IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fontaine v. The Attorney General of Canada,* 2013 BCSC 756

Date: 20130501
Docket: L051875
Registry: Vancouver

Between:

Larry Philip Fontaine et al

Plaintiffs

And

The Attorney General of Canada et al

Defendants

Before: The Honourable Madam Justice B.J. Brown

Reasons for Judgment
re: Requests forDirection concerning Lac La Biche Indian Residential School, St. Augustine Indian Residential School and Coqualeetza Indian Residential School

Counsel for Canada:	D. Mouallem
Counsel for the applicant, Independent counsel:	P. Grant K. Williams
Place and Date of Hearing:	Vancouver, B.C. October 18, 2012
Place and Date of Judgment:	Vancouver, B.C. May 01, 2013

[1] On December 15, 2006, the courts in nine provinces and territories concurrently issued reasons approving a national settlement concluding various class actions related to Indian Residential Schools throughout Canada. Those reasons were followed by a set of orders, incorporating the Settlement Agreement and addressing issues pertaining to the implementation and administration of the Settlement Agreement. The orders were issued in substantially the same form in each court. I will refer to these orders collectively as the "Approval Orders".

[2] Each court also issued an order consolidating the actions terminated by the Settlement Agreement into a single nationwide action, titled (in part), *Fontaine v. Canada (Attorney General)*. I will refer to those orders collectively as the "Consolidation Orders".

[3] Two elements of the Settlement Agreement direct compensation to individual Class Members, as that term is defined in the Settlement Agreement. The Common Experience Payment ("CEP") is available to all class members who resided at an Indian Residential School. The Independent Assessment Process ("IAP") provides for compensation to Class Members who have suffered serious physical abuse, sexual abuse or serious psychological harm while resident at an Indian Residential School.

[4] Canada and the other defendants obtained releases. The Settlement Agreement provides at Article 4.06 (g) as follows:

> [...] that the obligations assumed by the defendants under this Agreement are in full and final satisfaction of all claims arising from or in relation to an Indian Residential School or the operation of Indian Residential Schools of the Class Members and that the Approval Orders are the sole recourse on account of any and all claims referred to therein.
>
> [Emphasis added]

[5] The consolidation of actions across Canada into *Fontaine v. Canada (Attorney General)* is similarly limited by the terms of Article 4.01 to those actions arising in relation to Indian Residential Schools:

> The Parties agree that all existing class action statements of claim and representative actions, except the Cloud Class Action, filed against Canada in relation to Indian Residential Schools in any court in any Canadian jurisdiction except the Federal Court of Canada (the "original claims") will be merged into a uniform omnibus Statement of Claim in each jurisdiction (the "Class Actions"). The omnibus Statement of Claim will

> name all plaintiffs named in the original claims and will name as Defendants, Canada and the Church Organizations.
>
> [Emphasis added]

[6] Whether an institution is considered an "Indian Residential School" for the purposes of the Settlement Agreement is clearly critical to the overall settlement scheme created by the parties and approved by the courts.

[7] The Settlement Agreement defines "Indian Residential Schools" as:

> (1) Institutions listed on List "A" to OIRSRC's Dispute Resolution Process attached as Schedule "E";
>
> (2) Institutions listed in Schedule "F" ("Additional Residential Schools") which may be expanded from time to time in accordance with Article 12.01 of this Agreement; and,
>
> (3) Any institution which is determined to meet the criteria set out in Section 12.01(2) and (3) of this Agreement.

[8] In three Requests for Direction, Independent Counsel seeks interpretation of entries on Schedule "E" to the Settlement Agreement. In general, each of the Requests involves circumstances where multiple institutions have operated at different times at a single location. The dispute in each of the Requests centres on which of those institutions were intended to be considered Indian Residential Schools by the parties to the Settlement Agreement.

[9] In substance, Independent Counsel argues that "Lac La Biche (Notre Dame des Victoires)", "St. Augustine (Smokey River)" and "Coqualeetza", all of which appear on Schedule "E", should be understood to extend CEP and IAP eligibility to former students who attended any institution known by those names prior to December 31, 1997, including:

> a. Lac La Biche Mission Boarding School (the "Boarding School"), which operated between 1905 and 1963;
>
> b. St. Augustine Mission School (the "Mission School"), which operated between 1907 and 1951; and
>
> c. Coqualeetza Indian Hospital (the "Indian Hospital"), which operated from 1941.

