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Mandate of the Indigenous Human Rights Monitor

Multi-Jurisdictional Police Task Force Investigating Deaths and Burials of Children at the Mohawk Institute

November 18, 2021

Context

- A.** The Mohawk Institute, also known as the Mechanic's Institute, the Mohawk Industrial School, the Mohawk Indian Residential School, the Mohawk Student Residence, and the Mush Hole, hereinafter referred to as the "Mohawk Institute", was in operation from 1828 until 1971.
- B.** The Mohawk Institute was situated on Lot Five, Eagle's Nest Tract in Brantford, Ontario, and also utilized the Babcock Lot, the Mohawk Farm (also known as the Manual Labour Farm), and the Mohawk Parsonage (also known as the Glebe Lot), collectively hereinafter referred to as the "Mohawk Institute Lands".
- C.** It is known that a former Principal of the Mohawk Institute purchased farmlands adjacent to the Mohawk Institute Lands and required children at the Mohawk Institute to work on these farmlands.
- D.** The Truth and Reconciliation Commission of Canada, in Volume 4 of its Final Report entitled Missing Children and Unmarked Burials, identified 3200 children who died while attending Indian Residential Schools and held that there are likely more children that died and have yet to be identified.
- E.** The National Centre for Truth and Reconciliation's National Student's Memorial contains the names of 48 children that died while at the Mohawk Institute. The burial locations of these children is not yet known.

- F.** A Group of Survivors from the Mohawk Institute (hereinafter referred to as the “Survivors’ Group”) requested a death investigation into these 48 identified children to determine where they might be buried. The Survivors’ Group also requested an investigation into whether or not additional children died at the Mohawk Institute and where they may be buried.
 - G.** It is clear that proper and full death investigations, coronial and/or police, were not conducted in relation to all of the deaths of children at the Mohawk Institute during the years it was in operation.
 - H.** The Six Nations Police Service, the Brantford Police Service and the Ontario Provincial Police have agreed to create a Multi-jurisdictional Police Task Force to work with the Office of the Chief Coroner to investigate the deaths of children at the Mohawk Institute.
 - I.** The Survivors’ Group of the Mohawk Institute established a Survivors’ Secretariat which includes the mandate to assist with creating and coordinating death investigation processes and protocols that are culturally relevant and responsive.
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Purpose

- 1.** Given the long and documented history of the failures of the justice system, in particular the death investigation system as it relates to the deaths of Indigenous people, the Survivors’ Group wishes to appoint, thru the Survivors’ Secretariat, an Indigenous Human Rights Monitor (“Monitor”). This individual will monitor, verify and report back to the Survivors the work of the Multi-Jurisdictional Police Task Force’s (“Task Force”) investigation.
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Objectives of the Indigenous Human Rights Monitor

- 2.** The Objectives of the Indigenous Human Rights Monitor are to ensure that integrity, fairness, transparency and accountability are upheld throughout the Task Force’s investigation by:
 - a)** Ensuring that Haudenosaunee Legal Principles are applied and respected;

- b) Ensuring that the United Nations Declaration on the Rights of Indigenous Peoples and the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity are adhered to;
 - c) Ensuring that the Ontario Victims' Bill of Rights and the Joinet-Orentlicher Principles of the right to know, the right to justice and the right to non-recurrence, are followed; and
 - d) Assisting in building Survivors' and community trust and confidence in the Task Force's investigation.
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Mandate

