LAW SCHOOL

The School: a Case Brief

Records, evidence and the Calls to Action.

The issue

Who controls the records of what happened at the Mohawk Institute: the testimony survivors gave, the institutions' archives, and the evidence of the ground search; and what does the law require to preserve them and give survivors and families access?

The instruments

Instrument	Date	What it does
Indian Residential Schools Settlement Agreement	2006	The settlement, including the Independent Assessment Process
Truth and Reconciliation Commission	2008–2015	Testimony and records; the Calls to Action
Canada's apology	11 June 2008	Apology for residential schools
The Secretariat's mandate	12 Apr 2011	The Nation's own investigation

The statutes

Library and Archives of Canada Act, SC 2004, c 11.

Privacy Act, RSC 1985, c P-21.

The cases

Fontaine v Canada (AG), 2017 SCC 47

Records created in the Independent Assessment Process were confidential and to be destroyed after a retention period unless the claimant chose to preserve them.

The arguments

	For destruction or restriction	For preservation and access
Confidentiality	Survivors were promised confidentiality	Survivors may choose to preserve their own records
Archives	Institutional records are governed by statute	The Calls to Action ask for records to be shared
The Nation's record	No statutory status	Its own investigation, under its own seal
Families	Privacy of the deceased	Families' need to know what happened to their children

Weak points to test

Both sides: the balance between survivors' privacy and the public's need to know; the incompleteness of the records; the different holders of records.

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Briefing note

A records officer is asked by a family for documents about a child who died at the Mohawk Institute. In 150 to 200 words, advise the officer: what may be released, to whom, and what support to offer the family. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

A family seeks an order for access to records held by an institution about a child who died at the Mohawk Institute in the 1930s. The institution relies on privacy and confidentiality.

For the family: the Calls to Action, the family's interest, the passage of time. **For the institution:** privacy, confidentiality and Fontaine. **For both:** how to honour survivors' choices and families' needs.

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A worked outline: IRAC

Step	For the family
Issue	Should the family have access to the records?
Rule	Privacy law; Fontaine on survivors’ choices; the Calls to Action 71 to 76.
Application	The child’s death is the family’s concern; time has passed; the Calls ask for disclosure.
Conclusion	An order for access, with conditions.

The institution’s outline runs the same four steps the other way. Students draft it themselves.

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Written assignment: memorandum of argument

The task

Write the memorandum of argument for one side of the moot on this sheet: the family or the institution, as your instructor assigns. Then argue it.

Requirements

- 2,500 words, not counting the list of authorities.
- Every authority cited in McGill Guide form, with pinpoints.
- At least six authorities, including at least two not on this sheet.
- Meet the other side’s best argument in Part III, not just your own case.
- Only facts set out in the moot problem; no new facts.

Structure

- Part I, the facts: a neutral statement, no more than two pages.
- Part II, the issues: each as a single question.
- Part III, the law and argument: issue by issue, the rule, its application, and the other side’s answer met.
- Part IV, the order sought: precisely worded.
- Part V, the list of authorities: statutes, then cases, then secondary sources.

Timeline

- Week 1: research; a one-page outline of your issues and authorities.
- Week 2: the full memorandum, exchanged with the other side.
- Week 3: oral argument.

Oral argument

Fifteen minutes a side, two minutes’ reply for the applicant. Expect questions from the bench from the first minute; the marking guide on the instructor’s page applies.

Integrity

Your memorandum must be your own. If you use an AI tool for research or drafting, verify every authority against the reports and say so in a note; an invented citation fails the assignment.

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For the instructor: standards met

Universal competencies	Identify key facts and claims; Understand perspective and point of view; Analyse and evaluate evidence; Apply: what does this mean for us?. The same everywhere, whatever the curriculum.
TRC Call to Action 28	Residential schools, the Settlement Agreement, and the Calls to Action; with care for survivors.
National Requirement	Problem-solving, legal research, and oral and written communication.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a records officer; a moot on access to records.
Balance	The arguments both ways and their weak points; the brief names its own position.
Time	One class of 90 minutes; the moot as a separate session.
Care	A trauma-informed approach; If this topic is hard for you or someone you know: the Indian Residential Schools Crisis Line, day and night, 1-866-925-4419.

Marking guide: the moot

	Outstanding	Strong	Competent	Weak
Law	Every authority on point, accurately stated and pinpointed	Main authorities correct	Some missed or loose	Wrong or absent
Analysis	Applies the law to the facts and meets the other side's best point	Applies the law clearly	Applies it in part	States law without applying it
Structure	A clear road map, followed throughout	Clear and mostly followed	Some drift	Hard to follow
Advocacy	Answers the bench directly and returns to the theory	Answers well	Answers with difficulty	Avoids the questions

This brief sets out the Mohawk Nation of Grand River's position beside others, for study and argument. The case summaries are for teaching: read the reports. It is not legal advice.

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