

view became that departments need provide the TRC only with departmental researcher status to access their archived documents at LAC so that the Commission could conduct its own research.

The TRC's position was that Canada was obligated to produce all relevant documents, including those at LAC, and had an additional obligation to provide the Commission with access to LAC in order to conduct its own research. Although the TRC, in the spirit of co-operation, had agreed to obtain departmental researcher status, it maintained that this was unnecessary because the Settlement Agreement already gave the Commission unconditional access to the archives. The end result was that Canada had effectively shifted the onus of its responsibility to produce LAC documents onto the TRC.

In rendering his decision in favour of the Commission, Justice Stephen Goudge ruled:

In my view, the first paragraph of section 11 sets out Canada's basic obligation concerning documents in its possession or control. The plain meaning of the language is straightforward. It is to provide all relevant documents to the TRC. The obligation is in unqualified language unlimited by where the documents are located within the government of Canada. Nor is the obligation limited to the documents assembled by Canada for production in the underlying litigation. [para. 69]

I therefore conclude that given their meaning, the language in section 11 of Schedule N does not exclude documents archived at LAC from Canada's obligation to the TRC. The context in which the Settlement Agreement was created provides further important support for that conclusion in several ways. [para. 71]

First, telling the history of Indian Residential Schools was clearly seen as a central aspect of the mandate of the TRC when the Settlement Agreement was made. Since Canada played a vital role in the IRS [Indian Residential School] system, Canada's documents wherever they were held, would have been understood as a very important historical resource for this purpose. [para. 72]

Second, the Settlement Agreement charged the TRC with compiling an historical record of the IRS system to be accessible to the public in the future. Here too, Canada's documents, wherever housed, would have been seen to be vital to this task. [para. 73]

Third, the story of the history and the historical record to be compiled cover over 100 years and dates back to the nineteenth century. In light of this time span, it would have been understood at the time of the Settlement Agreement that much of the relevant documentary record in Canada's possession would be archived in LAC and would no longer be in the active or semi-active files of the departments of the Government of Canada. [para. 74]

Fourth, it would have been obvious that the experienced staff at LAC would have vastly more ability to identify and organize the relevant documents at LAC than would the newly hired staff of the newly formed TRC. It would have made little sense to give