

Sacred Responsibility:

Searching for the Missing
Children and Unmarked Burials

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Interim Report Findings



Independent
Special Interlocutor

June 2023

The information in this report may be upsetting for some because it contains content, including images, relating to the deaths and forced disappearances of children at former Indian Residential Schools and other institutions. If you require immediate support, please contact the following:

The Indian Residential School Survivors Society's 24/7 Crisis Support line:

1-800-721-0066

The 24-hour National Indian Residential School Crisis Line:

1-866-925-4419



Sacred Responsibility: Searching for the Missing Children and Unmarked Burials

INTERIM REPORT FINDINGS

Access to and destruction of records

1. Access to records, including those held by various levels of government within Canada and the different church entities that were funded to operate Indian Residential Schools, continues to be a challenge for many communities. Specific barriers include:
 - A lack of transparency and information on how to access records;
 - Legal and policy requirements to pursue access via formal freedom of information processes, even where records are over 100 years old;
 - Long delays before access to archives is granted;
 - Limited access and/or institutional selection of what records are “relevant”;
 - Production of records that require translation, particularly French language records, and no accompanying funds to pay for the translation;
 - Records are in numerous archives across the country, and outside Canada, which requires research teams to attend at multiple sites;
 - The need to negotiate several and varying Memoranda of Understanding or Access Agreements with multiple institutions;
 - Records are not always accessioned or organized in a manner that is useful; and
 - Significant research may be required because the records often do not identify the child by their original birth name, but rather by the number or christian name they were assigned by government or school officials.
2. Many records have been destroyed over the years relating to Indian Residential Schools. Between 1936 and 1954, the Government of Canada systematically purged thousands of these records from its files. In 1973, an agreement between Public Archives Canada and the Department of Indian Affairs placed a moratorium on further records destruction. Further moratoriums on record destruction must be put in place.
3. Records have also been taken overseas by various church entities. Some records relating to Indian Residential Schools operated by the Catholic entities are at the Vatican and some may have been taken there in breach of the terms of the Indian Residential School Settlement Agreement. Records from the United Church, the Anglican Church, and the Church of England can be found in various archives in England. This creates a significant barrier for those leading search and recovery work to access all records that may contain information relating to the location of unmarked burials and identities of the missing children. These records must be returned to Canada and made available to Indigenous Peoples.

4. The Supreme Court of Canada has ordered the confidential records of Survivors' applications and testimonies from the Independent Assessment Process (IAP) be destroyed on September 19, 2027 unless Survivors opt to preserve the records for historical, public education and research purposes at the National Centre for Truth and Reconciliation. Unlike other notice processes pursuant to the IRSSA, there have been limited efforts by the Indian Residential Schools Adjudication Secretariat (IRSAS) (which managed the IAP process) during its existence, the federal government and other entities to provide notice to Survivors about the opt-in to preserve their truths at the NCTR. In addition, many Survivors who participated in the IAP process are no longer alive and there is no way for living family members to opt-in. To date, approximately 30 Survivors have opted to have their records and testimonies preserved. The IAP records and testimonies may contain information related to missing children and unmarked burials that could assist Survivors, Indigenous families, and communities conducting search and recovery work.

An external independent process to review the IAP records and testimonies for information relating to the death of any child and the location of any burials must take place prior to their destruction. The Independent Reviewer(s) should be chosen, on consensus, by the Assembly of First Nations, the Inuit Tapiriit Kanatami, the Métis National Council, and the National Advisory Committee on Residential Schools Missing Children and Unmarked Burials, with guidance from their respective Survivors' Advisory Circles. The federal government should cover all costs of this review and expedite the required security clearances for the Independent Reviewer(s) to complete the review and prepare a report of findings, prior to the court ordered destruction date in 2027. This report should be made public.