[10] In responding to the Requests, Canada argues that those descriptors, in the context of the Settlement Agreement, must be understood to refer to three specific institutions, being:

a. Lac La Biche Indian Residential School ("Lac La Biche IRS"), which operated between 1893 and 1898;

b. St. Augustine Indian Residential School ("St. Augustine IRS"), which operated between 1900 and 1907; and

c. Coqualeetza Indian Residential School ("Coqualeetza IRS"), which operated between 1924 and 1940.

[11] For the sake of brevity, I will refer to Lac La Biche IRS, St. Augustine IRS, and Coqualeetza IRS as, collectively, the "Original Institutions". Similarly, I will refer to the Boarding School, the Mission School, and the Indian Hospital collectively as the "Successor Institutions".

[12] Broadly put, it is Canada's position that institutions operating at these locations after the closure and/or relocation of the Original Institutions were distinct from the earlier institutions, and are not Indian Residential Schools.

[13] For the reasons below, I have determined that the disputed entries on Schedule "E" refer only to the Original Institutions, and that the Successor Institutions are not currently Indian Residential Schools for the purposes of the Settlement Agreement.

Historical Context

Lac La Biche

[14] Lac La Biche IRS was operated by the Roman Catholic Sisters of Charity (otherwise known as the Grey Nuns) from September 1893 to June 1898 at the Lac La Biche Mission in Lac La Biche, Alberta. Documentation provided in support of Canada's position indicates that the students and staff of Lac La Biche IRS relocated to new facilities at the Blue Quills Reserve in 1898. As of June 1898, Canada argues, there was no educational institution in operation at the Lac La Biche Mission.

[15] This remained the case until 1905, when the Boarding School was opened by the Daughters of Jesus, a Roman Catholic organization distinct from the Grey Nuns. The Boarding School remained in operation under the administration of the Daughters of Jesus, and later the Oblates of Mary Immaculate, until 1963.

St. Augustine

[16] St. Augustine IRS was operated by the Roman Catholic Sisters of Charity of Providence between July 1900 and October 1907 at the St. Augustine Roman Catholic Mission, near the confluence of Alberta's Smoky and Peace Rivers. Canada's submissions and supporting documentation are unclear about what happened in 1907, but two possible stories emerge. The first, according to the Annual Report of the Department of Indian Affairs for the year ending March 31, 1908, suggests that

> In Treaty 8 a new boarding school building was erected at Sturgeon Lake to take the place of that at Smoky River, at which it was found a satisfactory attendance of children could not be secured.

[17] Canada argues, on the basis of the excerpt above, that Sturgeon Lake IRS succeeded St. Augustine IRS as of October 1907.

[18] Other documents provided in support of Canada's submissions suggest that the staff of St. Augustine IRS relocated to another new institution, Assumption Indian Residential School, at Hay Lake, Alberta. In any event, it is clear that St. Augustine IRS ceased operation the St. Augustine Mission location by the end of 1907.

[19] There was, however, another educational institution in operation at the St. Augustine Mission by the end of 1907, also operated by the Sisters of Charity of Providence. This institution, the Mission School, closed in 1951.

Coqualeetza

[20] Coqualeetza IRS was operated by the United Church of Canada at the time of its closure in 1940, having been established in 1924 at a site in Sardis (now Chilliwack), British Columbia. That location in Sardis had previously hosted an Industrial School and a Mission School. In Canada's submission, Coqualeetza IRS ceased operation after the 1939/1940 school year, and students previously resident there were relocated to St. Michael's Indian Residential School in Alert Bay, British Columbia or to the newly-reconstructed Alberni Indian Residential School.

[21] The buildings which had previously housed Coqualeetza IRS were reopened in July 1941 as the Indian Hospital. The Indian Hospital was funded and operated by Canada and was used primarily as a tuberculosis sanatorium, although the documentation provided in support of

Independent Counsel's position indicates that other routine medical treatment was also provided there.

[22] The documentation also indicates that, although the Indian Hospital treated patients of all ages on an inpatient basis, school-aged patients attended classes and participated in other educational activities during their convalescence at the Indian Hospital.

Submissions of Independent Counsel

[23] Independent Counsel's position relies primarily on the text of the Settlement Agreement and Schedule "E" to support the argument that each of the Successor Institutions should be considered an Indian Residential School for the purposes of the Settlement Agreement.

