

*Charlie Angus*

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HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

The Honourable Peter MacKay  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

February 28, 2014

**Re: The Presentation of a False Evidence Narrative for the St. Anne's Residential School Legal Adjudication Process**

Dear Minister MacKay,

Thank you for your letter dated January 14<sup>th</sup> 2014 regarding the failure of your officials to disclose evidence to the adjudication process dealing with compensation for the survivors of St. Anne's Residential school. Your response was sent on the eve of a damning Ontario Superior Court ruling against your government. In that ruling, Justice Perrell focused on the legal obligations that were breached when your officials withheld evidence concerning the crimes committed at St. Anne's Residential School from Independent Assessment Process (IAP). Your letter fails to address this breach. However, the reason for this letter is your failure to explain an equally important issue I raised with you over six months ago concerning the decision by your officials to present the IAP with a false evidence narrative. This narrative formed the basis for what was supposed to be a "non-adversarial" adjudication process. And unfortunately, due to the actions of your officials, this process has been anything but "non-adversarial".

Beginning with the decision to withhold evidence from the IAP:

The Ontario Superior Court rejected your government's claim that you weren't obligated to "seek out" the evidence gathered by the OPP, nor to share knowledge of this

investigation with the IAP. Justice Perrell correctly noted that, under the terms of the Residential School Settlement Agreement, the government of Canada had a legal duty to *"search for, collect and provide a report about the persons named in the Application Form as having abused the Claimant... as well as any allegations of physical or sexual abuse committed by such persons, where such allegations were made while the person was an employee or student."* (Ruling paragraph 134).

The Court also found that the failure to fulfil this duty compromised the legal rights of the survivors of these horrific crimes. *"Canada's failure to produce the OPP documents about St. Anne's has compromised the IAP and denied the Claimants access to justice."*

From the presentation of evidence at the Ontario Superior Court we learned the extent of knowledge your officials had regarding the sexual and physical crimes committed against children at St. Anne's. The OPP police evidence was obtained by the Justice Department through court order in 2003. At the time, the Justice Department took the position that obtaining access to this evidence was necessary to protect the interests of the *defendant* Canada. According to the June 24, 2003 affidavit of Justice Department official Haniya Sheikh, it would be *"unfair to require the Crown Defendant to proceed to trial without production of these documents."*

Surely, if it was unfair to the defendant to proceed to litigation without access to this evidence, it was doubly unfair to deny access to this evidence to the victims. This brings us to the decision to prepare a false evidence narrative. In your letter to me, you admit that your officials had a legal obligation to prepare a factual evidence narrative.

*"The government has an obligation to gather documents and draft reports with respect to the various claims alleged. To the extent possible, reports reference criminal convictions."*

However, this was not done and you need to explain why. For your review, I am forwarding you the St. Anne's evidence narrative that clearly states: *"No known documents of sexual abuse at Fort Albany IRS. No known incident documents of sexual abuse at Fort Albany IRS."*

This false narrative presented the IAP with an itinerary of irrelevant information about school laundry services, lunches and parent-teacher committee meetings from 1969. It is really straining credulity to think your officials went searching for parent-teacher notes from 40 year ago while ignoring the huge trove of evidence sitting in your department regarding known cases of sexual assault, torture and psychological abuse contained in over 982 witness statements your department gained access to through a court order in 2003.

The effect of this incomplete narrative meant that lawyers for the survivors were forced to rely on oral testimony and a narrative that stated there was nothing to support their claims, while your lawyers went into the IAP with intimate knowledge of the extent of

crimes committed by 180 identified perpetrators of physical and sexual abuse, rape and torture of children at St. Anne's.

What is even more disturbing is the fact that after I publicly challenged your government on this false evidence narrative, a new narrative was prepared by Justice Department. This narrative prepared on July 26, 2013 was completely different than the original narrative because it included known charges against adult perpetrators of sexual and physical abuse at St. Anne's. This revision is entitled "Amendments to S. Anne's IRS narrative – *In response to Charlie Angus*".

This narrative was prepared for your office by Seeta Sunga, the Strategic Advisor to the Director General of Canada for victim reparations, civil litigation and the Truth and Reconciliation Commission. Surely given what the department knew about St. Anne's there was a higher obligation to present an accurate narrative than what appears to be mere damage control "in response" to being publicly outed?

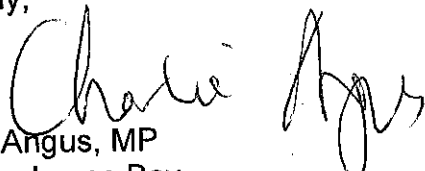
The duty to disclose is a fundamental tenet of justice. The breach of this duty crosses legal, fiduciary and professional boundaries. However in the case of the breach of rights for St. Anne's survivors it appears that the failure to disclose was further augmented by the presentation of a false evidence inventory. You need to explain this breach to the survivors of St. Anne's.