5. All individuals, organizations, and entities within Canada should search for, protect, and disclose records that may support the identification of unmarked burials and missing children. This includes a commitment to not destroy any records relating to any, and all, Institutions where Indigenous children were taken or transferred to.
6. Survivors, Indigenous families, and communities are often required to pay fees to various levels of governments to access records and images necessary to support search and recovery work. An immediate waiver of fees is needed, including fees to obtain birth and death certificates, issued burial permits, and fees under access to information laws, regulations, and policies.
7. Consistent with Articles 7 and 8 of the Declaration, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence's recommendations and the Joint-Orentlicher Principles, Canada must uphold its international obligations to take effective measures to provide access to records to support the search and recovery of unmarked burials and missing children. This is both to support the right of Indigenous Peoples to know the truth of what happened and ensure the non-repetition of the human rights violations that Indigenous children suffered while in the care of the State and churches.

Access to and protection of sites

8. Significant barriers exist for Survivors, Indigenous families, and communities to access sites to conduct ceremonies and searches, particularly where the sites are in the process of being redeveloped or are owned by corporations or private landowners.
9. Currently, there is a lack of clear legal mechanisms to support access to and protection of sites to be searched. Although there may be some provisions under legislation regulating cemeteries that requires people with knowledge of a burial on their property to notify the police or coroner, most people only become aware of burials after human remains are found. There may also be powers under provincial acts, such as *Public Lands Acts*, to issue stop work orders where development may threaten a known Indigenous burial site; however, governments seem to be reluctant to use these powers.

In the context of privately owned lands, Survivors, Indigenous families, and communities leading searches may seek a court order to either stop development on a site or to gain access to a site where access is being blocked. This has led to disputes and strained relationships between those upholding their responsibilities under Indigenous law to protect the burials of the children and those who are refusing to provide access to the lands.

10. There are some existing legal mechanisms that may provide some protection to buildings or sites, including heritage designations. There are federal, provincial, territorial, and municipal processes that those leading search and recovery efforts need to navigate if they are interested in applying for these designations. The process to seek approval for such designations can take a significant amount of time leaving the sites vulnerable to further development or disturbance.
11. In some situations, federal, provincial, and municipal governments are not actively supporting Survivors, Indigenous families, and communities in obtaining access to the land or in protecting the sites.
12. Consistent with Articles 10, 11, 12 and 25 of the Declaration, access to sites should be provided so that those leading search and recovery efforts can complete appropriate searches and conduct ceremonies. Additionally, sites must be protected before, during and after searches take place. If access is not granted and sites are not protected, disputes may arise that will continue to impact relationships and undermine reconciliation.

Complexity and timeline of ground searches

13. There is jurisdictional complexity in the context of search and recovery work. Different laws apply depending on the ownership of the sites and the legal frameworks in place.

14. Each site requires a unique search plan depending on the geography and history of the site. The different terrains of sites, the development on the site, and the environmental conditions all affect ground search plans. These factors often require the use of different search technologies in different areas of the same sites or several technologies in the same area.
15. At some sites, there are multiple properties and/or buildings that need to be searched. In some instances, the Indian Residential School building was relocated to other sites.
16. There may be delays in expert analysis of the data collected from remote-sensing search technologies, such as ground penetrating radar. Currently, there are few experts in Canada who have the specialized experience and skills to analyse data to identify potential burials.
17. An immediate priority should be to establish a dedicated program for Indigenous people to receive training and certification in remote sensing technologies and to interpret results from GPR and other non-invasive survey methods in the context of searching for unmarked burials. Sufficient funding and supports should be provided for Indigenous people interested in receiving this training.
18. Recognized institutions, including Indigenous technical institutions, should offer these courses with an established curriculum that is comprehensive and adapted for cultural relevancy.

Shortcomings of existing investigation processes

19. Existing police and coroner investigation processes often explicitly exclude Indigenous families and communities from participating and providing input into investigations under the guise of “forensic rigour” or to “maintain the integrity” of the investigation.
20. These investigative processes conflict with Indigenous laws and protocols relating to grieving, death, burial practices and honouring responsibilities to one’s family members and ancestors.
21. Existing police and coroner investigation processes focus on examining the individual circumstances of the death of a child, and often fail to consider the systemic patterns of crimes, mistreatment, and neglect of children across Indian Residential Schools that support findings relating to genocide and/or crimes against humanity.
22. Consistent with Articles 8 and 25 of the Declaration, Canada has an obligation to provide effective mechanisms for redress and to support Indigenous families and communities to uphold their responsibilities to future generations. This includes ensuring proper investigations are done that include respect for, and inclusion of, Indigenous laws, protocols, and processes throughout the investigations. It also includes ensuring that the systemic patterns of mistreatment, neglect and wilful harm perpetrated against children at Indian Residential Schools that contributed to the deaths of children be fully investigated in a manner that is responsive to Survivors and communities and holds individuals and institutions accountable.