[24] Schedule "E" is, strictly speaking, nothing more than a list of names. The entries at issue in the three Requests are not atypical in the context of Schedule "E". Other entries appearing on Schedule "E" include "Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)", "St. Mary's (Blood, Immaculate Conception)" and "Morley (Stony/Stoney, replaced McDougall Orphanage)". With few exceptions, entries on Schedule "E" are place names (i.e. "Lebret"), religious references (i.e. "St. Philip's") or, most frequently, a combination of both (i.e. "Assumption (Hay Lake)", "Bishop Horden Hall (Moose Fort, Moose Factory)" and "St. Paul's (Squamish, North Vancouver)").

[25] Independent Counsel notes that, in some instances, Schedule "E" refers to successor and/or predecessor institutions, such as "Guy (Clearwater, the Pas, formerly Sturgeon Landing, SK)". Independent Counsel argues that, because none of "Lac La Biche (Notre Dame des Victoires)", "St. Augustine (Smokey River)" or "Coqualeetza" are limited by date or by reference to a successor institution, they must be taken to apply to any residential institution at which children received instruction operating at those locations during the period covered by the Settlement Agreement.

[26] In its written submissions, Independent Counsel argues that the Successor Institutions were not distinct entities from the Original Institutions. In each Request, Independent Counsel characterizes the relevant Original and Successor Institutions as having been, in fact, a single institution.

[27] Only in reply submissions does Independent Counsel address the Successor Institutions as distinct from the Original Institutions. In that context, Independent Counsel adopts several new approaches. In relation to Lac La Biche, Independent Counsel notes that "Lac La Biche" forms part of the Schedule "E" entry "Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)", and argues that "Lac La Biche (Notre Dame des Victoires)" must therefore refer to an institution other than Lac La Biche IRS. In Independent Counsel's submission, that other institution must be the Boarding School.

[28] In reply submissions on the Request in relation to Coqualeetza, Independent Counsel suggests that the continuation of federal funding after 1941 for the Indian Hospital, an institution at which children were educated and lived away from their homes, is sufficient to indicate that the Indian Hospital was intended to be encompassed by the Schedule "E" reference to "Coqualeetza".

[29] Independent Counsel also notes that, prior to the conclusion of the Settlement Agreement, Canada and the Oblates of Mary Immaculate were defendants to several actions brought by former residents of the Boarding School. Similarly, Canada, the Oblates of Mary Immaculate and the Sisters of Charity of Providence were defendants to at least one action on behalf of former residents of the Mission School.

[30] In the context of the Boarding School and the Mission School, Independent Counsel submits that Canada, the Oblates and the Sisters of Charity of Providence have effectively obtained the benefits of settlement in those actions, as no steps have been taken to advance them since the Settlement Agreement was finalized. Independent Counsel also suggests that the Settlement Agreement provides Canada and the other defendants with releases in respect of actions relating to the Boarding School and the Mission School.

[31] It does not appear from the record that Canada (or any other entity) was defendant to any actions involving the Indian Hospital as of the time the Settlement Agreement was finalized.

[32] As an aid in interpreting Schedule "E", Independent Counsel submits that interpretations of the Settlement Agreement should not produce absurd outcomes. According to Independent Counsel, limiting the meaning of "Lac La Biche (Notre Dame des Victoires)" and "St. Augustine

(Smokey River)" to Lac La Biche IRS and St. Augustine IRS, respectively, would constitute an absurdity, as almost no possible CEP applicants (who are required to have been alive on May 30, 2005) could have attended those institutions. Independent Counsel also submits that a narrow construction would result in the absurd circumstance in which former students of the Boarding School and the Mission School are left without resolution, healing or reconciliation for their experiences, despite the stated intention of the parties that the Settlement Agreement would conclude all litigation relating to Indian Residential Schools.

[33] Furthermore, Independent Counsel argues that interpretation of the Settlement Agreement should be consistent with the context of the surrounding circumstances prevalent at the time it was finalized. To that point, as noted above, Independent Counsel suggests that the parties intended to provide a fair, comprehensive and lasting resolution of the legacy of Indian Residential Schools by settling all litigation brought against Canada with respect to Indian Residential Schools. This, according to Independent Counsel, is a "critical surrounding circumstance" to be considered in interpreting the Settlement Agreement.

