C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P É R I O R C O U R T

(Civil Division)

Nº.: 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

and

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

REPLY AFFIDAVIT OF DR. NICOLE MARION-PATOLA

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

1. I submit this affidavit for the specific purpose of responding to the affidavits sworn by Keith Woolrich dated November 22, 2023 (the **"Woolrich Affidavit"**).

2. I currently serve as Know History's Director of Litigation and Residential Schools and I specialize in Indigenous legal claims, overseeing projects relating to treaty, land claims, and residential schools research.

3. I adopt and rely upon my previous affidavit dated September 22, 2023 and filed with this Honourable Court.

The August 21, 2023 Meeting

4. As I reviewed the Woolrich Affidavit, I also reviewed my contemporaneous notes I had taken of the August 21, 2023 meeting attended by myself, Katie Brais, Martine Gauthier and Keith Woolrich—all from McGill University Health Centre (**"MUHC"**). My Know History colleague, Jennifer Bate, also attended the meeting (the **"MUHC Meeting"**).

5. I am aware and do verily believe to be true that Ms. Bate also took contemporaneous notes of the MUHC Meeting and I have conferred with her to make sure of the veracity of my notes.

6. With regards to paragraph 11 of the Woolrich Affidavit, according to my notes I was told the following by the MUHC attendees:
    a. That they looked through the collection and "found nothing on unclaimed bodies";
    b. That they have 40,000 boxes of administrative records indexed by originating department;
    c. That they had "skimmed the inventories of the boxes", reviewed the relevant records related to our search requests and "found nothing related to unclaimed bodies, deceased patients or Indigenous patients".

7. I consulted with Jennifer Bate and reviewed her contemporaneous notes. Her notes also include the statement that "they have searched what they have" in

relation to our request for records regarding policies for unclaimed bodies and found nothing of relevance.

8. I do not know how those assurances would be the "likely result of a misunderstanding" as claimed by Mr. Woolrich—particularly given my experience and background in working with archives.

9. With regards to paragraph 12 of the Woolrich Affidavit, I have no recollection of Mr. Woolrich asking me about whether hospital records had been useful in my previous research work. I consulted Ms. Bate and she has no recollection of this question as well.

10. I do not understand why Mr. Woolrich would make such a claim as contained in paragraph 12 of the Woolrich Affidavit as, even if the question was asked (which I deny), I would never have responded in the way Mr. Woolrich claims.

11. I have significant experience in historic research related to healthcare in Canada and have accessed hospital archives during that research. Hospital records have proven invaluable in those projects; and I believe those records would be invaluable to the research Know History has been hired to undertake in this matter.

12. If Mr. Woolrich asked the question—which I deny—I would have responded that Know History, as a company, has struggled greatly over the past two (2) years to gain access to hospital records for the purposes of searches for children who disappeared from colonial institutions of assimilation, such as the Indian Residential Schools.

13. That I would never have answered in the manner Mr. Woolrich recollects is supported by my September 22, 2023 affidavit. For example, at paragraph 24, I state that medical records "are necessary to assist in the search for unmarked burials at the RVH and the AMI sites".

14. Further, in the Executive Summary to Know History's Interim Research Report, dated August 11, 2023 (the **"Interim Report"**) (and, therefore, ten (10) days prior to the MUHC Meeting), we state in the second bullet point that medical, patient and staff records are "Records of key important for this project" (Exhibit OSI-5, p.4).

15. Moreover, if Mr. Woolrich asked the question (which I deny) I would never have responded as he has claimed—particularly in the context of the subject of the meeting which was Know History's attempt to understand MUHC's archival system so that we might be able to reach an agreement with MUHC to access any records for the purposes of the investigation that is the focus of this litigation (Exhibit KH-8).

16. Even after the MUHC Meeting, which was specifically requested by myself for "a conversation with someone about how the records are stored and organized" so that Know History could make a more specific research request (Exhibit KH-8, pp.3-4), I still have the following questions (among others) that have yet to really been answered:

    a. What would constitute a "more specific search requests" as Mr. Woolrich states he invited us to provide (see e.g., Woolrich Affidavit at para 9), that would constitute an actionable search of the records held by the MUHC?

    b. Under what conditions could Know History gain authorization to review any of the 40,000 boxes of administrative records that MUHC holds and are organized by department?

    c. Does MUHC or any of the other archives Know History has reached out to have a policy and procedure for establishing research agreements with researchers?

Hurdles to Records Sought

17. As detailed in Know History's Interim Report, "Of particular significance was our inability to access patient records" (Exhibit OSI-5, p.11).

