing the RVH medical registers and case books to determine whether access could be granted for these particular records (attached hereto as **Exhibit KH-5**).
20. In a meeting on April 27, 2023, Know History was advised by the McGill Archivist that McGill’s legal team had determined the records would remain closed to researchers due to patient privacy concerns (attached hereto as **Exhibit KH-6, Appendix A**).
21. On June 20, 2023, I sent a letter to McGill University Legal Services and the MUA to reconsider their decision. I explained the importance of the medical registers and case books to this archaeological search. I cited the *Québec Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (attached hereto as **Exhibit KH-6, Appendix B**).
22. In this letter, I offered to receive records with patient names redacted in order to alleviate the confidentiality concerns McGill had raised. As part of this offer, the redacted versions of the files would remove any personal identifying information. I also offered to refrain from the digitization of the records, including the personal information of patients.
23. On June 27, 2023, I received a letter from the MUA stating that the case books and the registers contain confidential patient information, and as such are restricted by law. I was instructed to direct any further questions related to access to these files to the MUHC (**Exhibit KH-6, Appendix C**).
24. It is Know History’s position that these records are necessary to assist in the search for unmarked burials at the RVH and the AMI sites, by determining if Indigenous patients were admitted to the AMI or RVH, how they were treated while there, and whether they were discharged or died while registered with the hospital.

## Finding Aids

25. On March 2, 2023, Claudine Fortin (“Ms. Fortin”), a Know History researcher, emailed the MUHC archives to request a finding aid (attached hereto as **Exhibit KH-7, Correspondence A**). Know History never received a response to this inquiry. I followed up again to request a finding aid for the MUHC archives via email on May 15, 2023 (**Exhibit KH-7, Correspondence B**).
26. Finding aids are tools that help researchers locate and access information within archival collections, libraries, and other repositories. Much like an index or table of contents in a book, these finding aids are guides or tools that provide detailed descriptions of what materials are available, where they are located, and how they are organized.
27. Finding aids make it possible for researchers to navigate through extensive and often complex collections of documents, photographs, manuscripts, and other historical materials.
28. On June 26, 2023, the MUHC emailed a letter noting that they do not have finding aids or indexes for its records. Additionally, they noted that any identification of records related to our search criteria would require a manual search of the collection (**Exhibit KH-6, Appendix E**).
29. Furthermore, the letter advised that due to the *Act respecting health services and social services* and the *Act to authorize the communication of personal information to the families of Indigenous children who went missing or died after being admitted to an institution*, only patients or family members can request personal medical information. Despite that restriction, the letter concluded with an invitation for Know History to provide a more specific search request.
30. Without the cataloguing information contained in finding aids, Know History is unable to provide any more specific search parameters that would provide records that could identify Indigenous patients who may have died or gone missing from these institutions.
31. Finding aids were also sought for the Douglas Mental Health University Institute Library and the Montreal Neurological Institute Library from MUHC (**Exhibit KH-7, Correspondence L**).
32. On June 26, 2023, we received a response from the MUHC regarding the request for Montreal Neurological Institute records, indicating Medical Record Services cannot search patient files by ethnicity or ancestry (**Exhibit KH-7, Correspondence N**).
33. The letter also indicated that the MUHC did not have any finding aids or indexes for the Montreal Neurological Institute records, and invited Ms. Fortin to make a more specific search request.
34. It is not possible to make a more specific search request without finding aids, indexes, inventories, or a general overview of the contents of the archive or library repository in question. I have never encountered an archive, even a small one, that has not provided me with this sort of material.

