Upholding Sacred Obligations

Reparations for Missing and Disappeared Indigenous Children and Unmarked Burials in Canada

Volume 2

INDEPENDENT SPECIAL
INTERLOCUTOR

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Volume 2

Office of the Independent Special Interlocutor for
Missing Children and Unmarked Graves and Burial Sites
associated with Indian Residential Schools

2024

Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools

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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 or the 24-hour National Indian Residential School Crisis Line: 1-866-925-4419.

Burning Medicine in a smudge bowl (Office of the Independent Special Interlocutor).

PART THREE

Finding Truth, Rematriating Lands, and Repatriating the Children

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CHAPTER 9

Decolonizing Archives and Affirming Indigenous Data Sovereignty

States have a duty to preserve archives and other evidence concerning past violations. This is essential for enabling societies to learn the truth and regain ownership of their history.

— United Nations (UN) Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence[1]

The importance of our people and communities having access to our own information is apparent. Our stories are part of this data. Without our stories, so-called Canada tried to sweep it under the rug. The more our stories become part of the historical record, the closer we can get to the truth. Who were these children? Why did they die? Where were they buried?

— Vanessa Prescott, Métis, Clinical Herbal Therapist[2]

ARCHIVES IN THE CONTEXT OF INTERNATIONAL HUMAN RIGHTS LAW

The right to know the truth about mass human rights violations associated with atrocity crimes, including genocide and crimes against humanity, is an internationally recognized right of victims, their families, and communities. The State's corresponding duty to remember is

also enshrined in international human rights law. Legal scholar Louis Joinet's 1997 report to the UN Commission on Human Rights on combating the impunity of perpetrators recommended the adoption of international principles on the inalienable right to the truth, the guarantee of non-recurrence, and the right to reparations.[3] Joinet concluded that the right to know the truth is both an individual and collective right and that the State has a corollary duty to remember this history to combat impunity and prevent the recurrence of atrocities.[4] The State must therefore protect and preserve records with information relating to atrocities and amend existing laws and regulations governing access to archives.[5] Professor Diane Orentlicher later updated these principles, and, in February 2005, the UN issued the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, also widely known as the UN *Joinet-Orentlicher Principles*.[6] Orentlicher observed that, in updating Joinet's Principles, it was essential to maintain their original dual purpose to, "function [both] as a classic soft law instrument ... a reliable distillation of established law and [as] emerging practice ... that could serve as a broad strategic framework for action against impunity."[7] Subsequently, UN Special Rapporteurs, international legal and archival experts, and truth commissions, including the Truth and Reconciliation Commission of Canada (TRC), have issued reports and studies making recommendations on implementing the *Joinet-Orentlicher Principles*. A key focus of these reports and studies has been the critical role and responsibility of State archives and archivists in preserving records as evidence of mass human rights violations and making these accessible to victims, families, and communities. In a comprehensive study of archives and human rights in 2021, historians and archival scholars Jens Boel, Perrine Canavaggio, and Antonio González Quintana noted that:

> The 1990s were a decisive decade for the emergence, at the international level, of the principles of the right to the truth, justice and reparation.... [T]hese were the years where the United Nations adopted the Joinet Principles. It was also, in 1998, the period where a Spanish judge, Baltasar Garzón Real, with the help of Scotland Yard arrested the former Chilean dictator, Augusto Pinochet, in London for crimes committed as part of Operation Condor and documented by archival evidence.... The symbolic significance of judge Garzón's legal action was tremendous; in multiple countries, sympathisers and families of victims gathered to express their joy and relief to see a glimmer of hope of justice prevailing in the end. Such is the power of the record. What we witness during the 1990s and later is also a metamorphosis of the perception of the role of the archivist. While preservation of institutional memories remained essential for the archivist, facilitating access became much

> more important. What was really new was the idea that archivists could and should play an active role in defending basic human rights, in particular by enabling access to documentation on human rights violations.[8]

These changing perceptions of the role of archives and archivists in documenting mass human rights violations led to several other international initiatives. In 2003, the UN Educational, Scientific and Cultural Organization (UNESCO) began including archives from several countries in the International Register of UNESCO's Memory of the World Program.[9] In 2016, the International Council on Archives issued the *Basic Principles of the Role of Archivists and Record Managers in Support of Human Rights*, establishing professional and ethical guidelines to:

- Assist institutions that preserve archives in their task of ensuring the proper role of archivists in support of human rights;
- Provide guidelines for individual archivists and records managers who, in the course of their everyday work, must take decisions that might affect the enforcement and protection of human rights;
- Provide support for professional associations of archivists and records managers; and
- Help international officials dealing with human rights matters understand the importance of the issues covered by the Principles and the contribution that professional archivists and records managers can provide to the protection of human rights.[10]

Archives and human rights are examined in depth in several reports of UN Special Rapporteurs. In August 2013, Pablo de Greiff, then UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, issued a report on the design, mandates, and operations of truth commissions, including the role of archives and archivists in preserving the records of truth commissions, governments, and other institutions containing information relating to atrocities. He recommended that archives should maximize access to these records, observing that, "truth commissions and national archives contribute in a substantial manner to realizing the right to truth and may further criminal prosecutions, reparations, and institutional and personnel reforms."[11] In a subsequent report in 2015, he surveyed the limitations of existing archival legislation in many countries. He recommended, "the creation of archival laws, freedom of information legislation, data protection legislation and transparency requirements within other laws, which take into account the right to information, the right to know the truth, and the specificity of the records dealing with human

rights violations and violations of international humanitarian law."[12] He reiterated the need for greater transparency and accessibility to archival records, noting that, "there should be a presumption of public access to all State information with only limited exceptions; a procedure to make effective the right of access should be established; whatever access rules are determined for various categories of potential users (for example, victims, legal representatives, journalists, academics, and members of the general public) should apply to all members of the given category without discrimination."[13]

In 2021, de Greiff's successor, UN Special Rapporteur Fabián Salvioli, examined the need for States to address the history and ongoing legacy of mass human rights violations committed in colonial contexts. Noting that records are essential to conducting investigations into these atrocities, he concluded that settler States should give investigative bodies such as truth commissions, "unrestricted access to the necessary information and archives.... [He observed that] there have been problems gaining access to [both State and church] archives.... It is also important that the Holy See [the diplomatic representative of the Roman Catholic church] should cooperate in affording access to archives under its authority to shed light on the patterns of rights violations committed in Catholic institutions in colonial contexts."[14] In 2023, Salvioli concluded that the, "conservation of records and historical sites must be guided by transparency, and with the perspective of guaranteeing the freedom to seek and receive information. Therefore, access to archives should be facilitated to the victims and their next of kin, always with due respect to other victims' privacy or security, which may necessitate restrictions. Provisions that prevent declassification of information related to grave human rights violations should be repealed."[15]

The valuable insights from these international reports and studies, together with the findings of the TRC's Final Report and Calls to Action on archives and archivists inform this chapter. The TRC referenced the *Joinet-Orentlicher Principles* and the August 2013 report of UN Special Rapporteur de Greiff in its Final Report.[16] In settler colonial countries like Canada, State and church archives, much like legal and educational institutions, can either serve to perpetuate settler amnesty and a culture of impunity or strengthen truth, accountability, justice, and non-recurrence of mass human rights violations. As institutions of collective memory, archives hold records with information that enable victims of State violence, their families and communities, and all citizens to determine the truth of what happened.

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In addition to these international reports and studies, the UN General Assembly in 2007 adopted the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*), which recognizes the right of Indigenous Peoples to self-determination, including the right to maintain distinct cultural practices, languages, and traditions.[17] Participants at the National Gathering in Vancouver emphasized the importance of the *UN Declaration* in the affirmation of Indigenous data sovereignty and called on governments, archives, museums, universities, and other data institutions to adopt the *UN Declaration* in their access and ownership policies.

The *UN Declaration* has significant implications concerning data sovereignty and how Indigenous Peoples' cultural heritage is documented, preserved, and shared. The *UN Declaration* highlights the importance of Indigenous Peoples' retention over their cultural knowledge, customs, ceremonial objects, and cultural expressions. This includes the right to control and manage Indigenous information and data, which is essential for promoting self-determination and protecting and preserving cultural heritage.

UN Declaration

Article 11

1. Indigenous Peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, art[i]facts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous Peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31

Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional

> cultural expressions…. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Articles 11 and 31 of the *UN Declaration* call for the protection of Indigenous Peoples' intellectual property rights, including the right to determine how their traditional knowledge is used and the right to protect their cultural expressions from unauthorized use or misappropriation. This protection includes the need for informed consent from Indigenous Peoples before their cultural heritage is documented or disseminated and the right to control how documentation is used. These Articles require the return of Indigenous knowledge and Sacred items taken without consent.[18] This chapter will, first, briefly identify the temporal development of Canada's national archives in relation to the establishment of the Indian Residential School System and discuss the long history and practice of record destruction by the State and the problems associated with determining the historical or archival value of records. The chapter then explores some of the challenges that exist with the access to information and privacy law regimes, including the lack of an adequate application and interpretation of the "public interest override" within them. Next, church policies and operational procedures—in particular, Roman Catholic church processes—that hinder the Sacred work of investigating the missing and disappeared children are examined. The final sections focus on the importance of decolonizing archives and supporting Indigenous data sovereignty within communities that are leading investigations into the missing and disappeared children and their unmarked burials.

ARCHIVES IN CANADA: DETERMINING TRUTH AND COUNTERING THE IMPUNITY OF SETTLER AMNESTY

> Now we are all actively collecting data, we are collecting knowledge, we're collecting data—how are we protecting it? Whether we're First Nations organizations or other spaces, other organizations, other people, researchers, how are we going to make sure it's protected? It needs to be legislated federally that that information cannot be used by Canada or any other sources against Indigenous people, because they have for centuries used our own ways against us.
>
> — Mary Musqua-Culbertson, Keeseekoose First Nation, Treaty Commissioner of Saskatchewan[19]

Survivors, Indigenous families, and communities searching for the missing and disappeared children and unmarked graves have the right to know the truth about how their children died, why they died, and where they are buried. Some of these truths are hidden in archives across the country, including government and church archives. The TRC's Final Report identified the vital role that archives have in documenting the history and legacy of the Indian Residential School System.[20] These archives, along with other heritage collecting sites like museums, which museum studies scholar Leah Huff notes were created to, "house the spoils of colonization,"[21] are institutional repositories for historical records that can safeguard the documentary heritage and memory of people, places, operations, and events. The preservation of archival material should aim to provide citizens with original sources of historical information to learn about and from the past. However, collectively, archives across the globe have functioned as colonial gatekeepers, obstructing meaningful access to the truth. Archives are long-ignored systems of power that preserve, organize, and control important information about all levels of government, institutions, organizations, and their representatives within Canadian society. Although characterized as neutral sites of information management, archives were established to legitimize the State's dominion over natural resources, lands, and, by extension, Indigenous Peoples. The type of information collected and preserved reflects the priorities and perspectives of the settler colonial State.