18. Moreover, the Interim Report speaks about how consistent follow-up and correspondence was done with, *inter alia*, the Centre intégré universitaire de santé et de services sociaux de l'Ouest-de-l'Île-de-Montréal (**"CIUSSS"**) and the MUHC, but that none of the "institutions provided Know History with information on available records" (Exhibit OSI-5, p.11).

19. Returning to the Woolrich Affidavit, and, specifically, paragraph 23, the information contained therein is the most detailed information I have been provided at any point with regards to what is actually contained in the Royal Victoria Hospital (**"RVH"**) records held by McGill Archives.

20. Based on the information provided in paragraph 23 of the Woolrich Affidavit, it is Know History's position that even just the name and address as contained in the records could be enough for us to make assumptions related to ethnicity. As a result, I continue to consider those records valuable for our research.

21. The fact that the records are hand-written is not a barrier for Know History. As with any trained historical researcher, Know History's staff are trained at reading handwriting and dealing with paper records. And while I do not dispute that reviewing the records would be time consuming, Know History has a team of researchers who could undertake the work.

22. With regards to paragraphs 14, 16 and 25 of the Woolrich affidavit, Mr. Woolrich appears to be confused about or misunderstanding our requests. Though an electronic “interface” would be ideal, when we have requested finding aids it is definitely not a requirement or a standard among the archival institutions Know History work with.

23. In my opinion, specifically with regards to paragraph 16, is that Mr. Woolrich is playing semantics as what Know History is seeking is just a simple catalogue, index, or list that identifies the organizational structure of the MUHC boxes. For example, if MUHC has 40,000 boxes of administrative records organized by hospital department, are those boxes also organized by other criteria such as subject matter or time period? I do not understand why Mr. Woolrich is interpreting our requests in such a narrow, simplistic and restrictive manner.

24. Even that basic information about the organization of records could potentially help Know History narrow down our search requests to identify boxes that would be of potential relevance and, again, Know History would be able to assist in searching through the boxes to pull the most relevant records.

25. At no point have we been told that the boxes of administrative records contain personal information. As a result, the legislation Mr. Woolrich (and other archives’ representatives we have engaged) has relied upon should not apply to those boxes. Yet access to those records have been denied.

26. With regards to the final question in paragraph 16 above, I am aware of a published article that cites the use of records from the MUHC collection. I am aware that this article is attached to the Affidavit of Kimberly Murray, dated November 14, 2023 as Exhibit OSI-6. The citations in that article indicate that MUHC does have an archival filing structure and that the authors were provided access to patient records.

27. I and others at Know History have consulted with other academics who have accessed the MUHC archives in the past for historic research purposes. In all of those discussions, the academics said the research was for publication purposes.

28. I do not know, and we have never been informed about, under what conditions MUCH released records to those other researchers. In fact, Mr. Woolrich nor any other archival representatives at MUHC or CIUSSS ever informed us of this access by other researchers.

Conclusion

29. I do not deny that Know History has not been able to provide MUHC—or any other relevant archives involved—with the specific names of patients. This is readily

explainable by Know History's denial of access to records that would allow us to provide such information.

30. Based on my experiences with this matter, though, I am uncertain that even if Know History could provide names of specific patients that we would get access to those records.

31. Regardless, at this stage of our research, Know History has not been provided access to any records that include sufficient patient information to allow us to make such a request to MUHC. We have not been able to identify the names of any patients who died while at the AMI.

32. When we discussed access to records at the MUHC Meeting, we were essentially told that they could only pull records out of their collection based on patient names, but that the law would prevent them from ever releasing those files to us.

33. The only exceptions we were told about at the MUHC Meeting to the law was related to the *Archives Act* that allows for the release of confidential information thirty (30) years after someone's death. But even then, we were told that the *Act respecting health services and social services* would still prevent the release of the information if it was from medical records.

34. At the end of the MUHC meeting I explicitly asked about even if we could provide them with a specific request including names of patients that they would still refuse to release the records. Mr. Woolrich agreed with my conclusion.

35. As of the date of this affidavit, I still do not know under what conditions the MUHC would be able to provide hospital records to Know History—aside from learning through the instant application (and not Mr. Woolrich or any other MUHC or other archive representative we have engaged) through a court order.

AND I HAVE SIGNED:

[redacted]

Dr. Nicole Marion-Patola, Know History

SOLEMNLY AFFIRMED BEFORE ME
by video conference on the 30th day of
November, 2023



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

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- **REPLY AFFIDAVIT OF Dr. Nicole Marion-Patola**

Original

Julian N. Falconer
Co-Counsel for the Third-Party Intervener
Law Society No. 29465R
Julianf@Falconers.ca
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9
T.: 416-964-0495
F : 416-929-8179