You need to also explain why they should have any trust in a process that has been undermined by the actions of your officials and has proven to be anything but non-adversarial. At stake is the credibility of the Prime Minister's apology to the survivors of this horrific chapter in Canadian history.

Also at stake, is your claim to put victims first under your tenure as Attorney General. You need to explain why the survivors of St. Anne's have been left out of this commitment.

It is unsurprising that as a result, the St. Anne's survivors have written to express their objection to the very legal officials who undermined their basic legal rights are still now sitting across from them in the IAP hearings. They rightly ask for the Justice Department lawyers who have been involved up to this point to be removed from the hearings and replaced by untainted other legal representation.

Sincerely,

  
Charlie Angus, MP  
Timmins-James Bay

Cc. Edmund Metatawabin, Peetabeck Keway Keykaywin Association  
Grand Chief Stan Louttit, Mushkegowuk Council  
Justice Murray Sinclair, Truth and Reconciliation Commission

National Grand Chief Shawn Atleo, Assembly of First Nations  
Deputy Grand Chief Alvin Fiddler, Nishnawbe Aski Nation  
Chief Rex Knappaysweet, Fort Albany First Nation  
Chief Theresa Spence, Attawapiskat First Nation  
Chief Derek Stephen, Kashechewan First Nation  
Chief Edmund Hunter, Peawanuck First Nation  
Chief Norm Hardisty, Moose Cree First Nation  
Jean Crowder, NDP Aboriginal Affairs Critic

Incidents (Sexual)

No known incidents found in documents regarding sexual abuse at Fort Albany IRS.

Incidents (Student on Student)

No known incidents found in documents regarding sexual abuse at Fort Albany IRS.

**ADDITIONAL INFORMATION**

1912 Consumption, scurvy and scurfula were prevalent and resulted in two deaths [FTA-000119; FTA-000123].

Early 1960s

A school committee was to be formed in every government agency in the early 1960s. James Bay reported that this could be done only in Moosonee [FTA-000601; FTA-000597; FTA-000597a-c; FTA-000602; FTA-000596; FTA-000595].

1964 Parents complained about the appalling condition of their children's clothing [FTA-000254; FTA-000255].

1972 A document, written by the students at Albany Residential School entitled, *We Live at School*, describes the student life at the school, as well as some of the employees. It includes a drawing depicting the layout of the buildings on the mission site [FTA-000429].

1975 Concerns regarding several issues at the school were noted in a letter to the District Supervisor in 1975 [FTA-000493].

1976 A December 1976 confidential report reveals that the education program in the James Bay District suffered from a lack of continuity in administrative personnel [FTA-000603].

1992 Former students of the St. Anne's Residential School organized a conference in Fort Albany to examine a malady known as the Residential School Syndrome [FTA-000575].

Laundry and cafeteria services were provided to the nearby hospital and mission by the church-run school [FTA-000305a].

**School Committee:**

Minutes were found for a meeting by a school-home committee meeting, held December 9, 1969. Thirty parents and the school principal attended. Discussions gathered around three topics: The home conditions required if a school is opened in the village, the administration of the school, and the proper use of the school or the program

**From:** Seetal Sunga  
**To:** Ana Stuhec; Caroline Clark; Janet Brooks; Linda Denis  
**CC:** Catherine Coughlan; Michael Bader  
**Date:** 7/26/2013 10:02 AM  
**Subject:** amendments to St. Anne's IRS Narrative - Response to Charlie Angus

Hello All:

I am in the process of working with the researchers to make sure that the St. Anne's narrative includes the information that needs to be included.

Is the following information in the narrative enough information? I have added the bold text so you can see where the investigation is referenced. They do not reference any investigation documents as they don't have them.

#### DOCUMENTS REFERRING TO SCHOOL INCIDENTS

To date, we are aware of the following convictions for abuse at St. Anne's (Fort Albany) IRS.

1997 A former IRS staff member was charged **following an Ontario Provincial Police** investigation and was convicted of one count of indecent assault on a male. The former staff member was found guilty and the sentence did not include jail time [FTA-002435; FTA-001109, pg. 12].

1997 A former IRS staff member was charged **following an Ontario Provincial Police investigation**, found guilty on three counts of assault causing bodily harm, and was given a conditional sentence [FTA-002435; FTA-001109, pg. 15].

1997 A former IRS staff member was charged **following an Ontario Provincial Police investigation**, pled guilty to one count of indecent assault on a male, and was sentenced to eight months in prison [FTA-002435; FTA-001109, pg. 15].