Consequently, archives have reinforced discriminatory colonial narratives, including the erasure of Indigenous Peoples and their cultural heritage.[22] Archivist and public historian Krista McCracken writes that:

> Archives have historically legitimized colonial states and colonial power through their connection to the building of national historical narratives. State archives are also often created to justify the actions of the [S]tate, to highlight a cohesive historical narrative, and support nationalism more broadly. Indeed, Canadian archival systems are embedded with uneven power dynamics and have often systematically harmed Indigenous peoples by extracting their culture and history and placing it in inaccessible archives far removed from Indigenous communities.[23]

While government records are essential to documenting the history and legacy of the Indian Residential School System, archives in Canada were not created until almost 40 years after the first Indian Residential School was in operation.[24] Douglas Brymner, the first Dominion Archivist, established the Public Archives of Canada in 1872.[25] In 1904, Arthur Doughty was appointed as the Dominion Archivist and Keeper of the Records. Doughty believed archives were important to educate citizens and that all forms of government documentation

should be collected, organized, and stored.[26] He encouraged the Canadian government to preserve its history by transferring materials to the Public Archives. Doughty focused his efforts on emphasizing the importance of preserving maps, plans, paintings, and sketches, which he believed could improve research and teaching.[27] The development of archives and professional archival practice in Canada was only beginning as the Indian Residential School System was expanding. This means that, prior to Doughty's appointment, decades of records relating to the genesis and expansion of the Indian Residential School System were not being organized or retained in accordance with any standardized archival record-keeping policy in Canada. Once government departments did start to archive their records, only those records that served to support the institutional memory of the structures, systems, and institutions of the settler colonial State were preserved.

The TRC found an inherent conflict in the mandate of Canada's national archives, concluding that:

> A fundamental tension exists between LAC's [Library and Archives Canada's] public education mandate to work collaboratively with Aboriginal [P]eoples in order to document their cultural and social history and LAC's legal obligation to serve the [S]tate. This tension is most evident where archived documents are relevant to various historical injustices involving Aboriginal [P]eoples. Historical records housed at LAC have been used extensively as evidence by both Aboriginal claimants and Crown defendants in litigation involving [R]esidential [S]chools, Treaties, Aboriginal title and rights cases, and land claims.[28]

With regard to records relating to the missing and disappeared children and unmarked burials, then Grand Council Chief Reg Niganobe, of the Anishinabek Nation, pointed out that:

> [V]arious levels and ministries of government within Canada held and continue to hold valuable records and archival information which is crucial to identifying who administered and funded Indian Residential Schools, as well as the transferring/transporting, incarceration, hospitalization, and death of children resulting from these schools. Many records were destroyed accidentally and intentionally over the last 100 years and there is no legal requirement for institutions, municipalities, religious orders, international organizations, medical facilities, or police services and facilities to provide relevant records to communities. After

> the battle to acquire the records, communities are met with endless obstacles associated with ownership, storage, and translation of these important documents. Accountability through legislation needs to be established and coordinated to require relevant information be protected and makes it into the hands of those who require it.[29]

Today, federal government records are preserved at Library and Archives Canada (LAC). The preamble to the *Library and Archives of Canada Act* states:

(a) the documentary heritage of Canada be preserved for the benefit of present and future generations;

(b) Canada be served by an institution that is a source of enduring knowledge accessible to all, contributing to the cultural, social and economic advancement of Canada as a free and democratic society;

(c) that institution facilitate in Canada cooperation among the communities involved in the acquisition, preservation and diffusion of knowledge; and

(d) that institution serve as the continuing memory of the government of Canada and its institutions.[30]

Pursuant to this Act, it is the Librarian and Archivist of Canada who makes decisions over which records will be disposed of, including by way of destruction, and which records are of historical or archival value and should be preserved.[31] The TRC called on LAC to fully adopt and implement the *UN Declaration* and the *Joinet-Orentlicher Principles* to protect Indigenous Peoples' inalienable right to know the truth about the human rights violations committed against them in the Indian Residential School System.[32] The TRC recommended that the federal government fund the Canadian Association of Archivists,[33] in collaboration with Indigenous communities, to conduct, "a national review of archival policies and best practices to determine the level of compliance" with the *UN Declaration* and the *Joinet-Orentlicher Principles*.[34] Although LAC and the Association of Canadian Archivists have come together to discuss their progress, most recommendations that could affect substantive change have gone unfulfilled. Integrating the *UN Declaration*'s principles into archival practices necessitates the development of protocols and policies that prioritize Indigenous Peoples' rights, including upholding Indigenous laws, ensuring free, prior and informed consent, and supporting Indigenous data sovereignty.

THE DESTRUCTION AND PRESERVATION OF RECORDS

> My worst fears were realized.... Send a couple of bureaucrats out from Ottawa and you're sure to have a disaster.
>
> — Hugh A. Dempsey, *Always an Adventure*[35]

The 2005 UN *Joinet-Orentlicher Principles* identify the importance of, "preserving archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations."[36] Principle 14 specifically notes that the, "right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law." The destruction of records by governments and churches has impeded Survivors, Indigenous families, and communities in their searches and investigations into the missing and disappeared children and unmarked burials.

Many records relating to Indigenous people and communities have been purposely destroyed. By the 1930s, the federal government was attempting to reduce costs of storing records in Ottawa while also rationalizing and standardizing record-keeping practices across the entire government. The Treasury Board issued directives between 1933 and 1944 requiring the Department of Indian Affairs to adopt clear and consistent policies around document destruction and retention.[37] The first of these directives took effect in February 1933 and outlined the classes of documents that should undergo routine destruction. The Registrar of the Department of Indian Affairs directed that any records related to, "Medical, Hospital or Drug accounts ... Theft, Immorality ... Monthly Reports and Diaries" be destroyed after five years. After 10 years, any correspondence related to, "Hospital Grants, Sanitaria, Homes and Institutions ... Assistance to Ex-Students ... Insanity, Insurance, Accidents ... Report of Inspectors" were also to be destroyed. However, at this time, documents related to, "Churches, Cemeteries, Schools" were to be "retained indefinitely."[38]

A second directive in 1944 was issued clarifying specific types of documents that should not be destroyed, due to concerns raised by the Department of Indian Affairs. Included in the documents that were to be kept were those, "documents of general historical value"[39] and those related to the Indian Trust Funds, which were to be protected for 30 years.[40]

Canada's Past Destruction of Records

Though various departments of Indian Affairs have operated since 1755,[41] creating an enormous number of records, research has shown that, "there was no standard filing system used in Indian Affairs field agencies prior to 1950."[42] Much of the record destruction that happened within the Department of Indian Affairs is believed to have occurred during the Second World War to support the federal government's "scrap paper drive."[43] The Treasury Board's minutes from 1944 indicate that the record destruction was to be expedited, with many records being destroyed after just three or five years.[44] Included were the following records:

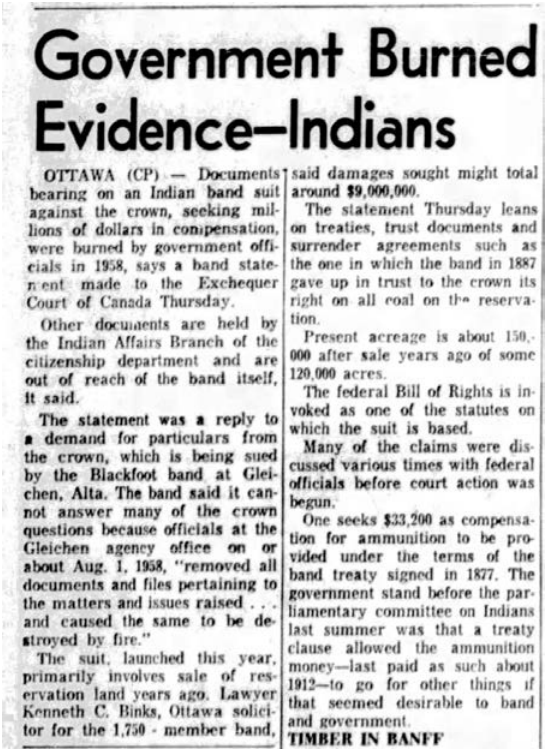
- Inspection reports;
- Quarterly returns;
- Students, Residential Schools (reports);
- Employment and relocation reports;
- Social workers reports;
- School attendance reports;
- Applications for admission;
- Records of, "non-Indian pupils in Indian Schools";[45] and
- Applications for positions as teachers in Indian Schools and seasonal schools.[46]

"Miscellaneous Land Matters, School land, Church Sites, and Cemetery Sites" records were to be protected from destruction for, "30 years—unless a departmental operational requirement exists."[47]

It is unclear how many records were destroyed during what Bill Russell, an archivist and historian, calls the "Dark Decade" between 1937 and 1947.[48] Russell confirms that, "no detailed lists of files destroyed have been located." He estimates that the figure of, "eight to nine tons (some 75,000 files)" that were marked for destruction in a 1937–1938 disposal of "valueless papers" was closer to "15 tons of wastepaper," as reported in a 1944 memorandum about the "exercise" that was being led by Alphonse St. Louis.[49] St. Louis was the bureaucrat responsible

for directing the record-keeping reforms at the Department of Indian Affairs and overseeing the "Dark Decade." Russell notes that St. Louis, "had no [formal archival] training but definite opinions" and, "destroyed a large number of records which he felt were of no historical importance and possibly some of which placed the Indian Affairs Branch in a bad light."[50]

The destruction of records continued beyond the "Dark Decade" and into the 1950s and 1960s. The Blackfoot told the Exchequer Court of Canada that, "documents bearing on Indian band suit against the crown, seeking millions of dollars in compensation were burned by government officials in 1958."[51] Six years later in 1964, the Department of Indian Affairs openly discussed the poor record-keeping conditions that individual Indian Agents reported. For example, the Birtle Agency staff in Manitoba reported that their "quite extensive" records had been destroyed some years ago because they, "were in such poor condition from coal dust and vermin as to be unreadable."[52] The Pas Agency reported that an official named Mr. McGuire, who was, "not a records officer and was not detailed to do this work," destroyed, "a considerable quantity of old files."[53]



Government Burned Evidence—Indians

OTTAWA (CP) — Documents bearing on an Indian band suit against the crown, seeking millions of dollars in compensation, were burned by government officials in 1958, says a band statement made to the Exchequer Court of Canada Thursday.

Other documents are held by the Indian Affairs Branch of the citizenship department and are out of reach of the band itself, it said.

The statement was a reply to a demand for particulars from the crown, which is being sued by the Blackfoot band at Gleichen, Alta. The band said it cannot answer many of the crown questions because officials at the Gleichen agency office on or about Aug. 1, 1958, "removed all documents and files pertaining to the matters and issues raised . . . and caused the same to be destroyed by fire."

The suit, launched this year, primarily involves sale of reservation land years ago. Lawyer Kenneth C. Binks, Ottawa solicitor for the 1,750 - member band, said damages sought might total around $9,000,000.

The statement Thursday leans on treaties, trust documents and surrender agreements such as the one in which the band in 1887 gave up in trust to the crown its right on all coal on the reservation.

Present acreage is about 150,000 after sale years ago of some 120,000 acres.

The federal Bill of Rights is invoked as one of the statutes on which the suit is based.

Many of the claims were discussed various times with federal officials before court action was begun.

