

over of documents. Once the Commission's document-collection processes began, it became increasingly apparent that Canada would not produce numerous documents that appeared to be relevant to the Commission's work.²

First, the federal government declined to produce all relevant documents held in its national archives, Library and Archives Canada. Library and Archives Canada took a position that it was not required to organize and produce to the Commission up to five million documents in its possession that were directly relevant to residential schools. Library and Archives Canada maintained that the Settlement Agreement required it to provide the Commission only with access to its archives. A lengthy process, which included the filing of written arguments, affidavit evidence, and court-ordered mediation between Canada and the Commission, culminated in a hearing before the Honourable Justice Stephen Goudge of the Ontario Court of Appeal (sitting as an Ontario Superior Court Justice) on December 20 and 21, 2012. By judgment dated January 30, 2013, Justice Goudge ruled in favour of the Commission's position, that the terms of the Settlement Agreement provided that all relevant documents held by the Government of Canada, wherever they may be held, must be produced to the Commission.³ Following the ruling, the Government of Canada began producing documents from Library and Archives Canada to the Commission.

Less than a year later, the Commission once again was required to go to court for judicial guidance respecting Canada's document-production obligations. At issue were records in the possession of the Government of Canada from the investigation of the Ontario Provincial Police (OPP) into abuse at the Fort Albany, Ontario, residential school in Ontario (also known as the St. Anne's school). The Commission had attempted to obtain the OPP documents from both the OPP and the federal government. Although the OPP did not respond to the Commission's overtures, it later took the position that it required judicial authorization to produce the records to the Commission, but it did not oppose disclosure. The Government of Canada, however, opposed production of the documents to both the Commission and to the lawyers for residential school Survivors. The government took the position that it was barred from producing the documents because they obtained the documents from the OPP subject to an undertaking that it would not, in turn, disclose the documents to any third party.⁴ The Government of Canada further argued that it was not obliged to seek documents from third parties for disclosure to the Commission and that any disclosure to the Commission of the St. Anne's records would amount to burdening the Government of Canada with this obligation.⁵

On October 18, 2013, the Commission filed a Request for Directions as to whether the Government of Canada was obliged to disclose the records of the OPP investigation of St. Anne's. After argument before the Honourable Justice Paul Perell of the Ontario Superior Court of Justice on December 17 and 18, 2013, the court ordered Canada to produce its documents to the Commission.⁶ Recognizing that Canada had only a subset of the OPP investigation documents, the court went one step further and ordered that the OPP produce all the investigation records in its possession to the Commission.⁷