- 3.** The Indigenous Human Rights Monitor's Mandate is to monitor, examine and assess the fairness, integrity and transparency of the Task Force's investigation. To do so, the Indigenous Human Rights Monitor may:
- a) Review any documents or information they deem useful for their work from the Task Force; subject only to restrictions based on confidentiality, privilege or court order;
 - b) Communicate with the Joint Management Team and/or Major Case Manager of the investigators to the Task Force on any matter relevant to their mandate;
 - c) Meet with anyone able to provide information relevant to the assessment of the investigation's fairness, integrity, and transparency;
 - d) Visit any locations related to the investigation, as deemed necessary by the Monitor, and may be accompanied by investigators and/or a Cultural Monitor; and shall be accompanied by investigators if visiting a location to which the Task Force has restricted access; and
 - e) Within their mandate, the Monitor may review any statements, whether they are in the form of transcripts, video or by witnessing them as they are being collected from a nearby room via video link or other viewing means as necessitated by the circumstances. The Monitor may only do so, however, upon consent of the victim/survivor/witness or third party as the case may be, and only so long as the information is not subject to legal privilege, confidentiality or privacy rights.

Process

4. If, at any time, the Indigenous Human Rights Monitor has concerns relating to the fairness, integrity and transparency of the Task Force's Investigation, they shall first attempt to resolve the matter by speaking with the Major Case Manager of the Task Force.
5. In the event that the matter is not resolved on an informal basis with the Major Case Manager within 5 days of being raised, the Indigenous Human Rights Monitor may then refer the matter to the Joint Management Team by providing written notice. The Joint Management Team will attempt to resolve the dispute with 5 days of receiving written notice.
6. If, the Joint Management Team is not able to resolve the matter to the satisfaction of the Indigenous Human Rights Monitor, the matter will be reported immediately by the Monitor to the Survivors' Secretariat (subject to reporting limitations that might arise as to legal privilege, privacy rights and confidentiality as outlined in paragraph 10).

Restrictions Regarding the Mandate of the Indigenous Human Rights Monitor

7. The Indigenous Human Rights Monitor is not a member of the Task Force or the Secretariat and shall perform their duties in a way that does not jeopardize any potential criminal investigation of the Task Force or any criminal proceeding.
8. The Indigenous Human Rights Monitor shall avoid direct contact, for the purposes of discussing evidence relating to the Task's Force's investigation, with any victims, witnesses, persons of interest or alleged offenders. If the Monitor does come into contact with these persons, the Monitor shall not discuss any evidence relating to the Task's Force's investigation.
9. The Indigenous Human Rights Monitor will have no role or provide any input into whether any Criminal Code of Canada charges should be laid as a result of the Task Force's Investigation.

Confidentiality

- 10.** Subject to the duties of the Indigenous Human Rights Monitor to comply with any applicable law and their duty to comply with their Mandate as stated herein, the Indigenous Human Rights Monitor shall treat as confidential and shall not disclose any information pertaining to the Task Force's investigation.
- 11.** The Indigenous Human Rights Monitor is not required to disclose to the Task Force any and all notes, documents, and records prepared or obtained by, or given to, the Indigenous Human Rights Monitor.
- 12.** Nothing in the Indigenous Human Rights Monitor's Mandate prevents them from remitting any information that they have obtained to the appropriate authorities if they have reasonable grounds to believe that:
- a) the information obtained may be used in the investigation or prosecution of an offence under the Criminal Code of Canada;
 - b) The information obtained relates to misconduct.
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Reporting

- 13.** The Indigenous Human Rights Monitor will:
- a) Report quarterly to the Survivors' Secretariat, including the Survivors' Group, by attending the Survivors' Group meetings, as regularly scheduled;
 - b) Provide, as requested by the Survivors' Secretariat, community updates on their work, in a manner and format as agreed to by the Survivors' Group; and
 - c) Provide a final written report of their work and findings relating to their assessment of the fairness, integrity and transparency of the Task Force's investigation. This Final Report will be made public by the Survivors' Secretariat.
 - d) The reporting and updates described in paragraphs (a) and (b), above, will not disclose any evidence relating to the Task's Force's investigation, including which individuals have been contacted or interviewed, or which locations have been examined. The written report described in paragraph (c) will not be made public until the conclusion of the investigation and any criminal proceedings arising from it. The Task Force will be given an opportunity to review the report in advance of publication.