[34] Finally, and in the alternative, Independent Counsel takes the position that the children who resided at the Indian Hospital were educated in the same manner as the children who were educated at institutions recognized as Indian Residential Schools. Those children, according to Independent Counsel, should be recognized as having been residents of an Indian Residential School for the purposes of the Settlement Agreement. In the context of this argument, Independent Counsel suggests that the record contains sufficient uncontradicted evidence for the Court to render a determination on the status of the Indian Hospital pursuant to Article 12.

Submissions of Canada

[35] Canada takes the position that the plain and ordinary meaning of the entries in dispute on Schedule "E" is that the Original Institutions were Indian Residential Schools for the purposes of the Settlement Agreement. According to Canada, the declarations sought by Independent Counsel would extend compensation to students of any institution sharing a similar name or location with an Indian Residential School, regardless of the degree to which Canada was involved in its operation.

[36] Canada argues that the Successor Institutions and the Original Institutions were distinct entities, noting that each of the Boarding School and the Mission School employed different staff to educate different pupils from Lac La Biche IRS and St. Augustine IRS. In the case of Coqualeetza IRS, Canada argues that the Indian Hospital was not only a distinct institution from Coqualeetza IRS, it had a distinct purpose, being the provision of medical treatment rather than education.

[37] Canada also argues that, notwithstanding the fact that many entries on Schedule "E" make no reference to specific periods of time during which an institution was an Indian Residential School, it cannot be denied that each institution listed on Schedule "E" operated for a specific period between fixed and ascertainable dates. In essence, the argument is that Schedule "E" refers to discrete institutions rather than geographical locations, notwithstanding the fact that many entries (such as "Shubenacadie", "Sechelt" or "Sept-Îles") are, superficially, nothing more than place names.

[38] In response to Independent Counsel's submission that Canada and the other defendants involved in the operation of the Successor Institutions have obtained the benefit of a release from claims arising in relation to those institutions, Canada notes that the terms of the Settlement Agreement, including any release obtained by Canada and other defendants, apply only in relation to Class Members and the Indian Residential Schools they attended. Canada also argues that the only litigation terminated by the Settlement Agreement was litigation brought by or on behalf of Class Members.

Analysis

[39] Independent Counsel and Canada agree that the interpretive principles set out by Saunders J.A. in *Gilchrist v. Western Star Trucks Inc.*, [2000] B.C.J. No. 164 (C.A.) at paras. 17 and 18, provide the proper framework within which the Settlement Agreement should be interpreted:

> The goal in interpreting an agreement is to discover, objectively, the parties' intention at the time the contract was made. The most significant tool is the language of the agreement itself. This language must be read in the context of the surrounding circumstances prevalent at the time of contracting. Only when the words, viewed objectively, bear two or more reasonable interpretations, may the court consider other matters such as the post-contracting conduct of the parties: [Citations omitted]

> The first inquiry, then, is to determine whether there is only one reasonable meaning to the words in the contract, or more than one. In this search one must look to the surrounding circumstances and the whole of the contract. The words of the contract must be looked at in their ordinary and natural sense and cannot be distorted beyond their actual meaning: [Citations omitted]

[40] Given the scarcity of detail provided by Schedule "E", it is readily apparent that each of "Lac La Biche (Notre Dame des Victoires)", "St. Augustine (Smokey River)" and "Coqualeetza" could bear more than one reasonable meaning. Contrary to Canada's preferred definition, Independent Counsel argues that the entries in dispute refer to all institutions which have existed at the Lac La Biche Mission, the St. Augustine Mission, and the Coqualeetza IRS site in Sardis during the relevant period. As noted above, in the case of Lac La Biche Independent Counsel also suggests that "Lac La Biche (Notre Dame des Victoires)" refers only to the Boarding School, and that the Blue Quills entry ("Blue Quills (Saddle Lake, Lac la Biche, Sacred Heart)") incorporates a reference to Lac La Biche IRS.

[41] Having determined that the disputed phrases could bear more than one reasonable meaning, in accordance with *Gilchrist*, *supra*, other matters, including post-contractual conduct, may be used in determining the intention of the parties. I will address each of the disputed Schedule "E" entries below.