1997 A former IRS staff member was charged **following an Ontario Provincial Police investigation** and entered a guilty plea on five counts of indecent assault upon a male. The Crown withdrew two charges of gross indecency. The staff member was sentenced to 18 months in prison [FTA-002435; FTA-001109, pg. 19].

1998 A former staff member who was a nun was convicted on charges of assaulting children at IRS [FTA-002436]

1999 A former IRS supervisor was charged **following an Ontario Provincial Police investigation** and was convicted for abuse including three counts of administering a noxious substance and two counts of simple assault. The former staff member was given a conditional sentence [FTA-002435; FTA-002437; FTA-002438; FTA-001109, pg. 21].

The following suggestions of abuse, listed chronologically, comprise all known identifiable complaints and/or allegations received by government officials and all available information regarding the follow-up and outcome.

#### Incidents (Sexual)

1996 A news article indicated that assault and sexual assault charges were laid against seven former IRS employees **following an Ontario Provincial Police investigation**. The staff positions of the former IRS employees were not mentioned [FTA-002435].

1997 to 1998 A former IRS staff member was charged with one count of indecent assault on a minor following an Ontario Provincial Police investigation. The charges were withdrawn after the complainant did not appear in court [FTA-002435; FTA-001109, pg. 13].

Minister of Justice  
and Attorney General of Canada



Ministre de la Justice  
et procureur général du Canada

The Honourable / L'honorable Peter MacKay, P.C., Q.C., M.P. / c.p., c.r., député  
Ottawa, Canada K1A 0H8

**JAN 14 2014**

Mr. Charlie Angus, M.P.  
Suite 202  
60 Wilson Avenue  
Timmins ON P4N 2S7

Dear Mr. Angus:

Thank you for your correspondence of July 21, 2013, and November 25, 2013. Your kind words on the occasion of my appointment as Minister of Justice and Attorney General of Canada are indeed appreciated. I regret the lengthy delay in responding.

You raise several concerns about allegations that the Government of Canada is not complying with the terms of the Indian Residential Schools Settlement Agreement, particularly with respect to document production for the Independent Assessment Process (IAP). Your concerns touch on a variety of matters, including the records of the Ontario Provincial Police (OPP) 1990 investigation into allegations of sexual and physical abuse at St. Anne's Indian Residential School (IRS), and the transcripts of criminal proceedings involving former employees of the IRS.

I can assure you that the Government takes its obligations under the Settlement Agreement very seriously. This agreement is a product of negotiations and co-operation between multiple parties including Canada, Aboriginal and Inuit organizations, and Church entities. It is an example of what can be achieved when the parties come together to address matters of such importance. Indeed, nine courts across the country approved the Agreement as a fair and reasonable settlement for former students.

The goal of the IAP is to provide former students with a safe forum to recount their experiences at Indian Residential Schools before a neutral and independent adjudicator. Unlike litigation or hearings in court, the IAP gives former students the opportunity to speak of these experiences in a confidential and non-adversarial environment. This claimant-centred process is less onerous and, consequently, it results in a faster resolution of claims.

As of October 31, 2013, the Indian Residential Schools Adjudication Secretariat has received 37,897 IAP applications. Of these, 24,402 claims have been resolved. This amounts to approximately \$2.160 billion in compensation, including awards, legal fees, and disbursements. The important work of achieving resolution of individual claims under the Settlement Agreement continues as per the court-approved process.

**Canada**

The Settlement Agreement outlines the obligations under the IAP that must be met by various parties. The Government has an obligation to gather documents and draft reports with respect to various aspects of the claims alleged. To the extent possible, reports reference criminal convictions. Upon request, the supporting documents are made available to claimant counsel. Tremendous effort is also made to ensure adjudicators have the necessary information required by the Settlement Agreement to assess IAP claims. We do all we can to meet our obligations within the legal boundaries.

To date, no IAP claimant has been prejudiced by alleged gaps in the Government's document disclosure. In fact, 98% of all the IAP decisions rendered to date by former students at St. Anne's IRS have been compensated.

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. That said, in order to facilitate issues in this regard, we took the initiative to file a request for direction with the Ontario Superior Court of Justice on September 5, 2013, to seek the Court's direction. Specifically, the Court was asked whether the OPP, as a non-party to the Settlement Agreement, must provide copies of its investigation of St. Anne's IRS to claimant counsel and under what conditions. I understand that claimant counsel has also filed a request to obtain direction from the Court regarding disclosure obligations. As you are no doubt aware, the Court heard both requests for direction on December 17, 2013. Once the Court renders its decision, the disclosure of documents under the control of the OPP will be resolved.

Thank you again for writing.

Yours truly,



The Honourable Peter MacKay

c.c.: The Honourable Bernard Valcourt, P.C., M.P.  
Minister of Aboriginal Affairs and Northern Development