Affirming Indigenous data sovereignty

23. Indigenous data sovereignty should be affirmed in the context of all records relating to the search and recovery of missing children and unmarked burials. This includes Indigenous ownership, control, access and possession of the records and information relating to Indian Residential Schools and other associated institutions, and the missing children and unmarked burials.
24. Record holders must respect the rights of Survivors, Indigenous families, and communities to access records and to determine which records are relevant to their search and recovery efforts.
25. There is an urgent need to amend or create new legislation, regulations and policies relating to the NCTR, so that Survivors, their families, and communities can access the records as envisioned by the TRC.

Challenges of responding to media and public disclosures

26. There is a need for all Indigenous communities and leadership to have sufficient funding to develop communications plans for dealing with media, including how to implement and enforce restrictions on the capturing of video, photographs, and drone imagery at burial sites. In addition, there is a need for adequate funding for communities to create media protocols and confidentiality agreements for those handling media requests.
27. Prior to and after public announcements relating to search and recovery work, communities require funding for security personnel to secure the sites from trespassers.
28. Laws should be enforced against media and members of the public who trespass on lands subject to search and recovery work or where potential unmarked burials have been located. Localized enforcement efforts should be prioritized after public announcements of findings are made.

The increase in the violence of denialism

29. Denialism is a uniquely non-Indigenous problem; it therefore requires non-Indigenous people to actively work to counter denialism and to create and implement strategies to do so.
30. Broad public support for Survivors, families, and communities conducting search and recovery work can be strengthened through public education about the history and ongoing legacy of Indian Residential Schools in Canada.
31. Urgent consideration should be given to legal mechanisms to address denialism, including the implementation of both civil and criminal sanctions.

32. Consistent with Article 15 of the Declaration, Canada has an obligation to combat denialism and ensure that education and public information reflects the truth about missing children and unmarked burials. This is important to ensure non-repetition in accordance with the UN's 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.'

Lack of sufficient, long-term funding

33. Concerns regarding the funding that is currently available include:
- **Lack of clarity about how to access funding:** Those leading search and recovery work have indicated that navigating the complex applications and requirements to be approved for funding can be time-consuming and may require applying to multiple levels of governments and various departments within governments, for different types of funding.
 - **The time-limited nature of the funding available:** The time-limited nature of the funding being provided does not reflect the length of time that is required to search the sites, given the complexity of these searches and investigations.
 - **Limits on who can access funding:** Initially funding was provided only to 'Lead Communities' (those whose lands the Indian Residential School was located on) and not to other Indigenous communities whose children were taken to Indian Residential Schools. Communities that are not Lead Communities also require funding to participate in search and recovery efforts.
 - **Limits on the uses of funding:** Various restrictions have been placed on the use of funds, including that only former Indian Residential School properties (i.e. recognized Indian Residential Schools under the Indian Residential Schools Settlement Agreement) could be searched; and that the funding could not be used for legal assistance, exhumation and DNA matching. Some, not all, of these restrictions have been lifted, without notifying those leading search and recovery work. Funding to search the grounds of any, and all, State-funded, church-run institutions that Indigenous children were transferred to should be made available.
34. There is a need for sufficient, long-term funding to cover the many costs associated with search and recovery efforts, including health supports, researchers, databases, search technicians, lawyers, forensic specialists, testing, exhumation and repatriation, commemoration and any other necessary costs that may arise. In the absence of sufficient funding and other supports, Survivors, Indigenous families, and communities are left with having to do this Sacred work without knowing if they will be able to complete it.
35. Consistent with Articles 11 and 12 of the Declaration, appropriate funding and supports for Survivors, Indigenous families, and communities leading search and recovery work should be put in place until the completion of all searches and investigations relating to unmarked burials and missing children.