Lac La Biche and St. Augustine

[42] One of the surrounding circumstances relied on by Independent Counsel in its interpretation of Schedule "E" is the existence of actions relating to the Boarding School and the Mission School naming Canada and other parties as defendants at the time the Settlement Agreement was concluded. Taking these circumstances as a starting point, Independent Counsel advances the following positions:

a. It was the intention of the parties to the Settlement Agreement to resolve all litigation relating to Indian Residential Schools, including the Boarding School and the Mission School;

b. "Lac La Biche (Notre Dame des Victoires)" and "St. Augustine (Smokey River)" were included on Schedule "E" because the Boarding School and the Mission School were the subject of Statements of Claim "in relation to Indian Residential Schools"; and

c. Canada and other defendants obtained releases in respect of the actions relating to the Boarding School and the Mission School, but the former students of those institutions obtained no compensation.

[43] As noted above, only those institutions which are named on Schedules “E” and “F” (or which are added to Schedule “F” pursuant to Article 12) are “Indian Residential Schools” for the purposes of the Settlement Agreement. Consequently, in reading the Settlement Agreement, one must read “those institutions named on Schedules “E” and “F” or added to Schedule “F” pursuant to Article 12” at each instance in which the phrase “Indian Residential School” appears. Viewed in this light, two conclusions become apparent.

[44] First, in accordance with Article 4.01 of the Settlement Agreement, only those class or representative actions arising in relation to institutions named on Schedules “E” or “F” have been consolidated into the nationwide *Fontaine v. Canada (Attorney General)* class action by the Consolidation Orders. When an institution is added to Schedule “F” pursuant to Article 12, any outstanding class or representative action pertaining to that institution will also be consolidated into *Fontaine v. Canada (Attorney General)*, and will be concluded by operation of the Settlement Agreement and the Approval Orders.

[45] Second, Canada and the other defendants cannot have obtained releases through Article 4.06 (g) of the Settlement Agreement in relation to any institution which does not appear on Schedules “E” or “F”. In the case of institutions added to Schedule “F” pursuant to Article 12, Canada and the other defendants will obtain a release in respect to that institution only on its addition to Schedule “F”, which also triggers entitlement to compensation for any former students of that institution.

[46] My review of the Settlement Agreement, Schedule “E”, the Approval Orders and the Consolidation Orders, in the context of the guidance provided by the Court of Appeal in *Gilchrist*, *supra*, leads me to the conclusion that the entry “Lac La Biche (Notre Dame des Victoires)” on Schedule “E” was not intended by the parties to refer to the Boarding School. For the same reasons, I must also conclude that “St. Augustine (Smokey River)” was not intended by the parties to refer to the Mission School.

[47] As a starting point, it cannot be that entries on Schedule “E” were intended to refer to geographical locations as opposed to particular institutions. The context of the Settlement Agreement requires each of the entries on Schedules “E” and “F” to refer to a single institution. Any other conclusion would define every educational institution which operated in Brandon,

Manitoba, Kamloops, British Columbia and Regina, Saskatchewan (as well as many other locations) during the relevant period as an Indian Residential School. This would be an absurd outcome that the parties cannot have intended.

[48] "Lac La Biche (Notre Dame des Victoires)" cannot, therefore, refer to both Lac La Biche IRS and the Boarding School. It must be understood to refer to one or the other. By the same logic, "St. Augustine (Smokey River)" must refer to only one of St. Augustine IRS and the Mission School.

[49] While addressing absurdities, I cannot accept the suggestion that it would be absurd for "Lac La Biche (Notre Dame des Victoires)" and "St. Augustine (Smokey River)" to refer only to Lac La Biche IRS and St. Augustine IRS because it is unlikely that any former students of those institutions would be eligible for compensation under the Settlement Agreement. For this conclusion I need look no further than Schedule "E" itself, which includes the entry "Regina". I take this entry to refer to Regina Indian Residential School, which closed permanently in 1910. Clearly, Schedule "E" includes, and was intended to include, institutions which are not likely to be functionally relevant to the compensation scheme set out in the Settlement Agreement.

[50] In the context of the Settlement Agreement, the Approval Orders and the Consolidation Orders, I cannot conclude that the parties intended "Lac La Biche (Notre Dame des Victoires)" and "St. Augustine (Smokey River)" to refer only to the Boarding School and the Mission School. The prior existence of Lac La Biche IRS at the Lac La Biche Mission and St. Augustine IRS at the St. Augustine Mission favours an interpretation limited to those institutions alone.

