

THE TRUTH AND RECONCILIATION COMMISSION OF CANADA

Marie Wilson

Truth and reconciliation in Canada

This contribution to the very important topic of Indigenous access to justice, and truth and reconciliation processes is informed by my role as one of three Commissioners of the first national Truth and Reconciliation Commission (TRC) ever to take place in Canada. We are in the midst of implementing a five-year TRC mandate which began in 2009. It is a complex, multi-faceted mandate, historical both in its nature, and in its content and purpose. We are reviewing the history of the injurious relations between the Canadian state and the Indigenous Peoples in Canada and the legacy of that history in today's lives, with our lens specifically centered on the 130-year long practice of forced residential schooling for Indigenous children. We are also re-writing that history, by documenting, sharing, and safeguarding a perspective of it that has never been told or taught, the perspective of the Indigenous Peoples.

That perspective is at the heart of our purpose, for it is the courage of Indigenous Peoples before the Canadian legal system that led to the creation of our Truth and Reconciliation Commission in the first place. Together, First Nations, Inuit and Metis, they stood up as adults to cry foul about what had happened to 150 thousand of them as children over the course of the previous seven generations. They mounted a legal case against the federal government, whose laws and policies established the longstanding residential school system, and against four national churches, which had run most of the residential schools, over the decades, on contract to the federal government.

Canada has a complex system of Treaties signed with diverse Indigenous nations across Canada, most dating back to the 1800's and early 1900's. Among the general promises made through these legally binding covenants was a Treaty right to education. Chiefs at the time had asked for these provisions so that their children could learn to read and write and function well in the face of the dramatic changes they saw coming

from the white man's world, as the lure of resources drew the European settler population ever westward and northward into traditional Indigenous lands. The general Treaty expectation from the Indigenous leaders was for schools in or near their communities. But almost immediately, and even before some of the later Treaties were signed, Canada began putting in place a range of laws and policies around Indian Residential Schools. Children were to be removed from the so-called pagan, heathen, savage influences of their parents and communities, so that within a generation they would be fully "civilized" and Christianized, and there would be no more "Indian problem" in Canada. The goal was to kill the Indian in the child, "in the best interests of the child", and so also to subdue an adult Indian population, who would not risk opposing the state as long as their children were in its custody.

As the harsh truths have been steadily emerging in recent years, many, including leaders within government and churches, have initially categorized the residential schools as a good intention gone wrong... But research of official records has shown that as far back as almost a hundred years ago, in the 1920s, an official appointed by the federal government to investigate the state of residential schools concluded that the treatment of children in the schools was a "national crime."

Courage and the courts

Some eighty years later, the nature and scope of that "crime" finally faced its day in court. Beginning in the 1990's, individual former students of the schools in various regions of Canada started coming together with a number of class actions against the government and the churches. Eventually, all the cases were combined, culminating in the largest class action law suit in Canadian history. This led to what also is the largest out of court settlement ever: the 2007 Indian Residential Schools Settlement Agreement (IRSSA).

The complex comprehensive agreement articulates both financial and practical obligations for the Government of Canada, more than 50 Roman Catholic entities, the Anglican Church of Canada, the United Church of Canada, and the Presbyterian Church in Canada. It also details a range of time-lined financial and healing provisions for the estimated

80,000 former residential school students, also referred to as Survivors, still living at the time of the settlement.

1. The **Common Experience Payment (CEP)** is a universal cash payment to all former students who went to schools on a somewhat controversial list of selected schools and residences. Payment calculations have been individually pro-rated, based on the number of years attended at school. This is an acknowledgment of the general harms of being removed from family, community, culture and all that was familiar to the child. Payment levels are modest, averaging about \$20,000 dollars, and are generally seen as a symbolic recognition.

2. The **Independent Assessment Process (IAP)** is not universal. It is an individually adjudicated review of evidence-based facts, in cases where students feel they have suffered harms beyond those generally recognized through the above, Common Experience Payment, harms that would fall into the category of severe abuse, whether physical, sexual, and/or psychological. Additional monies are awarded in cases where facts are accepted by specially-trained lawyer-adjudicators. Payments are calculated based on a scale of degrees of harm, as pre-determined in the Settlement Agreement. It is a similar approach to that used in the world of Workers Compensation pension calculations.

3. Another portion of the Settlement Agreement monies were contributed to a pre-existing national **Aboriginal Healing Fund**. These monies have already been fully expended, distributed across the country on a case-by-case application basis, for a very wide range of community-based healing projects.