35. To date, Know History has not received any finding aids or any indication of what types of records could be made available to researchers related to any of the institutions in question.
36. On July 25, 2023, I emailed the MUHC to request a meeting with someone on staff who is familiar with how the historical records are organized, so that my team can make a more specific research request to the MUHC (attached hereto as **Exhibit KH-8**).
37. A meeting finally took place on August 21, 2023 between myself, Katie Brais (a MUHC medical archivist), Martine Gauthier, (a MUHC document management specialist), and Keith Woolrich, (MUHC's Director of Quality, Evaluation, Performance and Ethics).
38. During this meeting, I requested policy and administrative records related to the relevant search period. I was promptly informed that although the records do exist, they do not find them relevant to my search. They referenced an index and an inventory related to confirm the existence of these records, However, we were previously told an index and an inventory did not exist.
39. When I inquired about this index, I was told it was an internal document and could not be shared. I informed them that this was quite unusual in my experience. I have never encountered an archive that could not provide even a basic list of their holdings.
40. The MUHC representatives also said they assumed the RVH and the AMI did not have institutional policies on unclaimed bodies, and instead followed provincial and municipal laws. This is contrary to records I have found that indicate that there were internal meetings to discuss policies and procedures related to deaths in each of these institutions.
41. Ultimately, I asked if they had any advice regarding how we can make our research requests more specific to access relevant records. I was assured that they already looked through their archives and found nothing relevant to Know History's search. They did acknowledge they had patient charts but explained the law strictly prohibited us accessing these patient records.
42. I updated the Kanien'kehá:ka Kahnistensera about this meeting on August 22, 2023 (attached hereto as **Exhibit KH-9**). I reported that I felt the MUHC was hiding behind the law and making excuses to restrict our access to inventories and records.
43. For example, I was told they have no information in their records to identify patients as Indigenous. However, it is established that ethnicity of patients has been relevant in the past. In the 1950s and 1960s, ethnicity was a factor in choosing which patients were chosen to be involved with medical studies.
44. To date, Know History has been unable to access any archival records related to the practices for admission, treatment, and discharge of Indigenous patients from the AMI and other related institutions in Québec. I am confident that we have exhausted all avenues available to us and there will not be any movement from the MUHC on accessing any records of potential relevance.

## **Library and Archives Canada**

45. The Kanien'keha:ka Kahnistensera and Know History have scoped the archival collections held by Library and Archives Canada ("LAC") and identified ninety-five (95) relevant files that are either restricted by law, donor restricted, or closed to researchers.
46. The primary interest in these records relate to responding to our mandate to uncover information as to whether Indigenous patients, and particularly Indigenous children in juvenile delinquency programs, may have been sent to the AMI for treatment and may have been subjected to experimental treatments.
47. While the records are not all directly related to the AMI, some of the requested records may provide contextual information about policies in Canada and Quebec in the 1940s and 1960s related to juvenile delinquency, mental health, and medical experimentation.
48. On June 23, 2023, Know History was advised that two (2) of the three (3) outstanding Access to Information and Privacy ("ATIP") requests we have made are currently being processed, and that one (1) of those two (2) may be available within the coming weeks (attached hereto as **Exhibit KH-10**). On July 4, 2023, one of the ATIP requests was fulfilled.
49. LAC assisted Know History with accessing donor restricted records. This involved seeking permission from the donors of the requested records to access them. We have successfully accessed records from four of the five private donors we have contacted.
50. The outstanding private donor records are related to the Weredale House (attached hereto as **Exhibit KH-10**). These records fall under the authority of the Research Support Unit of the CIUSSS.
51. On March 2, 2023, Ms. Fortin contacted several departments at CIUSSS for finding aids related to the Douglas Memorial Hospital/Verdun Protestant Hospital (**Exhibit KH-7, Correspondence D**)
52. After an extended delay and follow up by Ms. Fortin, the CIUSSS's Ethics Board indicated that Know History would have to submit a research project through the Nagano platform for review by the Research Ethics Board (**Exhibit KH-7, Correspondence E**).
53. On the recommendation of the Ethics Board, on May 24, 2023, Ms. Fortin emailed the Office of Research Management and Support at the Douglas Mental Health University Institute to inquire about gaining access to the Nagano system.
54. These records are important for this archival research because they shed light on a possible relationship between the Douglas Memorial Hospital/Verdun Protestant Hospital, the RVH, and the AMI and may provide information about transfers of Indigenous patients between the three institutions. We do not expect to find the

individual identities of patients in these records, but there may be indications that some of them were Indigenous.