One seeks $33,200 as compensation for ammunition to be provided under the terms of the band treaty signed in 1877. The government stand before the parliamentary committee on Indians last summer was that a treaty clause allowed the ammunition money—last paid as such about 1912—to go for other things if that seemed desirable to band and government.

TIMBER IN BANFF

"Government Burned Evidence – Indians," *Edmonton Journal*, December 31, 1960 (material republished with the express permission of Canadian Press).

The full extent of the federal government's destruction of records is unknown. In 2006, Edward Sadowski, who was then the coordinator of the Shingwauk Residential Schools Centre, compiled a list of documents that, based on directives from the Department of Indian Affairs' Records Office, were deemed "valueless" and were therefore likely destroyed.[54] According to Jean-Pierre Morin, a historian at the Department of Crown-Indigenous Relations and Northern Affairs (CIRNA), fires in government buildings also destroyed many records—most notably, the February 1897 fire in the West Block of Parliament that held both the Dominion Archives and records from the Department of Indian Affairs. Morin also explained that documents were lost when they were transferred from regional offices to the head office in Ottawa or destroyed in fires and floods at the regional offices of various Indian Agents.[55]

Destruction of the Pass System Records

Historian Ian Mosby and film director Alex Williams began to research why there was a discrepancy between the lived experiences of First Nations people who lived under the pass system[56] and what the government claimed to be true about the implementation and enforcement of the system. They found that the records documenting the pass system had been largely destroyed by Indian Agencies and the Department of Indian Affairs.[57] Mosby notes that, while there are:

> many accounts of entire agency records being lost to incompetence, indifference and even outright malice, … the reality is that the loss of the official archival record of the pass system didn't come about through individual acts by Indian Agents and their staff. In fact, it is much more likely that it was higher level decisions made in Ottawa that doomed the documentary record of the pass system to oblivion.[58]

Mosby and Williams further noted that, "generations of mostly White settler and male historians dismissed the nearly 60-year life of the pass system—they saw the archives as the repository of the truth, but never really grappled with the specific ways in which that truth was carefully curated by generations of also mostly White settler and male bureaucrats."[59]

The purposeful or accidental destruction of government records has significantly impeded the search for the full truth about the missing and disappeared children and their burials. Notwithstanding a 1973 agreement between Public Archives Canada and the Department of Indian Affairs to place a moratorium on any further record destruction,[60] concerns continue to exist regarding the lack of transparency in the federal government's past and current record destruction practices.

INDEPENDENT ASSESSMENT PROCESS RECORD DESTRUCTION

A group of records that may contain key information about the missing and disappeared children is scheduled for destruction. Notwithstanding the moratorium on the destruction of records, the Supreme Court of Canada has ordered that 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 their records for historical, public education, and research purposes at the National Centre for Truth and Reconciliation (NCTR).[61] Unlike other notice processes under the *Indian Residential Schools Settlement Agreement* (*IRSSA*), there has been limited efforts by the former Indian Residential Schools Adjudication Secretariat (which managed the IAP process), the federal government, and other entities to provide proper notice to Survivors about the opt-in process to preserve their truths at the NCTR.[62] In addition, many Survivors who participated in the IAP are no longer alive, and there is no way for living family members to opt in for them.

The Supreme Court of Canada, when considering whether the IAP records could be destroyed, focused its attention and analysis on whether they were "court records" or government records subject to the federal privacy, access to information, and archival laws and whether the *IRSSA* allowed for the records to be destroyed. A review of the Supreme Court of Canada's decision indicates that the court failed to address the NCTR's arguments, as laid out in its court materials,[63] that urged the court to adopt the UN *Joinet-Orentlicher Principles*, the *UN Declaration*, and the many reports that highlighted the importance of preserving the records of mass human rights violations and making them accessible to victims, families, and communities. The IAP records are important historical evidence of the systemic abuse and injustices perpetrated against Indigenous children and communities within the Indian Residential School System and the UN Special Rapporteur on the Rights of Indigenous Peoples called for Canada to pass legislation and take other measures necessary to preserve these records.[64]

DETERMINING THE HISTORICAL OR ARCHIVAL VALUE OF RECORDS

The records of federal government departments that were considered to have no further business value to the department were either destroyed or transferred to LAC in accordance with disposition requirements. Documents transferred to LAC undergo a review to assess whether the records hold any historical or archival value. This determination or "appraisal" of what records have value has been altered over time in Canada. Carol Couture, a Canadian archivist, set out the history of appraisal of federal government records:

> The chronology in Canada on matters of appraisal (for the records of the federal government) is the following:
>
> - 1914: no destruction of documents may occur without Treasury Board approval;

> - 1945: creation of an interdepartmental committee responsible for approving, along with Treasury Board, the disposal of government records;
> - 1961: the interdepartmental committee assumes sole responsibility for the mandate of approving disposal; each government department is required to establish a retention schedule;
> - 1966: under a Cabinet directive, the federal archivist assumes responsibility for the co-ordination and management of the disposal and preservation of public documents; and
> - 1987: adoption of a new law on archives whereby the appraisal of documents becomes the purview of the NA [National Archives].[65]

Although the determination of archival value, as Couture identifies, "is one of the most significant and defining functions of contemporary archival practice," there have been varying approaches adopted by archives and archivists, which have led to questions such as: "What would be the consequences of appraising records mainly to destroy them, rather than preserve them? When performing an appraisal, must we primarily keep in mind the interests of the creator or those of the user? Must we appraise in order to meet administrative needs or research needs?"[66]

The Librarian and Archivist of Canada is tasked with answering these questions and making decisions on preserving the government of Canada's collective memory. However, unlike provincial record-keeping laws, what is of historical or archival value is not defined in the *Library and Archives of Canada Act*.[67] Instead, various policy documents and guidelines were created to assist in the appraisal process. Today, LAC notes that it:

> continues to draw on macroappraisal methodology to identify records of historical or archival value for institutions subject to the *LAC Act*, emphasizing the context of records creation over content. Under our renewed and modernized macroappraisal approach, analysis is carried out to understand the role of the records creator within society and the Government of Canada, its relationship to other government institutions and citizens, and its mandate and activities over time.[68]

Given the genocide and crimes against humanity perpetrated against Indigenous people and communities, such a macroappraisal approach must, when viewed from an international law and human rights perspective, accept and acknowledge that the government of

Canada, which was the creator of the records, was the perpetrator of harms against Indigenous Peoples. As such, it should be Indigenous Peoples who determine what government records related to them should be preserved. Consistent with the *UN Declaration*, they should be part of the decision-making process to determine access and retention policies, and no record should be destroyed without the free, prior and informed consent of Indigenous Nations.

The Canada Memory of the World Register's Protection for Indigenous Records

UNESCO has a Canadian Council[69] with a Memory of the World Register that is specific to preserving, protecting, and highlighting archival or documentary heritage collections at archives and libraries across Canada that are essential for public memory and culture. The Canada Memory of the World Register's to, "preserve evidence of Residential School experiences while drawing attention to the resilience of [S]urvivors" has included the archival records at the NCTR, the Children of Shingwauk Alumni Association, and the Shingwauk Reunion Fonds at the Shingwauk Residential Schools Centre[70] in the Memory of the World Register. These collections include audio-video materials, photographs, oral history transcripts, organizational documentation, and documentation of community gatherings.

Other archives can apply to have their Indigenous collections preserved within this program. Dr. Cody Groat, a professor, author, and heritage advocate from Six Nations of the Grand River, noted that archives, especially ones at universities, may choose to apply to have their collections protected under the Memory of the World Register to protect at-risk collections from changes in mandates, funding cuts, and destruction policies. Such designation by UNESCO can help archives secure more funding from their institutions, aid in receiving additional grant dollars, and attract more researchers and visitors to the archives.[71]

ACCESSING GOVERNMENT RECORDS TO PROMOTE TRUTH AND JUSTICE

> It's a very time-consuming process—the research process—and when we started, we had no idea where to start.... [Research] is like putting together a puzzle and all these pieces are in so many different [organizations], so many different filing cabinets and vaults that I need to go search in. Although it's time consuming, it helps [to create] Sacred spaces of learning for younger generations and a history that is not written by non-Indigenous people but interpreted in our own way.
>
> — Participant at the National Gathering on Unmarked Burials[72]

Krista McCracken notes that, "intellectual access to records that are by or about Indigenous communities can often be complicated by how archives restrict material based on copyright, government privacy legislation, or Western understandings of ownership."[73] Such colonial understandings have led to the creation of laws and policies that have only worked to impede Indigenous people and communities from accessing the records created by settlers about them, without their consent. To access archival records preserved at LAC, individuals must submit an access request under the *Access to Information Act* and pay a fee.[74] Those seeking disclosure of their own personal information held by a government institution must submit a separate request under the *Privacy Act*.[75] In theory, the access to information and privacy legislation in Canada ensures that citizens have the right to access government information while, at the same time, protecting privacy. The *Access to Information Act* provides individuals with the right to access government information, subject to certain exemptions, which include information that could harm national security, the Canadian economy, and personal information.[76] However, these exemptions are limited and must be justified by the government department. The *Privacy Act* governs how personal information is collected, used, and disclosed by government institutions.

Archival policies and operational procedures regularly deny requests from Indian Residential School Survivors, Indigenous communities, and researchers or often produce redacted records due to privacy issues. In practice, these laws, policies, and operational procedures have not supported Indigenous communities that are leading investigations into the missing and disappeared children and unmarked burials. These legislative regimes prioritize the rights of the person or institutions who created the records (that is, governments, churches,

hospitals, and other institutions) over those of the Survivors and the children whose lives are documented in the records. In June 2023, the House of Commons Standing Committee on Access to Information, Privacy and Ethics issued a report entitled *The State of Canada's Access to Information System*.[77] This report notes that the *Access to Information Act* was enacted in 1983 and that many recommendations have since been made to modernize it. Bill C-58, *An Act to Amend the Access to Information Act and the Privacy Act and to Make Consequential Amendments to Other Acts*,[78] which received royal assent in June 2019, did introduce certain amendments to the *Access to Information Act*, yet many barriers continue to exist.

After hearing from numerous witnesses and receiving written submissions, the Standing Committee on Access to Information, Privacy and Ethics concluded that, "Canada's access to information system continues to have flaws." It made several recommendations relating to Indigenous Peoples, specifically:

> **Recommendation 4:** That the Government of Canada work with Indigenous Peoples to remove barriers to access information.
>
> **Recommendation 5:** That the Government of Canada work with Indigenous peoples to develop a mechanism of independent oversight that ensures their full and timely access to records held by federal government institutions for purposes of substantiating historical claims.
>
> **Recommendation 6:** That the Government of Canada amend the *Access to Information Act* to update and align language used in relation to Indigenous peoples and communities, including the definition of "[A]boriginal government" in the Act.[79]

The committee further recommended that the Government of Canada improve the declassification system to provide greater access to Canada's history and that it implement a process for the automatic release of historical documents that are more than 25 years old. Implementation of the committee's recommendations would create greater access for Survivors and Indigenous families and communities that are searching for the missing and disappeared children and aid in facilitating their right to know the truth.