[51] I am aided in this conclusion by the fact that nothing in the Settlement Agreement, the Approval Orders or the Consolidation Orders indicates that the parties intended actions relating to the Boarding School or the Mission School to be concluded by the Settlement Agreement. Despite the clear wording of Article 4.01, which required the consolidated nationwide class action created by the Settlement Agreement to "name all plaintiffs named in the original claims", the names of the plaintiffs in the actions relating to the Boarding School and the Mission School do not appear in the lengthy style of cause which I truncate as *Fontaine v. Canada (Attorney General)*.

[52] While this fact alone would not be conclusive as to the parties' intent, it is reinforced by the fact that the consolidated *Fontaine v. Canada (Attorney General)* Statement of Claim approved by the Alberta Court of Queen's Bench in the Alberta Consolidation Order omits any reference to any of Lac La Biche IRS, St. Augustine IRS, the Boarding School or the Mission School. The Daughters of Jesus, who were alleged to have operated the Boarding School, do not appear among the groups and entities named as defendants in *Fontaine v. Canada (Attorney General)*.

[53] Although the Missionary Oblates of Mary Immaculate (or variations on that name) are named in both the *Fontaine v. Canada (Attorney General)* style of cause and the consolidated Statement of Claim, the Statement of Claim does not refer to the involvement of the Oblates with either the Boarding School or the Mission School, despite the fact that the Oblates or similarly-named entities are named as having been involved in the operation of several dozen specific institutions across the country. Similarly, although the Sisters of Charity of Providence are named in both the consolidated style of cause and the consolidated Statement of Claim, the Mission School does not appear among the seven institutions the Statement of Claim alleges to have been operated by them.

[54] If, as Independent Counsel suggests, "Lac La Biche (Notre Dame des Victoires)" and "St. Augustine (Smokey River)" were listed on Schedule "E" because the parties to the Settlement Agreement intended for actions in relation to the Boarding School and the Mission School to be settled, that intention ought reasonably to have been evident in the subsequent conduct of the parties in drafting the Consolidation Orders, the consolidated style of cause, or the consolidated Statement of Claim. It is not.

[55] As a result, I conclude that the parties to the Settlement Agreement did not intend that the Boarding School or the Mission School be considered Indian Residential Schools.

Coqualeetza

[56] In the context of the Requests considered here, the Indian Hospital is in some ways an outlier. Unlike the Boarding School and the Mission School, the Indian Hospital was directly operated and funded by Canada. Additionally, the mandate of the Indian Hospital, in contrast to the Boarding School and the Mission School, was not primarily to provide residential education to children.

[57] Another distinction is that, unlike the Boarding School and the Mission School, the record does not indicate that any action had been commenced in relation to the Indian Hospital as of the date the Settlement Agreement was finalized. Nonetheless, as noted above, Independent Counsel suggests that the intention of the parties to the Settlement Agreement to "settle all litigation brought against the Crown or Church Defendants with respect to Indian Residential Schools in Canada" should be considered a critical 'surrounding circumstance' in determining the proper interpretation of "Coqualeetza".

[58] It is difficult, however, to draw any assistance from this line of argument. In the absence of any active litigation in relation to the Indian Hospital, the intention of the parties to the Settlement Agreement to settle all litigation pertaining to "Indian Residential Schools" contributes nothing to understanding the meaning of "Coqualeetza". Contrary to Independent Counsel's assertion, the absence of litigation suggests that the Settlement Agreement was not (and, perhaps, could not have been) intended to extend to the Indian Hospital, as there was no outstanding litigation to be settled in relation to it.

[59] Independent Counsel also made extensive reference in written materials to the fact that children attended classes while being treated at the Indian Hospital. A number of affidavits were included in the record to support the contention that children were educated while convalescing at the Indian Hospital. Unfortunately, they do not assist in determining the intention of the parties to the Settlement Agreement.

[60] As discussed above, the entries on Schedule "E" cannot reasonably have been intended to refer to locations rather than individual institutions. On this point, Independent Counsel rejects Canada's assertion that the Indian Hospital was a distinct institution from Coqualeetza IRS. Instead, Independent Counsel argues that "Coqualeetza" does, in fact, refer to a single, continuous institution incorporating both.