4. A 20,000,000 dollar allocation of the government's portion of the Settlement monies was set aside for national, regional and local **Commemoration** projects. These monies have also been distributed on an application basis, for initiatives aimed at honouring the tens of thousands of children who went through the schools...and in remembrance of more than four thousand documented cases of children who died while away at these schools. Projects are still unfolding. They are widely diverse in nature; community arbours, monuments, books, sculptural installations, films, graveyard restorations, and even a commissioned national ballet.

5. The Survivors who brought the court action argued most ardently for the establishment of a national **Truth and Reconciliation Commission**.

They envisioned the TRC both as a vehicle for hearing the truth of what the Survivors had lived through as children, and for using that truth to educate, and engage with, all Canadians. It was their stated hope in the TRC mandate that such truth-telling would inspire meaningful reconciliation, and would contribute to healing and to freeing broken-spirits, both of individuals and of the country. On a practical level, and for its enormous historical and moral value, the TRC would also lead to the creation of a new public record of what had happened. This would serve as an alternative to the public record normally created by ‘your day in court,’ something that was *not* going to happen due to the out-of-court nature of the Settlement Agreement. This new, alternative public record would then make it impossible for governments, churches, or anyone else, to ever deny in the future that this actually happened in our Canada.

The Truth and Reconciliation Commission of Canada is both historic as a Commission, and as a national opportunity. It is unique in many of its aspects.

First, it exists not because of intentional political will and direction to look into what happened, as in the case of some of the other TRCs. Rather, it exists because the ‘victims of harms’ took action themselves. It was their court case and settlement that obliged the creation of the TRC. And it is the courts, not the government, which supervise the fulfillment of the TRC mandate (and all other obligations of the Settlement Agreement). The Truth and Reconciliation Commission of Canada is therefore independent of government.

Secondly, the TRC in Canada is the first in the world to specifically focus on harms done to children, children of specific ethnicity: First Nations, Inuit and Metis, the Indigenous children of Canada

Thirdly, unlike most TRCs, Canada’s is exploring harms that did *not* happen in the context of military conflict; rather, it is looking into the harms and legacy of harms done in and through state-sponsored institutions and intentional policy initiatives.

Finally, unlike the more usual time-frames for TRCs with a fairly narrowly-defined time-frame, such as a war, the Truth and Reconciliation Commission of Canada is considering a very long, multi-generational period of harms...over 130 years. It spans most of Canada’s entire history as a constituted country.

TRC mandate and purpose

The many prescribed responsibilities of the Truth and Reconciliation Commission of Canada might be simplified down to three broad areas of work. Each of these areas has a number of inter-related activities.

1. Understanding What Happened and How

To understand this long history, our mandate guides us to do new research; to assemble relevant records from existing archives; and to conduct fresh analysis.

We are conducting independent research into such things as the legal, policy and operational context of the schools. We are pulling together all that has been written and documented and stored over the years in vast government and church archives, collecting and assembling records from hundreds of these sources. And to the extent of our capacity, we are analyzing these records. Analysis to date, for example, has led to the early beginnings of a previously non-existent national record of the names and numbers of little children who died at residential schools, or as a result of conditions or incidents that occurred at them. We now know that a minimum of 4,125 children died in such circumstances and that this number will increase as more records are reviewed.

2. Truth-Telling and Healing

The Canadian TRC mandate suggests an unlimited number of community events across the country, as well as seven major National Events, as vehicles for contributing to truth-telling and healing. On one level, this work is about organizing the facilities, coordinating the equipment, and ensuring the written legal consents to record and preserve the statements that individuals may wish to give to the Commission. On another level...which has proven to be even more essential...it is about preparing what we Commissioners refer to as “the sacred space” for such statement gathering to take place safely. This is in keeping with our specifically stated obligation to ‘do no harm’. We hold this obligation in mind as we provide for the traditional ceremonies which typically begin and end our sessions, based on local advice as culturally appropriate to the respective territory where we are gathered. We also consider it

in assuring the presence of specially-trained health supports (one of the federal government's obligations to provide under the Settlement Agreement). These integrated teams of clinically and academically trained professionals, working together with traditional spiritual and cultural knowledge keepers, ensure that the space is emotionally safe, both for those who may be sharing, and for all those who witness their sharing. These may be family members, community members, media, or Commission staff. Finally, we also consider the nature of sacred space, and our duty to do no harm, in considering and providing a range of options for truth-sharing and statement-gathering. Of the nearly 5,000 Survivors we have heard from to date, many have chosen to give their statement publicly, as well as through books, blankets, and videos, in front of the Commissioners, 'so that all the world will know' what happened to them. Others have their own reasons for deciding to share their experiences privately. Still others take greatest comfort in sharing together with other Survivors, in a traditional circle setting. Whatever the venue, each is designed to keep the individual safe and sound, while contributing to individual and collective healing.