A further report about Canada's access and privacy laws was released on February 27, 2024, by the Standing Senate Committee on Indigenous Peoples, which held two sessions as part of its ongoing response to recommendations made in its report *Honouring the Children Who Never Came Home*.[80] The purpose of the sessions was to address issues relating to the federal government's withholding of Indian Residential School records and the difficulties

surrounding the *Privacy Act* and other related barriers. The first session included witnesses Philippe Dufresne, the Privacy Commissioner of Canada, and Caroline Maynard, Canada's Information Commissioner.[81] Dufresne described the *Privacy Act* as, "old legislation" and emphasized the need to modernize the Act to reflect the reconciliation needs of Survivors, Indigenous families, and communities and their search and recovery efforts for the missing and disappeared children. Dufresne noted that the *Privacy Act* is focused on individual rights, choices, and identity and lacks consideration of Indigenous Peoples' collective rights. To incorporate these rights, Dufresne highlighted that section 8(2) of the *Privacy Act* does permit the disclosure of personal information as follows:

> 8(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed,
>
> (m) for any purpose where, in the opinion of the head of the institution,
>
> (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
>
> (ii) disclosure would clearly benefit the individual to whom the information relates.[82]

Dufresne suggested that reconciliation efforts are, "in the public interest" and outweigh the perceived invasion of privacy.

Maynard testified that Canada lacks a public interest override in its access legislation, which may hold relevant information regarding the search and recovery efforts of the missing and disappeared children and their unmarked burials. Additionally, she stated that the access to information system is overwhelmed with access requests and that government units and departments are not adequately resourced to respond to the demand.[83] Maynard further noted that an informal approach could be utilized to respond to access requests relating to Treaties. However, even with informal disclosure processes, there can be frustration because the government maintains control over the records. Additionally, Maynard explained that a significant amount of material released is first redacted by the federal government. Maynard proposed that mediation is necessary to address the growing mistrust of government and to ensure that Indigenous Peoples are receiving the information to which they are entitled, and require, to conduct investigations into the missing and disappeared children.[84] Both commissioners emphasized the need for legislative action. Maynard stated that an updated law is needed, one that creates a legal obligation to consult with Indigenous communities and organizations.[85]

Children of Shingwauk Alumni Association

> This past year has focused on the memorialization of children. There are very few of us [Survivors] left now. We are all getting tired now and we really have to put our trust in [the federal government] to do what is honourably possible.... All we are trying to do is comply with truth and reconciliation. We are not the ones withholding the truth, we will give you the truth on what we expect of you [the federal government] as the other partner in truth and reconciliation. I am hoping this is a turning point so we can move forward in a positive direction so we can honour those children who died in the Residential Schools. It is very heartbreaking that the lack of respect and consideration that was given to children in the school, is still being given to these children after their death. We have to do that not only in our eyes but in the eyes of Creator.
>
> — Shirley Horn, Survivor, Children of Shingwauk Alumni Association[86]

What happens when an Indigenous community or researcher searching for missing children has their access denied or is told a document does not exist? How can Indigenous communities have trust in a process where the entities complicit in the disappearances of their relatives are the ones with the power to determine what is disclosed? The federal government holds the authority to provide access to information to Survivors, Indigenous families, and communities, who are asked to blindly trust that the government is being transparent, honest, and fair in its determination of access and disclosure. Survivors, Indigenous communities, and researchers are finding that explanations for the lack of access are frequently shifting. The lack of adequate funding to archives and the lack of respect for the important nature of the records also impacts what is a complicated bureaucratic process. The mechanisms put in place by Canada to ensure information is made available to the public are inherently flawed. The Information Commissioner of Canada cannot help Indigenous communities and researchers when government departments are unwilling to work towards, or participate meaningfully in, reconciliation efforts.

All these challenges are evident in the recent access to information request filed by Ed Sadowski, the Children of Shingwauk Alumni Association's (CSAA) researcher. The CSAA has been working closely with Sadowski to obtain records from the federal government to help identify two boys who drowned in a small lake on a farm property adjacent to the former site of the Shingwauk and Wawanosh Indian Residential Schools in Ontario. The CSAA's

search is based on the comments made at the first Shingwauk Reunion in 1981 by Margaret McLean, a former staff member who was raised and lived at the Shingwauk and Wawanosh Indian Residential Schools. McLean told the CSAA that her father, Seymour Hayes, who was also a former Shingwauk staff member, attempted to retrieve the bodies of two boys from the marshy section of the lake around 1914–1915 but that the boys' bodies were not recovered. In the 1960s, the lake was filled in and is currently part of Snowdon Park.[87]

Sadowski has conducted extensive research to find records that could help name the two boys. Sadowski believes that one way to ascertain the identities of the two boys is to cross-reference the records of the Indian Register with the Indian Trust Fund. Some of these records include lists of those entitled to receive Treaty Annuity and Interest Annuity benefits. Comparing the annual lists may help to identify which children's names appeared in one year and not the next.[88] By examining these records, it may be possible to determine whether withdrawals were made from a child's Treaty and interest savings accounts to cover the costs of their own coffins and burials.[89] Typically, records over one hundred years old are made public, unless they fall within one of the few legislated exceptions, such as for national security purposes or military operations. Sadowski has sent numerous requests to LAC to reclassify these records from restricted to open access. However, due to the lack of internal capacity, LAC has not reclassified the records that the CSAA has requested.

At the third National Gathering, Sadowski told participants that requests and meetings with the federal government are still ongoing. Since then, some records have been released by the federal government. Treaty Annuity and Interest Annuity Paylists were provided, along with some Trust Fund Ledgers and other documents, but the copies were of poor quality and were difficult to read. The federal government also mistakenly included records relating to a different Indian Residential School in the release package. Unfortunately, the Annuity Paylists for Indian Residential School children (Form no. 81) were not included in the release of records.[90] The events that followed reveal that the CSAA's access to these records have been deliberately hampered by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada (ISC). The request to provide all records and an Inventory of records held by CIRNAC and the ISC were ignored. CIRNAC and the ISC continue to block access to the Indian Register itself. If any individual is identified, then the Indian Register, along with its Genealogical Database and other records, would show living family members.

While Sadowski believes some documents were destroyed during the paper shortage of the Second World War, he is also trying to obtain the complete, longer versions of the Indian Residential School Narratives.[91] The publicly available versions of the Indian Residential

School Narratives are short summaries on the history of each Indian Residential School that were prepared as part of the IAP. Sadowski, who had knowledge and research experience with the IAP knew that the government created detailed School Narratives, some that were thousands of pages long for all 139 Indian Residential Schools that were recognized under the *IRSSA*. At the time of writing this Final Report, the NCTR has made 136 School Narratives publicly available. However, Sadowski points out that many of these publicly available School Narratives are redacted and are under 20 pages long, indicating that they may not be the full School Narratives. It is unclear where the original long-form School Narratives are archived or if they still exist.

In response to an access to information complaint filed by Sadowski, seeking the full School Narratives, the Information and Privacy Commissioner found that CIRNAC failed to conduct a reasonable search for records. Despite acknowledging the existence of the requested records, CIRNAC refused to process the request, citing confidentiality concerns and resource constraints. The Information and Privacy Commissioner emphasized that, under the *Access to Information Act*, every Canadian citizen has the right to access government records upon request. Despite reminders and requests for cooperation, CIRNAC did not provide necessary information or indicate any intention to process the request. On February 19, 2024, the Information and Privacy Commissioner issued a decision determining CIRNAC's behaviour to be wholly unacceptable as it infringed upon Sadowski's right to access information.[92] Consequently, the Information and Privacy Commissioner ordered CIRNAC to retrieve all relevant records without delay, process them, and provide a complete response to the complaint within 60 business days. The Information and Privacy Commissioner was forced to inform the minister of CIRNAC of the department's non-compliance and require the minister to ensure compliance with the orders. Upon doing so, the minister advised the Information and Privacy Commissioner of the discovery of additional records.[93]

While the Information and Privacy Commissioner's decision affirms the importance of transparency and accountability within government institutions to ensure that citizens can exercise their right to access information without delay and barriers by government, these circumstances reveal the degree of obstruction that CIRNAC continues to display in relation to Indigenous communities. In addition to the lack of cooperation and failure to process the access request, CIRNAC's non-compliance is further underscored by its disregard of the Office of the Information and Privacy Commissioner's directives. Despite requests for details such as the number of relevant pages, a timeline for processing the request, information on required consultations, and a firm response date, CIRNAC remained non-responsive. Furthermore, CIRNAC's access officials confirmed their continuous denial of providing the requested records, thereby obstructing the processing of the request.

The Information and Privacy Commissioner's finding of CIRNAC's failure to conduct a reasonable search for records is compounded by its unwillingness to engage constructively with the Office of the Information and Privacy Commissioner and researchers working with Indigenous communities. This pattern of obstructionist behaviour not only undermines right to access legislation but also erodes trust in government's claims that it will cooperate and be transparent and accountable with respect to the disclosure of information regarding the Indian Residential Schools System. The Information and Privacy Commissioner's detailed examination of CIRNAC's non-compliance highlights the severity of the situation and the necessity for immediate corrective action to address systemic barriers that impede Indigenous communities' search and recovery efforts.

The disconnect in CIRNAC's systems are most apparent when contrasting Sadowski's experiences on behalf of the CSAA with that of Paul Allen, an independent researcher, who made a similar access to information request in December 2022. Allen requested from CIRNAC, "any records pertaining to policies and procedures governing the preparation, review, revision, final approval, and distribution of all 140 IRS School Narratives publicly issued" as well as, "any records pertaining to a failure to prepare School Narratives for four specific schools."[94] Despite statements by the minister that such documents did not exist, Allen received some related documents in March 2023.[95] He received protocol documents that outlined what research and content went into the IAP School Narratives, a template all researchers followed, an internal document detailing the release and redaction of the School Narratives and short-form School Narratives for the four institutions for which the federal government claimed no Narrative existed. The School Narratives were redacted and contained little information about the experiences of the children, but they did include enough details to signal that the redacted details dealt with incidents and gravesites.[96]

Sadowski commenced an access to information request about 10 years ago on behalf of Survivors who were IAP claimants. He noted that the Survivors, "did not receive a proper copy of their IAP School Narrative as part of their evidentiary package after their hearings were completed. All of them have now passed away."[97] The persistent refusals, lack of transparency, and creation of systemic barriers by CIRNAC demonstrates that settler amnesty and a culture of impunity is deeply embedded at this federal government department, which claims that it, "continues to renew the nation-to-nation, Inuit-Crown, government-to-government relationship between Canada and First Nations, Inuit and Métis; modernize Government of Canada structures to enable Indigenous peoples to build capacity and support their vision of self-determination."[98] Survivors, Indigenous families, and communities want to know why records that are over one hundred years old have not been reclassified. They want to know why processes and legislation are not in place for the eventual disclosure of historical records.

The CSAA and Sadowski continue to search for records from 1914–1915 that could lead to naming the boys whose bodies were never recovered from Snowdon Park.

Snowdon Park Gathering with Survivors, August 2, 2024 (Children of Shingwauk Alumni Association and Office of the Independent Special Interlocutor).