55. The Office of Research Management and Support indicated that the Nagano system was used for projects taking place in whole or in part within the CIUSSS de l'Ouest-de-l'Île-de- Montréal. As the research is not being conducted at or for this institution, Know History was referred back to the Douglas Mental Health University Institute Archives.
56. Ms. Fortin emailed the Douglas Mental Health University Institute Archives once again on May 25, 2023 (**Exhibit KH-7, Correspondence F**).
57. I have been informed by Ms. Fortin and do verily believe that no response has been received to Ms. Fortin's email.
58. In hopes of gaining more information on how to access documents from institutions affiliated with the CIUSSS, Ms. Fortin emailed the CIUSSS Psychosocial Research Committee on June 1, 2023 (**Exhibit KH-7, Correspondence J**).
59. On June 2, 2023, a Research Ethics Specialist from the CIUSSS Research Review office replied offering to meet with Know History and provide guidance on who to contact to gain access to the requested records. They indicated that Know History should contact the Commission d'accès à l'information du Québec to inform them of the project and request blanket access to records held at institutions affiliated with the CIUSSS.
60. On June 8, 2023, Know History called the Commission d'accès à l'information du Québec and left a voicemail requesting more information on how to request this blanket access. There has been no response. On June 14, 2023, Ms. Fortin emailed the Commission d'accès à l'information du Québec's contact page to request more information on the application process. There has been no response from the Commission advising us on the best approach to access these records, since receiving the email from the Research Ethics Office.
61. I have reviewed the Commission d'accès à l'information du Québec website and, based on the information available on their website, it appears that blanket access to their holdings is not provided. Instead, researchers must submit requests for specific documents held within a specific institution of which the Commission d'accès à l'information du Québec has holdings for.

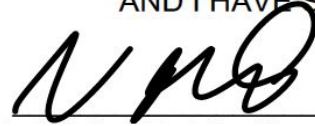


62. Because Know History has not been provided any finding aids for various archives, Know History is not able to provide the Commission d'accès à l'information du Québec with specific requests for documents (**Exhibit KH-7, Correspondence K**).
63. On August 4, 2023, Ms. Fortin was notified that the CIUSSS ATIP committee would be meeting on August 15, 2023, to review the request. On August 17, 2023, Ms. Fortin was notified that the CIUSSS ATIP committee needed to do further investigation and would be meeting again to discuss on September 11, 2023 (attached hereto as **Exhibit KH-11**).
64. There were an additional two (2) private donor files that are closed to researchers. On August 30, 2023, I was informed by Library and Archives Canada that files from the W. Clifford Scott fonds and the Joe Clark fonds are exempt from the *Access to Information Act* under section 68(c) (attached hereto as **Exhibit KH-12**).
65. On September 7, 2023, I was notified by Jessical Pizzoli, counsel for the Department of Justice, that Library and Archives Canada had reviewed the Joe Clark fonds and updated their status from closed to accessible with restrictions (attached hereto as **Exhibit KH-13**). On September 20, 2023, Ms. Fortin was able to review a requested file.
66. I was also notified by Ms. Pizzoli on September 7, 2023, that the W. Clifford Scott fonds held by Library and Archives Canada remain exempt from the *Access to Information Act* as they are private archives, and that the records will remain closed until at least 2041.

**Conclusion:**

67. The inability to access patient and other medical records has erected a significant barrier for Know History to fulfill their mandate under the Settlement Agreement.
68. Despite promises made by the Defendants' about facilitating access to the archives, Know History's researchers have been either been denied access or have been asked to provide more specific requests to institutions to access records.
69. Without even the basic information found in various forms, such as finding aids, Know History has been unable to provide more specific requests, and thus prevented again from accessing records and documents that would assist in their archival research.

AND I HAVE SIGNED:



**Nicole Marion-Patola**  
Director, Treaty Claims and  
Residential Schools Research

SOLEMNLY AFFIRMED BEFORE ME  
at Toronto, ON  
this 22<sup>nd</sup> day of September, 2023



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Mitchell Goldenberg, Commissioner of Oaths  
for the Province of Ontario (LSO 85215T)

Know History  
200-1224 9th Ave SE, Calgary, AB,  
T2G 0T1  
384 Bank St, Ottawa ON, K2P 1Y4