



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
for British Columbia

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Office of the Information and  
Privacy Commissioner of Alberta

*Published in the Globe and Mail Thursday July 26, 2014.*

## **Residential school survivors must decide the fate of their testimony**

The abuses perpetrated in Canada's aboriginal residential schools are a dark chapter in our history that must never be forgotten. Honouring the lives and experiences of residential school survivors, in their own words, is an essential part of healing and reconciliation.

Recently, there has been debate about how and whether certain records and testimony of residential school survivors should be preserved for future generations.

The Truth and Reconciliation Commission (TRC), whose mandate is to provide a fulsome public record of the residential school experience, is seeking to archive records from the Independent Assessment Process, where adjudicators are charged with resolving the compensation claims of 38,000 residential school survivors who suffered serious sexual, physical, and psychological abuse in an out-of-court process.

Records created or collected by the Independent Assessment Process contain highly sensitive personal information including medical records, psychological assessments, testimony, letters, personal financial records, and treatment plans for future care.

The chief adjudicator of the process has asked the Ontario Superior Court to stop the TRC from including the records of these 38,000 individuals in the National Research Centre, housed at the University of Manitoba.

The Centre will include millions of records such as photographs, artifacts, audio and video recordings, provided voluntarily to the Commission. This collection will serve as a fulsome historic record to ensure Canadians do not forget their past.

On the one hand, there are those who maintain that residential school survivors will be silenced if the documents of these 38,000 individuals are destroyed. On the other hand are those who argue that the disclosure of this sensitive personal information to the Commission would violate the trust of the individuals who provided testimony on the basis of confidentiality.

This is a complex legal and jurisdictional matter. As information and privacy commissioners responsible for adjudicating the collective 'right to know' and the protection of personal privacy, we believe that any decisions made concerning the final disposition of these sensitive records should be guided by long-established and foundational privacy principles.

At the heart of the matter is informational self-determination. Personal information is by definition information *about* a person. That person's control of their own personal information is at the heart of the right to privacy. Without control, one cannot fully exercise privacy rights.

Claimants that participated in the Independent Assessment Process were promised confidentiality. There was no notification or consent for future use of the records of these private hearings. No doubt there are some survivors who would give their express consent, and provide their transcripts for an archival record, to be opened for research now or at some time in the future. There are others though, who, if given a choice, would put an end to the inter-generational tragedy of the residential school experience and support destruction of the files.

The work of the Truth and Reconciliation Commission has been instrumental in examining the abuses that took place in residential schools and holding government and churches to account. Likewise, the Independent Assessment Process has given tens of thousands of survivors the opportunity to secure compensation in private and, more importantly, closure for the abuse they endured.

The question of whether to include these individuals in an archival record should not be answered by commissioners or adjudicators, but instead the people whom the information is about. What is needed now is for these 38,000 survivors to be the authors of their own legacy, in the name of privacy, dignity and choice.



Elizabeth Denham  
Information and Privacy Commissioner for B.C.



Jill Clayton  
Information and Privacy Commissioner of Alberta