Freedom of Information Law Is Failing the Public

In interviews with the *Globe and Mail*, dozens of historians, researchers, archivists, and academics who regularly deal with LAC say that the situation has become so dire that Canadian historians now often rely on the public archives of other countries to do research.[99] The issues with accessing records—even records that are more than one hundred years old—are a known problem within the non-Indigenous academic research community. Canadian historians are concerned about processes that delay and restrict access for seemingly no reason. This deters people from conducting important research that could lead to public education and creating more informed and engaged citizens on history, which is of vital importance in an age of misinformation and denialism.[100]

The *Globe and Mail* investigated the freedom of information (FOI) processes across the country and found that public institutions regularly, "violate their statutory deadlines and overuse redactions" and have, "years-long appeals backlogs." The most problematic issues that were identified relate to historical documents. In the *Globe and Mail*'s November 2023 article "The Dustbin of History," academics identified some of the problems stemming from FOI laws:

> Many factors have contributed to the turmoil—inadequate resources, outdated technology, a lack of political will to fix longstanding problems—but at the root of the rot is the fact that Canada, unlike so many other democracies, has no system in place to open government records after a set period of time.
>
> The result is that everything that isn't voluntarily released by government is closed by default—forever—until someone applies for it through an access request. From there, the information is scrutinized under modern FOI legislation, which was not designed to deal with decades-old documents.[101]

Secret Canada, a *Globe and Mail* FOI project to help individuals navigate access regimes, was established. A database of FOI summaries from various public and government institutions across Canada was also created.[102]

PUBLIC INTEREST OVERRIDE

As Caroline Maynard, Canada's Information Commissioner, identified to the Standing Senate Committee on Indigenous Peoples, Canada lacks a "public interest override" in the *Access to Information Act*.[103] Pursuant to international standards, the rights to information should only be subject to limited restrictions where the disclosure would pose a risk of harm. However, such restrictions should not apply if the disclosure outweighs the harm—rendering the disclosure in the public interest. The Centre for Law and Democracy (CLD), in its April 2023 submission to Session 44 of the Universal Periodic Review on the Right to Information in Canada, wrote that the *Access to Information Act*, "contains only a limited public interest override which applies to third-party trade secrets and financial, scientific or technical information, allowing for disclosure if it 'would be in the public interest as it relates to public health, public safety or protection of the environment' or where 'the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party' (section 20(6))."[104] It further noted that, "the scope of this was effectively extended by the Supreme Court of Canada in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, which held that the public interest must be taken into account when deciding whether or not to apply discretionary exceptions—that is, exceptions that provide that public authorities "may" refuse to disclose information as opposed to "shall" refuse.

As a result, these exceptions are now all subject to some form of public interest override.[105] However, most mandatory exceptions are not subject to this override. The CLD called for the enactment of a, "blanket public interest override" in the *Access to Information Act*.[106] If such a public interest override was to be enacted, Indigenous laws, rights, and the internationally recognized human right to know the truth should all be included in defining what is in the public interest. In its July 2024 report, *Missing Records, Missing Children*, the Standing Senate Committee on Indigenous Peoples noted that both the *Privacy Act* and the *Access to Information Act*, "require modernization with respect to information by Indigenous peoples."[107] The committee recommended that the federal government, in consultation with Indigenous peoples, amend the laws and, "produce a specific plan to align both acts to incorporate the rights as articulated in the *United Nations Declaration on the Rights of Indigenous Peoples*; and to provide broader discretionary powers under these Acts to federal institutions to disclose records when warranted by public interest."[108] It further recommended that the "purpose clauses" of these Acts be amended to, "reflect reconciliation with Indigenous peoples."[109]

"Public Interest" and Indigenous Peoples

For far too long, the "public interest" has excluded consideration of Indigenous Peoples. Recently, Justice Gethin B. Edward, in the sentencing decision of *R. v. Williams*, discussed how to define the "public interest" in relation to Indigenous Peoples.[110] Skyler Williams, a land defender at Six Nations of the Grand River pled guilty to one count of mischief and two counts of failing to comply with an undertaking in relation to the 1492 Land Back Lane land defence. In his oral reasons, Justice Edward stated:

> The narrow issue on sentencing Mr. Williams is whether I grant a discharge ... or a suspended sentence.... The question the Court struggled with was the interpretation to be given to Section 730 of the *Criminal Code* which says an accused may be discharged absolutely or on conditions if the court "considers it to be in the best interests of the accused and not contrary to the public interest." It is this last phrase the Court focused on, "not contrary to the public interest." Did that mean the Haudenosaunee public interest, the settler community public interest or both?[111]

Justice Edward, after hearing evidence from two experts—Dr. Richard Monture, who testified about the history of Six Nations of the Grand River, and Dr. Beverly Jacobs, whose testimony focused on Haudenosaunee legal traditions—stated that, "this court will attempt to fashion a sentence that incorporates Haudenosaunee legal traditions." Justice Edward further stated that, "the Court's struggle to answer, 'to what public' ... I am prepared to rely on the application of Haudenosaunee law. In this instance the application of Kuswentah, the Two Row Wampum." In explaining his decision to grant an absolute discharge, he found that, "Skyler Williams was carrying out his actions as a land protector in the context of these Haudenosaunee laws.... Therefore, the public are the Haudenosaunee people. And this Court concludes that community would not conclude his actions in protecting their land was not in their public interest."[112]

ACCESSING CHURCH RECORDS TO PROMOTE TRUTH AND JUSTICE

As noted above, Fabián Salvioli, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, when writing of the importance of providing unrestricted access to records when investigating rights violations, specifically called for the cooperation of the Catholic church. Salvioli indicated that, "truth-seeking initiatives shed light on and gather information about past violations of human rights and contribute to combating impunity, restoring the rule of law and facilitating reconciliation."[113] All the church entities that operated the Indian Residential Schools have committed to reconciliation with Indigenous Peoples, as specified in their apologies and statements of reconciliation. Yet many continue to block Survivors, Indigenous families, and communities from accessing church archives.

Among the many problems with the *Access to Information Act* is its limited scope. The *Access to Information Act* does not apply to the church entities that operated the Indian Residential Schools, even though they received funding directly from the federal government to enforce its policies. Many churches rely on the fact that the *Access to Information Act* does not apply to them to refuse access to their records and, at the same time, argue that the *Privacy Act* precludes them from releasing records. The OMI (Oblates of Mary Immaculate) Lacombe Canada, for example, notes on its website that it did not release its Codex Historicus and personnel files of the Oblates, "due to privacy law restrictions."[114] However, it fails to note what privacy law restrictions it is hiding behind.

In June 2023, the Permanent Council of the Canadian Conference of Catholic Bishops (CCCB) released the *Guidelines for Developing Diocesan Policies on Indigenous-related Records in Canadian Catholic Diocesan Archives* to assist dioceses in developing policies related to, "the care of and access to the holdings in diocesan archives in consideration of applicable privacy legislation and canon law."[115] These guidelines note that, "in most provinces and territories, there is no privacy law that directly applies to a diocese" and that federal and provincial legislation that governs the collection, use, retention, and disclosure of personal information generally applies to either public sector institutions (for example, the government itself or government agencies) or private sector organizations. For example, the federal *Personal Information and Electronic Documents Act* (*Personal Information Act*) applies to private sector organizations that collect personal information in the course of commercial activities.[116] It further notes that, "the federal *Privacy Act* applies to personal information held by federal

government institutions" and that, "neither *PIPEDA* [*Personal Information Act*] nor *Privacy Act* directly applies to personal information held by an archdiocese, diocese, or parish."[117]

Although current access to information and privacy laws do not apply to church entities, the process of obtaining archival information from different churches is fraught with many challenges. Some of these challenges can be attributed to the diffuse nature of church organizations, confusing lines of authority within the church hierarchies, lack of central repositories or standardized archiving practices, varying degrees of cooperation, reluctance to accept responsibility for abuses and deaths, and the lack of transparency. Further, many church organizations implicated in the Indian Residential School System were not part of one large denomination; rather, they consisted of various religious entities with distinct philosophies, diverse geographical catchments, and an array of practices, often lacking standardized rules for archiving historical documents. Consequently, there is no uniformity in the preservation and accessibility of records across different religious entities. Unlike governmental structures that have established policies and operational procedures for archiving records that are public, church entities do not have publicly available protocols. Each religious denomination has its own formal or informal archival processes, leading to inconsistencies and difficulties in accessing information.

In correspondence from the Office of the Independent Special Interlocutor (OSI), over 60 different church entities were asked to share information on what steps they had taken, or were taking, to support Survivors and Indigenous families and communities searching for the missing and disappeared children, including what processes were in place to access church archives. This request for information was made in the hope of bringing some transparency to what the churches were doing and to identify any emerging practices. Less than half of the church entities responded to the request for information. Of those that replied, only some provided full answers, while others indicated that they did not understand the questions or their relevance. Many only provided short answers and skipped several sections entirely. The lack of meaningful responses from these church entities supports the sentiments shared by Survivors, Indigenous families, and communities—that accessing church records has many barriers, especially Catholic church records. Many of the Catholic church entities that responded to the request for information indicated that no special processes or practices have been put in place for Survivors, Indigenous families, and communities to navigate the archives. In contrast, other religious denominations, like the Anglican and United churches, have created portals or tools for Indigenous families and communities to make requests (see Table 1).[118]

Table 1: Summary Chart

Denomination	Number of Entities Contacted	Number of Substantive Responses Received	Number of Acknowledgements of Request / Some Type of Response	No Response
Anglican	22	2	1	19
Baptist	1	0	1	0
Mennonite	1	0	0	1
Moravian	1	0	0	1
Presbyterian	3	1	0	2
Roman Catholic	30	18	0	12
United	4	1	0	3

For a more detailed description of the Request for Information from the OSI and individual church responses, see Appendix A to this chapter.

The Office of the Treaty Commissioner's Difficulties in Accessing Catholic Church Records

The Office of the Treaty Commissioner (OTC) partnered with Dr. Winona Wheeler, the Department Head of Native Studies at the University of Saskatchewan, to document and collect church records relating to four Indian Residential Schools in the Roman Catholic Diocese of Prince Albert in Saskatchewan: Delmas Indian Residential School; St. Anthony's Indian Residential School; Beauval Indian Residential School; and St. Michael's Indian Residential School. The OTC encountered numerous barriers in accessing church records relating to all four institutions. The Interim Report contained a detailed timeline demonstrating the frustrating deflections and confusing see-sawing answers that Catholic church entities provided on how to obtain records from them. For example, with respect to the OTC's efforts to obtain records relating to the St. Michael's Indian Residential School, the bishop of the Prince Albert Catholic Diocese initially announced that archival records would be shared. After numerous phone calls to the diocese, a written response was received saying that the Prince Albert Catholic Diocese, "never owned or operated any residential school" and denying that the previous bishop had agreed to share documents. The letter indicated that some documents relating to St. Michael's Indian Residential School were microfilmed by the Saskatchewan Archives Society and available in Regina and that some Prince Albert Catholic Diocese records

were held at St. Paul University in Ottawa, Ontario. However, St. Paul University's archivist contended they had no records relating to the Prince Albert Catholic Diocese.