The TRC has a supplementary role of educating the Canadian public about this part of Canadian history, which has generally not been taught in Canadian schools. Statement gathering provides what many consider to be the most powerful venue for such education, with the survivors as the principal teachers. One measure of progress on this educational front is the ever-growing presence of 'witnesses' from the wider, non-Indigenous population. In increasing numbers they are attending TRC events, which are all free, voluntary, and open to the public and the media. Another measure is the growing number of intergenerational survivors (the children or grand-children of former students), and many others from churches or the general population who are also choosing to speak to the Commission. They may have been only indirectly associated with the residential school experience, or may be just recently learning about it. Their messages vary from expressing personal or organizational apologies or regrets, to statements of solidarity with Survivors, to messages of outrage and recommendations for change, whether to national governments or community leadership.

3. Responsibility To Remember

It has been said that the work of memory is more than the collecting of history and facts. It is about Re-Membering, about putting the dismembered pieces back together again. This perspective captures the TRC's responsibilities around reconciliation. It is related to truth gathering, and it is moving beyond the facts of these truths. It is moving into the shared responsibility and need for building respectful relations.

Many activities specified in the TRC mandate lend themselves to this dual role of remembering and inspiring reconciliation: Commemoration; Publication; Preservation, and Recommendation.

Commemoration: Hundreds of competing proposals for local, regional and national commemoration projects have been assessed and recommended for funding based on their potential to acknowledge and honour the experiences of residential school students, as well as their potential for contributing to new understandings and respect, within families and between peoples. As a Commission, we have especially considered it a high priority to honour the thousands of little ones who died at the schools, and to keep the memory of them alive in all aspects of our work. We have supported and welcomed special songs, ceremonies and commemoration activities that honour them. And we continue to make the telling of their collective story a priority for the national consciousness-raising and awakening that is unfolding.

Publication: To fulfill our mid-term obligation to report on the complete history of the schools, we produced a book called *They Came For The Children*. It is now being used as a school curriculum resource in some parts of the country, and it is available to all as a free download at the Truth and Reconciliation Commission of Canada website: www.trc.ca. An Interim Report of our work, with twenty preliminary recommendations, is also available at that website.

Preservation: To ensure the safe-keeping of all that survivors and others have told the TRC, and to ensure its accessibility for all future generations, whether family members or from the academic community, the TRC consulted internationally, seeking practical advice and lessons learned from a wide range of truth and memory projects, and from every continent. On June 21, 2013, the longest day of the year that is celebrated

as National Aboriginal Day in Canada, the TRC officially announced the establishment of a national research centre to be housed at the University of Manitoba in Winnipeg, Canada, in association with partner learning institutions in other parts of Canada, including the University of British Columbia in Vancouver. This centre will serve as the permanent home and point of accessibility for the entire TRC collection of material holdings and recorded statements. It is to be an independent resource centre, guided by the spirit reflected in the Truth and Reconciliation Commission mandate. Its governing circle will include representation from each of the three Indigenous Peoples of Canada; the First Nations, Inuit and Metis. This TRC research centre will be both physical and virtual in nature. This is to allow maximum accessibility throughout Canada and beyond, and in recognition that much more work in regard to studying and analyzing the complete records on residential schools, especially from the massive government and church archives, will fall to researchers and others over the many years following the Canadian TRC's five-year mandate.