Need for Indigenous health and wellness supports to address trauma

- 36.** Sufficient, long-term funding is required to support Survivors, Indigenous families and communities leading and affected by search and recovery work. All those impacted should be supported to address the direct, intergenerational, and vicarious trauma they are experiencing. This funding should be provided by all levels of government.
- 37.** Health and wellness supports that are available through colonial systems may not provide culturally respectful, relevant and safe care for Indigenous people experiencing trauma relating to the search and recovery of missing children and unmarked burials. As a result, sufficient, long-term funding is required for Indigenous Healers and Indigenous healthcare workers to provide culturally safe supports and services.
- 38.** For over a century, the federal government provided funding to build and operate Indian Residential Schools and associated institutions. The government therefore has a moral and ethical obligation to fund Indigenous health and wellness supports, including the building and operation of healing lodges, to address the trauma these institutions created.
- 39.** Consistent with Articles 21, 23 and 24 of the Declaration, Canada has an international obligation to support Indigenous-led health and wellness initiatives that include providing mental health and wellness supports for those experiencing trauma, particularly when the trauma is the direct result of State-imposed assimilative and genocidal laws, policies, and systems.

Repatriation of the children

- 40.** Sufficient funding is required for all families and communities who wish to repatriate the children that died at Indian Residential Schools and associated institutions and were never returned home.
- 41.** All decisions and processes relating to exhumation, DNA testing and repatriation must be Indigenous-led. Survivors, Indigenous families, and communities must be able to freely choose which organization(s) they wish to work with. The federal government should therefore provide funding to Indigenous communities who wish to do exhumations and DNA testing, to develop plans and processes that are tailored to their own local circumstances and needs, in accordance with Indigenous sovereignty and self-determination.
- 42.** Consistent with Articles 11 and 12 of the Declaration, and UN principles and guidelines on reparations, Canada has an international obligation to take effective measures to recognize and protect the right of Survivors, families, and communities to repatriate the missing children from unmarked burials, and cemetery sites.

Land back: Repatriation of cemetery and burial sites

43. Consistent with TRC Call to Action 75, there is an urgent need to document the complex history and current land ownership of burial and cemetery sites associated with Indian Residential Schools. Some sites are now privately owned, and others are endangered by land development projects.
44. There is an urgent need for governments and churches to take proactive steps to return these lands to Indigenous communities. Although repatriation of cemetery and unmarked burial sites associated with Indian Residential Schools may be possible through existing legal mechanisms, emerging practices should be explored and more timely, creative approaches should be put in place to return these lands.
45. Consistent with Articles 8 and 28 of the Declaration, Survivors, Indigenous families, and communities have a right to redress, including restitution for, and repatriation of, the lands that were taken without their free, prior, and informed consent.

Accountability and justice

46. Domestic and international legal mechanisms must be utilized to hold individual perpetrators and institutions accountable for harms they committed against the missing children and Survivors of Indian Residential Schools, and other institutions. This may include reform to existing legal processes and/or the creation of new laws and bodies with authority to prosecute wrongdoing.
47. To ensure accountability and justice, sufficient monitoring mechanisms must be put in place. In Canada, these may include the National Council for Reconciliation, and national, provincial, and territorial human rights commissions and tribunals. Possible international monitoring mechanisms may include UN Special Rapporteurs, UN Expert Mechanism on the Rights of Indigenous Peoples, or other international human rights bodies.
48. Consistent with Articles 8, 11 and 40 of the Declaration, Canada has an obligation to provide appropriate mechanisms of justice, redress, and compensation for mass violations of human rights and genocidal harms it has committed.

The full version of the Interim Report is available here:

https://osi-bis.ca/wp-content/uploads/2023/06/OSI_InterimReport_June-2023_WEB.pdf



**Independent
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for Missing Children and Unmarked
Graves and Burial Sites associated
with Indian Residential Schools

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