After arranging to view the microfilm at the Saskatchewan Archives Society in Regina, the OTC was informed that the documents were restricted and that written permission was required from the Prince Albert Catholic Diocese. A long delay ensued before the Prince Albert Catholic Diocese met with OTC researchers and then required a non-disclosure agreement (NDA) to be signed to authorize access to the microfilmed records. The Prince Albert Catholic Diocese also instructed the Provincial Archives of Saskatchewan to not allow any copies to be made of the microfilm records, which the OTC only learned of upon arrival at the archives. After many months of negotiating with the Prince Albert Catholic Diocese and expressing concerns over the lack of cooperation to the archbishop, the OTC was permitted access to the records in the summer of 2022, which was 14 months after the initial announcement indicating that records would be made available.

It has taken over three years for the OTC to obtain records regarding the Beauval Indian Residential School. Starting in July 2021, the OTC was informed by the archivist at the Prince Albert Catholic Diocese that information may be found through the Soeurs de Saint Joseph de Saint Hyacinthe Québec at the Centre du Patrimoine in St. Boniface, Manitoba, and the Archdiocese of Keewatin-Le Pas Archives. Upon contacting the Centre du Patrimoine, the OTC was notified that authorization was required to view any documents earlier than 1931. Upon contacting the Archdiocese of Keewatin-Le Pas Archives to request access, the OTC was required to sign a NDA to be able to view the records, despite having already signed a NDA in relation to records from the Prince Albert Catholic Diocese.

In the spring of 2022, after cancelling two scheduled visits, a representative of the Archdiocese of Keewatin-Le Pas Archives deposited files with the Centre du Patrimoine for digitization; however, a review of the files revealed that there were no records relating to the Beauval Indian Residential School. At this time, inquiries by the Centre du Patrimoine uncovered the fact that institutional records had been moved from the Archdiocese of Keewatin Le Pas Archives and sent to Richelieu, Quebec. The OTC then requested the records from the archivist for the Missionnaires Oblats de Marie Immaculée in Richelieu, Quebec. In the summer of 2023, the OTC was still working to retrieve records relating to the Beauval Indian Residential School.[119] In July 2024, the OSI contacted the OTC for an update on

their work, and they reported that the main obstacle to continuing their archival research was still gaining access to archival church records. It has become clear to the OTC that churches and public archives that hold church records will need to be compelled to share their archival records with Survivors.[120]

Although the OTC focuses mainly on archival research at the direction of the search committees, they also support ground-penetrating radar and oral history interviews. The OTC noted that:

> The OSI has been instrumental in navigating the complicated funding opportunities for IRS [Indian Residential School] research. Without this support many of the search committees in Saskatchewan would not be funded. The OTC has also benefitted from attending the annual gatherings hosted by the OSI. It is a privilege and honour to learn from Survivors and their families as well as other IRS researchers. For all of the individual speakers, the panels and the breakout session speakers—there are almost no proper words to describe the emotions you feel after hearing their stories. You feel their pain, their hurt, and the frustrations with the roadblocks they face in trying to get answers and gain access to IRS records. All of this culminates in our staff getting immeasurable education that helps us with the work that we do here at the OTC. We gain invaluable insight to the truth—on the dark stain in Canada's true history. We deeply appreciate the OSI on all of the tremendous hard work, dedication and devotion for all that they do and we will continue to praise them for their commitments of helping the IRS Survivors/families and to sharing the ultimate goal of truth.[121]

Church Entities and the Standing Senate Committee

In November 2023, the Standing Senate Committee on Indigenous Peoples heard from three church witnesses; representatives from the Archdiocese of Keewatin-Le Pas, the Oblate General Archives, and the OMI General Administration.[122] The senators questioned church witnesses about their institution's role in withholding information and documents necessary for the search and recovery of the missing and disappeared children and unmarked burials. A day before being called to testify, the Archdiocese of Keewatin-Le Pas finally released records

that were found by archdiocesan staff two years prior. The Archdiocese had held onto the records in 2021 without providing disclosure of this material. Archbishop Murray Chatlain explained that, although the records were only now being released, the recovery of these files was immediately brought to the attention of NCTR in October 2021. At that time, it was determined that the files would be digitized through the Société historique de Saint-Boniface, a third party, and then sent to the NCTR. However, the archbishop stated that the delivery of the files did not occur because the files were misplaced. It appears that no attention, or little importance, was given to the delivery of these records until October 2023, one day before the archbishop's scheduled testimony before the Standing Senate Committee on Indigenous Peoples.[123]

At the hearing, upon being asked about the disclosed records, the following exchange occurred:

> Senator Tannas: Given that you found something that you didn't think existed before, and passed it along, are you now satisfied that you have found everything that is vital and relevant to the NCTR's work in your archives?
>
> Archbishop Chatlain: Yes, 99% was there already, which we passed on eight years ago. It was just this little bit. We feel that everything is there. Maybe there's a little surprise, but we are absolutely not holding anything back. If we find a little bit, we'll do exactly the same thing. But, for sure, the vast majority is there—everything that we know of.
>
> Senator Tannas: But if you find something, it won't take two years to get it to the NCTR?
>
> Archbishop Chatlain: No.[124]

Archbishop Chatlain failed to provide a detailed explanation for the delay in the production of the records. Just as the Catholic church entities were not transparent with the OSI about their policies and procedures regarding access to records, the witnesses before the Standing Senate Committee on Indigenous Peoples were also vague and provided little guidance on how Survivors or Indigenous communities could access church records.

A key focus of the Senate hearing was on access to the church personnel records of individuals who worked in the Indian Residential Schools. The information that personnel records

can offer is crucial to the understanding of how these institutions were set up, operated, and administered. Saskatchewan Treaty Commissioner Mary Musqua-Culbertson described how difficult accessing the personnel files had been for her office. She noted that her office was told that they had to sign NDAs to access these files. One NDA was drafted to guarantee 21 years of confidentiality. Musqua-Culbertson stated, "Who specifically asks for a 21-year NDA? Who within their organization needs to die within those 21 years that is being protected? I'm very frank about this because this affects my life, my legacy, my children."[125] Such NDAs protect the interests of the churches and do not assist in the search and recovery efforts of Survivors, Indigenous families, and communities. With respect to the question whether personnel files had been moved out of the country, the church witnesses testified that most of the information is within Canada and controlled by the provincial superiors.[126]

Jesuits of Canada Release a List of Names of Those Credibly Accused of Sexual Abuse of a Minor

As part of its efforts to promote transparency, accountability, justice and healing, the Jesuits of Canada publicly released in March 2023 a list of the names of 27 Jesuits who were credibly accused of abusing minors from 1950 to 2023. The list was created following the Jesuits of Canada's review of their archival records and an investigation conducted by their third-party consultants. The Jesuits reported that three men of their 208 current members have had a credible accusation made against them.[127] Of the 27 men named on the list, six had worked at the Spanish Indian Residential School, the only Indian Residential School operated by the Jesuits. Another four of those named had worked in a First Nations community.[128] The list not only contains the name of the credibly accused person, but it also includes the personal information of the person, such as their date of birth, date of ordination, whether they are currently living or deceased, their year of death, and each of their pastoral assignments with the Jesuits—all information that would be included in personnel files.

In its press release on March 13, 2023, the Jesuits of Canada encouraged, "any person who has suffered abuse by a Jesuit to notify the appropriate law enforcement or child-protection agency in the location in which the incident took place" and further encouraged people to contact their appointed representative.[129] The Jesuits posted a revised list of names in May 2023. This revised list adds two additional names of credibly accused Jesuits.[130]

Name:	Mara, James
Birth:	1921
Ordination:	N/A
Status of Individual:	Deceased – 1992
Pastoral Assignments:	Garnier Indian Residential School, Spanish, Ontario
	Raydor Retreat House, Oakville, Ontario
	Regis College, Toronto, Ontario
	Ogilvie Residence, Ottawa, Ontario
	Port Arthur, Ontario
	Garden Village, Ontario
	Fort William Reserve, Thunder Bay, Ontario
	Jesuit Community, Toronto, Ontario
	St. Joseph's College, North Point, Darjeeling, India

Extract from the List of Jesuits Credibly Accused of Abuse of Minors, accessed July 2024 (excerpt from the Jesuits of Canada).

Churches Hiding Their Records at the NCTR

One very concerning practice of several churches has emerged. When asked to provide records relating to Indian Residential Schools and the missing and disappeared children and unmarked burials, many churches responded by stating that all their records were provided to the TRC, which are now stored in the NCTR, which is part of the University of Manitoba.[131] What is problematic with this response is that these church records, which were not subject to federal or provincial privacy laws, are now in the NCTR's "vault," which is governed by the *National Centre for Truth and Reconciliation Act* (*NCTR Act*).[132] The *NCTR Act* incorporates Manitoba's *Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Act*, which both now restrict access to these church records.[133] The CCCB's *Guidelines for Developing Diocesan Policies on Indigenous-related Records in Canadian Catholic Diocesan Archives* notes the following:

> The National Centre for Truth and Reconciliation (NCTR) is mandated to be a clearing house for information about the Residential School system in Canada. As such, it has requested that dioceses provide copies of their relevant Indigenous records to the NCTR to facilitate research by community members and academic researchers. As of August 2022, eighteen Catholic dioceses had sent records to the NCTR, and most of those diocesan archives have retained itemized lists of what was sent. Some dioceses have reported that former staff may have sent records, but itemized lists cannot currently be found.

> Further work is being done to ensure that all records requested were sent to and received by the NCTR. This work will strive to produce a comprehensive list of all records sent, under what terms, and indicating the current status of the records at the NCTR. For example, the records may be: Fully processed and available through the NCTR website; Processed but withheld due to privacy or other legal issues; Still being processed.... The NCTR acknowledges that it has received records from these eighteen Catholic dioceses.[134]

Such church responses demonstrate exactly how settler amnesty and a culture of impunity is operating in Canada—an amnesty that is disguised, neither formally legislated nor publicly acknowledged, and that is preserving settler colonial systems, structures, and institutions and continuing to protect wrongdoers from prosecution or public censure. The church entities directly involved in harming the children, and those complicit in the atrocities, are not only being protected by Canada, but they are now attempting to hide behind the NCTR and its colonial law to frustrate the right to truth for victims and Survivors. This is a contravention of international human rights law. Records provided to the NCTR are not the original documents, they are copies. Survivors and communities should not have to file access requests through the NCTR processes to obtain documentation from church entities. Churches can and should provide access to their records that will demonstrate the history and patterns of their human rights violations against Indigenous children, their families, and communities.

National Centre for Truth and Reconciliation

Pursuant to section 12 of Schedule N of the *Indian Residential Schools Settlement Agreement* (*IRSSA*), the TRC was mandated to create a "research centre" that was to be, "accessible to former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula."[135] The TRC's Final Report noted that:

> [W]hat [Indigenous] [P]eoples require is a centre of their own—a cultural space that will serve as both an archive and a museum to hold the collective memory of Survivors and others whose lives were touched by the history and legacy of the residential school

> system.... [The NCTR is to be] an evolving, Survivor-centred model of education for reconciliation. Implementing a new approach to public education, research, and recordkeeping, the centre will serve as a public memory "site of conscience," bearing permanent witness to Survivors' testimonies and the history and legacy of the residential school system.