[61] The record does not, however, support such a conclusion. Correspondence between the Principal of Coqualeetza IRS and Canada in the summer of 1940 indicates that most of the staff, students and furniture from Coqualeetza IRS were relocated to new facilities in Alberni at that time. These letters provide a glimpse into the logistics of uprooting an educational establishment over the course of several months, as well as the difficulties associated with ensuring that staff,

students and furniture, having departed from Coqualeetza IRS at various times between June and August, 1940, arrive at new facilities, somewhat distant from the old, in a timely fashion. The last of these letters, dated November 9, 1940, is on “Coqualeetza Residential School” letterhead, but a type-written “Alberni” is substituted for the pre-printed “Sardis, B.C.” This last letter outlines the progress made to that date by students and staff in “settling in” to their new facilities at Alberni. There can be no doubt that the institution which operated as Coqualeetza IRS prior to June 1940 ceased to exist that summer, at least at its previous location in Sardis.

[62] The final point to be determined, therefore, is whether the Schedule “E” reference to “Coqualeetza” refers to the Indian Hospital or Coqualeetza IRS, as it can refer to only one.

[63] It must, in my opinion, be the latter. As with the Lac La Biche and St. Augustine Requests, the previous existence of a Residential School named “Coqualeetza” operated by the Methodist Church and the United Church of Canada under Canada’s supervision suggests that to be the more likely intention of the parties.

[64] This conclusion is supported by the fact that the consolidated Statement of Claim refers to “Coqualeetza” only twice. The first occurs in the context of a list of institutions allegedly operated by the United Church of Canada. In this list, the entry “Coqualeetza” appears below the heading “Schools and Dates of Involvement”, with the notations “Chilliwack, BC,” and “1925-1937”.

[65] Similarly, the second reference to “Coqualeetza” in the consolidated Statement of Claim is in the context of a list of institutions allegedly operated by the Methodist Church of Canada. The information set out in this entry is identical to the United Church entry above, except that the dates are listed as “1886-1925”.

[66] While I cannot, on the record before me, reconcile the discrepancy between the dates of involvement set out in the consolidated Statement of Claim and the fact that Coqualeetza IRS was still in existence under the auspices of the United Church of Canada until the summer of 1940, I need not do so for the purposes of this Request. Suffice it to say, the consolidated Statement of Claim makes no reference whatsoever to the Indian Hospital, or any reference at all to “Coqualeetza” after 1937. It does, however, clearly refer to the institution operated by the

United Church of Canada, and the Methodist Church before it, between 1886 and 1937. These can only have been intended to be references to Coqualeetza IRS, as the Indian Hospital did not come into being until 1941.

[67] I cannot, on the basis of the above, conclude otherwise than that Coqualeetza IRS was intended to be an Indian Residential School for the purposes of the Settlement Agreement, and that the Indian Hospital was not.

[68] Although Independent Counsel requested that I consider whether the Indian Hospital should be added to Schedule "F" pursuant to Article 12 of the Settlement Agreement, it would not be appropriate for me to do so in the context of a Request for Direction such as those decided in these reasons, which sought only directions as to the proper interpretation of the Settlement Agreement. An Article 12 inquiry requires an extensive canvassing of the relationship between Canada and the proposed Indian Residential School, and, ultimately, findings of fact upon which the Article 12 determination will turn. This is not the appropriate proceeding in which to do so.

Conclusion

[69] In summary, notwithstanding any ambiguity in the meaning of "Lac La Biche (Notre Dame des Victoires)", "St. Augustine (Smokey River)" and "Coqualeetza", I must conclude that those phrases can only be understood to refer to Lac La Biche IRS, St. Augustine IRS and Coqualeetza IRS, respectively. I can see no indication in the Settlement Agreement or its Schedules that any other meaning was intended.

[70] When viewed in the context of the subsequent conduct of the drafters of the consolidated Statement of Claim and style of cause in *Fontaine v. Canada (Attorney General)*, nothing indicates that the parties intended any of the Successor Institutions to be considered Indian Residential Schools.

[71] The Successor Institutions are not presently Indian Residential Schools for the purposes of the Settlement Agreement. As a result, actions relating to the Boarding School and the Mission School were not concluded by the Settlement Agreement. Canada and the other defendants to those actions did not obtain releases in relation to the Boarding School or the Mission School by operation of the Settlement Agreement or the Approval Orders. Residence at the Boarding

School, the Mission School or the Indian Hospital is not, therefore, sufficient for former residents to be considered Class Members for the purposes of the Settlement Agreement.

[72] In light of the fact that this Direction confirmed the existence of ambiguities in the terms of Schedule “E”, there will be no order as to costs.

“B.J. Brown J.”

The Honourable Madam Justice B.J. Brown