Recommendation: The TRC has an obligation to make recommendations based on all that we hear and learn about the residential school history and its legacy. In Canada, along with some important and exceptional stories of success related to the schools, this legacy includes a much more common and directly related litany of negative measures: shame, fear, anger, blame, violence, inability to parent, unemployment and under-employment, poverty, alcoholism, drug dependency, family and community violence, failed relationships, child apprehension, incarceration, suicide, and hopelessness. Many of those who have given statements to the TRC have included their own thoughts on what they think will be needed for meaningful reconciliation to take place. Many describe their own personal journeys of resilience, healing and hope as testaments to what has happened to them, and as evidence of the critical factors that will also be needed for others, in order to make such healing possible for them too. Among the many things they identify, three areas stand out as the most often mentioned: 1) honest education for all Canadian youth, including the truth about the residential school history, and its impacts on the attitudes, realities and opportunities of individuals, families, nations, and the country as

a whole; 2) sustained, specialized healing resources, to address the long-term effects of untreated, multigenerational, childhood traumas; 3) people and resources for teaching Indigenous languages and cultural beliefs, including parenting skills, and spiritual practices. Many, many people have told the Commission that the key to their own healing has been a reclaiming of their Indigenous identity, positively associated with self-love and self-respect.

The TRC's final recommendations will form an important part of its final report, expected in 2014–2015.

Lessons unfolding

Both the nature and processes of the Canadian TRC are largely unprecedented, leaving the Commission to feel its way through the implementation of some aspects of its inherited mandate. There have been a variety of challenges along the way, and emerging outcomes.

Lack of Perceived Justice: One challenge continues to be the perceived fairness of the overall out-of-court Settlement Agreement. It was negotiated by the Survivors' legal and political representatives, with the federal government and the churches. In this sampling of their own words, many Survivors have questioned whether the legal agreement represents true "Justice," especially where claims for financial compensation have been minimized or totally denied:

"A little bit of money...Is that all my childhood, my innocence and my identity are worth?...They make me remember things I've spent my whole life trying to forget...and they still don't believe me...If the Apologies from the Government and the churches were so sincere, where are the Government and the churches now? Who is in the room?...Was the Apology sincere or just a bunch of words to make the Prime Minister look good?...Where is the walk behind the talk?"

Interpretation of Legal Obligations: A key obligation on the part of the government and churches is to provide the Truth and Reconciliation Commission with copies of all relevant documents from their respective and extensive archives. These documents would then form a cornerstone

of information to be held for posterity and ease of future access in the TRC's consolidated national research centre about residential schools. Narrow interpretations by the government and some of the Catholic church entities led the TRC to go back to the courts for direction on the correct interpretation of "all relevant documents." The result has been both negative and positive: a significant delay in this aspect of the Commission's work; but with a new assurance that the research centre will indeed receive the legacy of the much more comprehensive and complete set of archival records that the TRC was hoping for.

Public Engagement: Since the 2007 Indian Residential Schools Settlement Agreement (IRSSA) the Canadian government has spent millions of dollars in outreach to inform former students about the Agreement, and related deadlines for applying for specific provisions of it. This is not the case for other Canadians. Yet "the people of Canada" are specifically named in the TRC mandate as having a role in the "ongoing individual and collective process" of Reconciliation. As part of a court supervised agreement, this articulated role for "the people of Canada" indicates both a legal and moral obligation. To date there has been no concerted government effort to inform "the people of Canada" about the Agreement, and particularly about the Truth and Reconciliation Commission of Canada, and this obligation upon them. This lack of information is compounded by the general absence of history about Indigenous Peoples in the school curricula that most adult Canadians grew up with. The result is a continuing widespread perception of Indian Residential Schools as Indigenous history, and something that happened a long time ago...rather than as Canadian history that unfolded under the laws and policies of the Government of Canada, that continued until the last schools closed as recently as 1996, and with a societal legacy that therefore belongs to all Canadians to address. Similarly, the federal government has assigned its own obligations and responsibilities for the Truth and Reconciliation Commission and other aspects of the Agreement to the Department of Indian and Northern Affairs, more recently re-named the Department of Aboriginal Affairs and Northern Development. This assignment to a designated "Aboriginal Affairs" department also perpetuates a more narrow government and public perception of the history and legacy of

residential schools as an Indigenous issue, rather than as an issue of Human Rights and Justice.

Mass Media Reflection: Positioning the Truth and Reconciliation Commission of Canada within the media for both its national and international historical significance, and its newsworthiness as an unfolding story of national importance, has been a great challenge. The work of the Commission has received significant coverage from regional media outlets, particularly in and around community hearings, and focused primarily on the worst horrors of survivors' childhood experiences. The interest and focus on the reconciliation aspect of our work has been far less frequent. Most critically, the TRC has not succeeded in holding the ongoing attention of any national media outlet. Government-sponsored Commissions within Canada continue to receive more sustained coverage, including a provincial one that is still unfolding. Similarly, Canadians received far more regular, unfolding coverage from our own media outlets about the Truth and Reconciliation Commission in South Africa than we will have received about our own country's historic Truth and Reconciliation Commission. This may be a reflection of the dramatically changed corporate media landscape, with an increasing monopoly held by far fewer owners with narrowing editorial interests. Also important to consider is the extent to which increasing awareness, and changing attitudes, about Indigenous Peoples also needs to happen within the very media that currently portrays them or chooses not to.