The TRC wrote that:

> [T]he Commission believes it will be especially important to ensure that communities are able to access the centre's holdings and resources in order to produce histories of their own residential school experiences and their involvement in the truth, healing, and reconciliation process. The centre will be a living legacy, a teaching and learning place for public education that will promote understanding and reconciliation through ongoing statement gathering, new research, commemoration ceremonies, dialogues on reconciliation, and celebrations of Indigenous cultures, oral histories, and legal traditions.[136]

Dr. Marie Wilson, former commissioner of the TRC, described the Commission's vision for a National Research Centre as a, "Sacred trust"—a promise made to Survivors that the Centre would be independent, national, and accessible. The NCTR was to be based on the principles of reconciliation, the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*), and the right to know the truth and the duty to remember.

Currently, the NCTR's access regime is pursuant to the *NCTR Act*.[137] Section 11 of the *NCTR Act* provides that persons may access records about themselves or a family member without having to make a formal access request under Manitoba's other access and privacy legislations. The *NCTR Act* also grants the NCTR's director broad authority to collect, use, and proactively disclose records, including records that contain personal information, to the extent that the director considers it necessary to fulfill the NCTR's mandate. In assessing whether to proactively disclose records, the director, "must consider all of the relevant circumstances, including whether the public interest in the disclosure clearly outweighs any invasion of privacy that could result from the disclosure."[138]

MILLIONS OF DOCUMENTS TO BE TRANSFERRED TO THE NCTR

In December 2021, Marc Miller, the former minister of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), issued a public statement indicating that he had directed his department to conduct a thorough internal review of documents in their possession and to preserve and retain all relevant documents regarding the former Indian Residential Schools. He further directed that all, "relevant School Narratives and the associated documentation" be provided to the NCTR.[139] An initial scoping exercise was done by the federal government that identified the existence of approximately 23 million additional documents related to Indian Residential Schools and the *IRSSA*. In January 2022, a memorandum of agreement (MOA) was signed by CIRNAC and the NCTR that outlined the protocols and timelines for the sharing of these documents.[140] In addition, the federal government reported that, "1.5 million documents and higher-quality images" were provided to the NCTR pursuant to this MOA.[141] In April 2022, it was announced that CIRNAC officials had been made aware of a third-party secure storage locker in the Northwest Territories that contained documents from the *IRSSA*'s IAP.[142] The storage locker belonged to a defunct federal government-funded not-for-profit organization that had provided health supports to claimants under the IAP. These newly discovered documents were given to the *IRSSA*'s Court Monitor for review and to seek advice on next steps.[143]

The Indian Residential School Documents Advisory Committee

To facilitate the process of transferring the over 23 million records, the Indian Residential School Documents Advisory Committee (IRS Advisory Committee) was created.[144] The IRS Advisory Committee's role is to guide the, "development of a new structure to govern document sharing" and, "propose recommendations for sharing relevant documents of historical interest."[145] The IRS Advisory Committee had its inaugural meeting on June 28, 2023, in Gatineau, Quebec, and has since met several times to establish definitions and the scope of its work. The chairperson of the IRS Advisory Committee is Cadmus Delorme, the former Chief of Cowessess First Nation.[146] Delorme's approach to the committee's work is to reconcile the two worldviews between the living witnesses, the Survivors, and the federal government departments on what should happen with the records.[147] Delorme has stated that, "there are two worldviews here. There's a government perspective where their duty of care is to protect the integrity of the government. And then there's a duty of care for the truth, and that's from living witnesses."[148] Delorme and the Indigenous members of the IRS Advisory Committee who do not represent the federal government are finding it difficult to work

within the narrow confines of the federal government's definition of an Indian Residential School, which is limited to the institutions identified under the *IRSSA*. Survivors, Indigenous families, and communities dispute this limitation as it does not include Indian Hospitals or the many other institutions to which the federal government transferred Indigenous children, as outlined in the OSI's *Sites of Truth, Sites of Conscience*,[149] and it does not recognize the institutions to which Métis children were taken. There are also several concerns regarding how the federal government and the NCTR will manage restricted records and potentially sensitive information.[150] Merely transferring records from one archive to another does not further victims', families', and communities' internationally protected human right to know the truth, the *UN Declaration*, or Indigenous data sovereignty. Much more is required.

After learning what the budget for the IRS Advisory Committee's work would be for the 2024–2025 fiscal year, Delorme wrote to the minister of CIRNAC advising:

> Effective Friday August 23, 2024, the non-government committee members suspend our role as Indian Residential School Documents Advisory Committee members. We cannot commit to helping such an important file when there are minimal resources allocated to fulfill the mandate given by Cabinet.... We want to remind you that the information in these documents belong to the Residential School [S]urvivors, their families and research experts helping in validating the search for information around unmarked graves and help in the healing journey many seek.[151]

DECOLONIZING ARCHIVES

> Archival practice has systematically taken away power from Indigenous peoples by silencing Indigenous understandings of the past.... Many Canadian archives are run by the same governments and organizations that continue to uphold present practices of colonialism within Canada.
>
> — Krista McCracken, Shingwauk Residential Schools Centre[152]

The TRC's Call to Action 70 called on archivists to conduct, in collaboration with Indigenous people, a national review of archival policies and best practices to determine the level of compliance with the *UN Declaration* and the *Updated Set of Principles for the Protection and*

Promotion of Human Rights through Action to Combat Impunity (*Joinet-Orentlicher Principles*). In response to this Call to Action, the Steering Committee on Canada's Archives (SCCA), which is comprised of the Canadian Council of Archives, the Association of Canadian Archivists, Library and Archives Canada (LAC), the Association des archivistes du Québec, and the Council of Provincial and Territorial Archivists, established the Response to the Report of the Truth and Reconciliation Commission Taskforce. The mandate of the taskforce was, "to conduct a review of First Nations, Inuit, and Métis community outreach policies and practices in non-Indigenous archives across the country and to identify potential barriers to reconciliation efforts between the Canadian archival community and First Nations, Inuit, and Métis governments, communities, researchers, and recordkeepers."[153] In 2022, the SCCA released its *Reconciliation Framework*, setting out, "a vision, foundational principles, and a transformative path forward for the archives profession in Canada."[154]

The *Reconciliation Framework* identifies eight principles, seven objectives, and numerous strategies for achieving the stated objectives. One of the eight principles is the acknowledgement of the harms done by the Canadian archival community to Indigenous peoples.[155] The Framework's objectives are guided by the, "primary objective of building relationships guided by the principles of respect, relevance, reciprocity, and responsibility," which are the Four Rs that were first identified by Cree education scholar Verna Kirkness and cross-cultural education scholar Ray Barnhardt, for decolonizing education systems.[156] To create systemic change, decolonizing work must respect cultural integrity, provide relevant services, foster reciprocal relationships, and demonstrate responsibility when working for and with Indigenous people and communities.[157] The other six objectives are:

> **Governance and Management Structures:** Leaders in Canada's archival communities must ensure that their organizational cultures, operations, and hiring processes support archives staff in building sustainable community relationships and implementing respectful professional practices.
>
> **Professional Practice:** Canada's archival communities must continue to build a body of professional practice that is committed to decolonization and reconciliation.
>
> **Ownership, Control, and Possession:** Canada's archival communities must respect and defend First Nations, Inuit, and Métis peoples' intellectual sovereignty over archival materials created by or about them.

> **Access:** Canada's archival communities must respect and defend First Nations, Inuit, and Métis peoples' right to know about and control access to archival materials created by or about them.
>
> **Arrangement and Description:** Canada's archival communities must integrate First Nations, Inuit, and Métis perspectives, knowledge, languages, histories, place names, and taxonomies into the arrangement and description of First Nations-, Inuit-, and Métis-related archival materials and collections.
>
> **Education:** Canadian archival education programs must integrate First Nations, Inuit, and Métis research theory, history, methodologies, and pedagogical practices into current and future curricula.[158]

Gwichyà Gwich'in historian Crystal Fraser and Métis anthropologist Zoe Todd note that, "to reclaim, reshape, and transform the archives to meet the needs of Indigenous people requires an honest and blunt engagement with the bureaucratic and arcane structures that govern and shape research today."[159] Government research systems control how information is managed, but Indigenous community-led research is done differently from non-Indigenous methods of research. When archives are built to support Indigenous Peoples in a localized context, they become more useful for communities.[160] If archival education does not support learning and adapting archival and data management systems to Indigenous community needs, the problems of a dominant colonial narrative will continue to permeate archives across the country.

Decolonial archival frameworks emphasize community-based approaches to archival practice. This involves working closely with local Indigenous communities to identify and preserve materials of cultural significance and to ensure that access to those materials is controlled by the community. Further, "archives professionals should keep in mind that building relationships that make space for Indigenous community members to lead in proper cultural care for collections is vital in establishing a relationship built on Indigenous sovereignty"[161]:

> Sovereignty needs to be embedded into the ways archives organize material, how archival practice is taught in postsecondary education, and how archivists work with Indigenous communities. Further, archival practice needs to make space for Indigenous Peoples to have gainful employment in archives, placing them in leadership positions that can give them the capacity to do essential systems change work. Without Indigenous Peoples at the forefront, Indigenous sovereignty cannot be embedded into archival systems.[162]

Decolonizing archival practices requires acknowledging and addressing historical injustices. Archival education must incorporate an expansive understanding of the historical context of colonialism and its impact on Indigenous communities. This includes recognizing the role that archives have had in perpetuating colonial narratives and marginalizing Indigenous voices. Archival education should emphasize the ethical use of archival materials, particularly when it comes to records related to the Indian Residential School System and other settler colonial institutions where mass human rights breaches have occurred against Indigenous Peoples.

EMERGING PRACTICE: THE INDIAN RESIDENTIAL SCHOOLS HISTORY AND DIALOGUE CENTRE: ORAL TESTIMONY PROGRAM

Photograph of the Indian Residential School History and Dialogue Centre (from the Indian Residential School History and Dialogue Centre).

The Indian Residential School History and Dialogue Centre (IRSHDC) is working to enhance access to, and include Survivors' perspectives in, the records it holds. The specific mandate of the IRSHDC is to address the colonial histories and ongoing impacts of Indian Residential Schools and other

colonial policies imposed by the federal government on Indigenous Peoples. An important part of this work is the Oral Testimony program at the IRSHDC, co-led by archival studies scholar Kristin Kozar (Hwlitsum First Nation), the centre's executive director, who is a leading expert on Indigenous data sovereignty. The Oral Testimony program ensures the experiences of those directly affected by Indian Residential Schools, other related institutions,[163] and systems of colonialism are recorded. The program will make oral testimonies accessible for future use according to community protocols. In addition to the recordings of these oral testimonies, the IRSHDC has textual and photographic records that link to different Indian Residential School sites from across the country. The IRSHDC is more than a repository; its work includes:

- Facilitating dialogues;
- Enhancing access to records and information; and
- Supporting Indigenous communities through health and proper cultural supports.[164]

Staff at the IRSHDC have a close partnership with the Indian Residential School Survivors Society. This partnership promotes the IRSHDC's efforts to be Survivor-centred and trauma and culturally informed when caring for the records that are at the IRSHDC.[165]

Ādisōke: Municipal, Federal, and Indigenous Collaboration

Ādisōke will be the new Ottawa Public Library and a joint facility between the City of Ottawa, Ottawa Public Library, and LAC that was co-developed with the Algonquin Anishinabe,[166] Peoples of the Kitigan Zibi Anishinabeg, and the Algonquins of Pikwakanagan First Nation. Ādisōke is from the Algonquin language and connects to the concept of storytelling and how knowledge is transferred between generations in Algonquin Anishinabe culture. The building will feature shared spaces for gatherings and meetings. There will also be spaces devoted to specific uses by the Ottawa Public Library and LAC for access to genealogical records and other items from the collections. Ādisōke is set to open in 2026.[167]

Artist rendering of the planned Ādisōke facility (from Ādisōke Project Group).

