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HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Independent Special Advisor
Honourable Ian Pitfield
ihp@pitfield.com
604-828-5494

April 24th 2015

RE: Breaches of the IRSSA by the Defendant, the Government of Canada

Mr. Pitfield,

In the settlement process of the IRSSA for the Survivors of St. Anne's the federal government, being the defendant, has been found by the Ontario Superior Court to have breached its legal obligations thereby violating the Survivor's legal rights and resulting in a denial of justice. These repeated breaches in the disclosure process included the suppression of over 12,000 documents and the submission of false narratives. These legal breaches appear to be on-going with further filings before the courts regarding St. Anne's and now other residential school cases as well.

Upon originally learning of the federal government's violation of its legal obligations, my constituents approached me in my capacity as their Member of Parliament. I wrote the Federal Minister's responsible for the IRSSA seeking the reasons for these legal breaches and what remedies would be introduced to prevent them from happening again.

On July 17 2013 the Minister of Aboriginal Affairs responded with a clear misunderstanding of the federal government's legal obligations that the court later ruled to be in violation of the IRSSA:

"The Government of Canada's disclosure obligations under the Independent Assessment Process do not however include the requirement to seek out the investigative files of police forces...the statements made to the Ontario Provincial Police in the course of its investigation regarding the St. Anne's Indian Residential School, referred to in your letter, cannot in Canada's view, be used as evidence in the Independent Assessment Process."

On July 14th 2014 the Minister of Justice responded with the same misunderstanding of the federal government's legal obligations that the court later ruled to be in violation of the IRSSA:

"to date, no IAP claimant has been prejudiced by alleged gaps in the government's document disclosure...as you know there are legal limitations on the Government's ability to produce documents that are under the control of third parties, specifically the OPP."

It is unsurprising that these legal breaches occurred given that the Ministers responsible for the IRSSA did not properly understand the federal government's legal obligations. Not only did the Ministers in charge misunderstand their legal obligations, but, the reasons for these legal breaches were never

given, remedies were not introduced to prevent them from happening again, breaches appear to be continuing, and justice continues to be in question.

Since this is a legal process, I expected the IAP to have a role in enforcing the agreement. That is why, upon reading Justice Perell's ruling I wrote the Chief Adjudicator, the Oversight Committee Chair, and the National Administration Committee of the IRSSA to see if they could bring accountability and justice to the process.

On September 19th 2014 the Oversight Committee responded:

"I must advise that the Oversight Committee is not empowered to compel the production of documents from parties."

On December 3rd 2014, the Chief Adjudicator wrote:

"As it appears that fundamentally your concerns continue to relate to the conduct of Canada and its representatives, I ask that you direct your further communications in this regard to the Honourable Peter Mckay, Minister of Justice and Attorney General for Canada and/or the Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development."

On February 24th 2015 Peter Grant wrote on behalf of the National Administration Committee

"The NAC does not have authority over any of the parties or stakeholders, claimants, or their legal representatives nor is it responsible for the administration of the Adjudication Secretariat...the IAP is not a watchdog body, or an entity capable of safeguarding claimants from improper behavior."

In summary, they have all stated that they do not have a substantive role in enforcing this legal process. It is therefore unsurprising that claimant's lawyers appear to be arguing that the process itself appears to have procedures biased against the Survivors in addition to these legal breaches. In my eyes, the result of the IRSSA has been an adversarial legal process where the federal government has infinite resources and the Survivors are some of the most marginalized individuals in society.

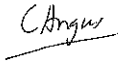
The government's breaches of the legal process and the absence of a body to enforce the agreement puts at risk the integrity and legal standing of the entire settlement agreement as initially warned by Justice Winkler and ex-Chief Adjudicator Dan Ish. For this process to have proper legal standing and achieve justice it cannot appear to have a bias or potential conflict of interest. It must withstand judicial scrutiny.

The IRSSAA is supposed to be a legal process that provides healing and reconciliation for unimaginably painful moments rooted in a very dark chapter in our history. The federal government cannot opt to put itself above the law of the land. To ensure the moral and legal integrity of the process there is an obligation to act. The procedural and substantive rights of the claimants must be protected.

On behalf of the National Administration Committee of the Indian Residential School Agreement, Peter Grant referred my office to you because in his words you are *"the Independent Special Advisor established by the Courts to be responsible for investigating concerns within the IAP with a role largely focused on ensuring appropriate behavior from counsel acting within the IAP."*

I am writing you to ask if your role includes investigating the defendant's council in the IAP process. If so, I would be happy to provide you further information so that someone can look into the federal government's legal breaches of the IRSSA that appear to be ongoing. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "C. Angus". The signature is written in dark ink and is positioned above the printed name.

Charlie Angus
MP Timmins-James Bay