Towards healing and reconciliation

Slowly but surely the TRC is both contributing to and witnessing positive changes. Some Survivors complain about the nature of their financial settlement. But many more say that the time and the resources needed for ongoing healing and reconciliation is much more important than money. Along with mental and emotional healing, many talk about cultural and spiritual healing. They say that the help of their elders and the return to their Indigenous traditions have given them their identity back along with self-respect and self-love.

The engagement of non-Indigenous Canadians is also gradually increasing. Our TRC Mandate says that Reconciliation is an ongoing

individual and collective process, involving former students and their families, former workers, the government of Canada, the churches and the people of Canada. The Commission intentionally reaches out to churches, universities, departments of education, the judiciary, legal and medical professions, youth leadership circles, the corporate sector and all levels of elected leadership; provincial and federal legislators, town and city Mayors, Indigenous Chiefs and leaders, Premiers and state governors. We are also engaging a growing number of prominent individual citizens who agree to be activist voices for ongoing reconciliation, by standing with us as designated ‘TRC Honorary Witnesses’. This includes a number of international Witnesses. Some Honorary Witnesses are institutions rather than individuals, such as the International Centre for Transitional Justice (New York), the Stolen Generations and Connecting Home (Australia), the Maine-Wabanaki State TRC (Maine), and the Quebec Native Women’s Association (Canada). We are also actively promoting a growing list of inspirational ‘Expressions of Reconciliation’. These are becoming increasingly creative and wide-ranging: from films, books, and art pieces to populate the TRC research centre; to new or renewed expressions of Apology; to the creation of specialized Scholarships for the study of Indigenous history; to the launching of revised curricula about the residential school history for high school students, interactive, developed with the multilingual input of residential school Survivors, and now mandatory learning as a condition for high school graduation in two of the 13 jurisdictions in Canada, with other jurisdictions now actively reviewing their own curriculum.

Voices of Hope on the Home Stretch

The Truth and Reconciliation Commission of Canada still has much work to do to complete the obligations and responsibilities set out in the TRC mandate. As we map out the recommendations that will inform our final report, we will need to carefully consider the gaps between how things are today for Indigenous Peoples, families and nations in Canada as a result of the 130 year history of residential schools, and how things should be, and need to yet become, in a country that has, through formal Apologies from all national Leaders including our Prime

Minister, declared itself to be fully committed to reconciliation, and new relationships of mutual respect.

In the meantime, just as it was the Survivors who took the courageous steps to bring their childhood school experiences to attention, seeking justice before the courts, the strongest indications are that it is also the Survivors themselves who are taking the lead on the equally courageous and often painful work of healing. Approximately 5000 statements have been voluntarily given to and recorded by the Truth and Reconciliation Commission of Canada. The correlation between addictions and healing is one of the most recurring and underlying themes of the stories shared with us. Approximately ninety percent tell the TRC that they have quit drugs and/or alcohol, and that has made other aspects of their healing possible. The importance of family and group support, and the positive examples of others, are other recurring themes for healing. At every session where experiences are shared we hear one or more Survivors say one or several of the following: “I have never told this to anyone before...I’m ‘inspired’ to speak, by the courage and stories of others...I feel so much lighter for setting down this load and getting these secrets and this shame out of me...I want to thank those who have already spoken today...I don’t feel so alone now...I’m not proud of how I was as a parent with my own kids, but I’m trying to do better with my grand-children...I want to thank those who have helped me...I’m beginning to like *me*...I’ll never forget the past but I don’t need to stay there...I’m learning to forgive myself and others and to move on. I can say, ‘Forgive me, I love you.’”

At one of the very first hearings we held, a very prominent and accomplished Indigenous leader summarized his statement to the Commission with these words: “I want my identity back...Is that too much to ask?” And everywhere we have gone, from coast to coast to coast, at least half the Survivors who speak say that it is precisely this reconnecting with their culture and identity that has been the key to their own healing, the key, as they so often put it, to “finding their way home”.