The Shingwauk Residential Schools Centre: Community-Centred Practice

The Shingwauk Residential Schools Centre (SRSC) is a "community-led/grassroots community archive, founded by Survivors and intergenerational Survivors" that aims to preserve the history and legacy of the Indian Residential School System, which affected Indigenous Peoples across the country.[168] Established in the late 1970s under the Shingwauk Project, the SRSC is located on the traditional territory of the Anishinaabe in the Robinson-Huron Treaty Territory, in what is known today as Sault Ste. Marie, Ontario. It is also located on the former site of the Shingwauk Residential School and the current site of Algoma University. Today, the SRSC is a joint initiative of the Children of Shingwauk Alumni Association (CSAA) and Algoma University. The CSAA, which is a group of Survivors of the Shingwauk Indian Residential School, established the SRSC to preserve their experiences, raise awareness, and promote education and healing concerning the impacts of the Indian Residential School System. The CSAA and Algoma University work with church entities affiliated with the Anglican church and other Survivor groups, educators, and First Nations impacted by the history of Indian Residential Schools in the region.[169]

Algoma University's Department of Archives and Special Collections is the repository for the Diocese of Algoma. The diocese provided its records to Algoma University in 2009, which include important records from the Synod of the Diocese of Algoma, prominent bishops and archbishops, and committees and church groups from across the Diocese of Algoma. The

collection covers over 150 years of history stretching across Northern Ontario from Mattawa to Thunder Bay. In addition, some historical materials from the Diocese of Algoma are held by the Arthur A. Wishart Library at Algoma University. Privacy and access policies relating to these records follow the Diocesan Policy on Access to Parish Records, developed solely by the Anglican church. While requests to view parish registers for one's own records will be granted upon proof of identification, requests to view parish registers for third-party records will be granted only if burial records are 50 years or older, marriage records are 75 years or older, and baptismal records are over one hundred years. Exemptions to the specified time frames may be granted based on specific conditions.[170]

The SRSC's "community-centred practices," which includes, "participatory description and arrangement," is working to decolonize interpretations of the past.[171] Participatory and community-engaged descriptions include Indigenous people and communities in redescribing and reinterpreting the archival materials with language and protocols that are relevant and meaningful to them.[172] McCracken notes that with, "participatory description and arrangement, archives can move toward advocating for Indigenous sovereignty over Indigenous archival materials."[173]

EMERGING PRACTICES OF THE UNITED CHURCH

The United Church of Canada Archives [UCCA] has identified that new archival policies and practices must be created to prioritize Survivor and Indigenous community access. At the third National Gathering, four key areas of focus for the UCCA were explained:

1. Reviewing and revising acquisition policies;
2. Reviewing and revising privacy policies;
3. Establishing anti-oppressive description policies; and
4. Formalizing ethical research policy.[174]

The UCCA recognizes that this work involves implementing the principles of the *UN Declaration* and the recommendations of the Steering Committee on Canada's Archives in Response to the Report of the Truth and Reconciliation Commission Taskforce; the principles adopted by First Nations Information Governance Centre Relating to Ownership, Control, Access, and Possession; and the Inuit Tapiriit Kanatami National Inuit Strategy on Research.

The UCCA acknowledges that the work of addressing the many colonial biases and assumptions in archival policy and practice is long term. The UCCA is committed to hearing from Survivors, communities, and other groups about how they can continue their work in removing archival barriers. Most materials held in the UCCA relating to Indian Residential Schools are administrative records, such as daily operations and federal government requests for information about bank accounts, staffing, and maintenance. Many of these records are helpful for finding the names of the children that were taken to Indian Residentials Schools and other institutions. As such, the United Church describes all records in as much detail as possible, including noting the children's names if recorded.[175] Nicole Vonk, the former manager of the UCCA, told participants at the third National Gathering, "As someone who is working for the archives of a religious organization, I have never been asked to withhold records. It has been very good to have an organization from the beginning that has said: 'Do whatever work you can to provide the records.'"[176] Vonk explained that the description and digitization of records that the UCCA is doing expands beyond Indian Residential Schools. The UCCA has extended its work to include Indian Day School and Indian Hospital records. As a proactive and transparent approach, the United Church has created a document list with descriptions of the records it holds and whether the United Church has provided the records to the TRC or to the NCTR. Vonk concluded her presentation at the National Gathering by acknowledging that the United Church of Canada Archives still has a lot of work to do and that they hope to encourage other church archives and institutions to engage in similar work to open their archives to Survivors, their families, and communities.[177]

Bringing the Children Home

The United Church of Canada Archives established the Bringing the Children Home initiative, which is committed to disclosing records and funding to Survivors and communities that are searching for the missing and disappeared children and their burials.[178] The Bringing the Children Home initiative has three components:

- Making funds available to Indigenous communities to support the work

of identifying unmarked graves, knowledge gathering, commemoration, and ceremony to honour the children who were not returned home;

- Providing all United Church archival records related to residential institutions to communities; and
- Providing all archival and oral history work to create a document index and narrative of all the information it has related to the deaths and burials of the children.[179]

In an official statement, the United Church recognized its role within the Indian Residential School System and the colonization of Indigenous Peoples by abusing its power under the pretext of faith. They have been providing disclosure packages to communities that include a hard drive with document inventories listing every record related to an institution of interest, the names of children taken to the institution, and a written description of how the research was conducted.

The United Church of Canada Archives has also created online access to the digitized records on Indian Residential Schools and missions run by the United Church for Survivors, Indigenous families, and communities and researchers, "The Children Remembered Residential Schools Archives Project is a website that hosts photos and historical summaries on United Church-run Indian Residential Schools.... Photographs displayed on the site are from the collections in the United Church of Canada Archives in Toronto, Ontario and the Pacific Mountain Regional Council Archives in British Columbia."[180] The United Church has also established Up and Down the Coast, a digital archive that focuses on United Church missions in British Columbia. Searches can be narrowed to First Nations, marine missions, hospital missions, general mission work, or Indian Residential or Indian Day Schools. In addition to photographs and videos, Up and Down the Coast features documents such as correspondence, pamphlets, published materials, and historical mission newsletters.[181]

Although the work of decolonizing institutional archives that hold Indigenous records is essential and required, perhaps the most important objective of the SCCA's *Reconciliation Framework* is that, "Canada's archival communities must respect and defend First Nations, Inuit and Métis peoples' intellectual sovereignty over archival materials created by or about them."[182] This objective requires that Indigenous Peoples' rights be prioritized, that Indigenous laws be applied, and that Indigenous data sovereignty be upheld.

INDIGENOUS DATA SOVEREIGNTY

> What happens when we think of Indigenous data as Sacred? As representations of stories and people? Data are held in stories and families, and hearts. Data is in the land; it's in our regalia, it's in our songs, and it's in our stories, and it's in our languages.
>
> **— Jeff Ward, chief executive officer, Animikii**[183]

José Francisco Calí Tzay, the UN Special Rapporteur on the Rights of Indigenous Peoples, came to Canada in March 2023 to, "provide relevant information and updates on the human rights situation of Indigenous Peoples in Canada, and concrete recommendations to address existing gaps."[184] On July 24, 2023, the UN Special Rapporteur issued a report of his findings regarding the situation of Indigenous Peoples in Canada, which was presented to the UN Human Rights Council during its fifty-fourth session in September 2023.[185]

The report is based on information and submissions received from various governmental bodies, Indigenous communities and entities and civil society groups, including representatives of all three levels of government, several Indigenous organizations, the National Centre for Truth and Reconciliation, former Commissioners of the TRC and the National Inquiry into Missing and Murdered Indigenous Women and Girls.[186] In his report, Calí Tzay acknowledged that Indigenous Peoples, "continue to face significant obstacles to achieving full enjoyment of their individual and collective rights" and that the, "current human rights situation of Indigenous Peoples in Canada cannot be fully understood without considering the negative legacy of the Indian Residential School system and the intergenerational trauma it created."[187] The UN Special Rapporteur recommended that the federal government take measures to support Indigenous data sovereignty.[188]

Indigenous data sovereignty refers to the right of Indigenous Peoples to exercise ownership, control, access, and possession over their data. It recognizes the unique cultural, social, and political contexts in which Indigenous data is collected, analyzed, and shared.[189] Indigenous communities have historically faced challenges in accessing and controlling their data, which has led to the misrepresentation and erasure of Indigenous knowledge and perspectives and the reliance on colonial States for their information.[190] Indigenous data sovereignty promotes Indigenous-led research methodologies, respects community protocols for data sharing, and ensures that data collected from Indigenous communities is used ethically and with their consent. Such practices recognize the cultural significance of data and the need to protect Indigenous data from unauthorized access or use. Indigenous data sovereignty also provides

an opportunity for non-Indigenous researchers and organizations to learn from Indigenous knowledge and perspectives and to collaborate in respectful and mutually beneficial ways.[191]

Indigenous data sovereignty is closely linked to the protection and stewardship of Indigenous lands and resources. The relationship between Indigenous data sovereignty and the sovereignty of Indigenous Nations is intimately connected to Indigenous lands, cultures, and communities. Indigenous Peoples' relationships with their lands and knowledge systems are based on the accumulation of generations of knowledge about their environments, resources, and relationships.[192] Indigenous data sovereignty protects and asserts Indigenous sovereignty by enabling Indigenous Peoples to gather and analyze data about their lands and resources, monitor environmental impacts, and make decisions about their futures.[193] By asserting control over their data, Indigenous Peoples can better protect and exercise their sovereignty over their lands, resources, and knowledge systems. This includes ethical research and information storage that aligns with the consent and protocols of Indigenous communities.

GUIDING PRINCIPLES OF INDIGENOUS DATA SOVEREIGNTY

> We didn't navigate our waters using maps. We used the mountain tops and different landmarks as guides. We didn't have a written language or books to read. We sat around with our families, Elders, and leaders, as they taught us how to speak, how to behave and conduct ourselves, who we are as distinct peoples, and how to live in a humble way. To me, these are all forms of data sovereignty.
>
> **— Megan Metz, Haisla Youth**[194]

The Global Indigenous Data Alliance, an international network dedicated to promoting Indigenous data sovereignty and governance, developed the CARE principles based on input from Indigenous Peoples around the world. The CARE principles were created by building on the existing FAIR Principles and the *UN Declaration*. These Principles are:

Fair	**C**ollective Benefit
Accessible	**A**uthority to Control
Interoperable[195]	**R**esponsibility
Reusable	**E**thics

The CARE Principles were developed to ensure that the open data movement respects the considerations and protocols of Indigenous Peoples globally. The open data movement is focused on the facilitation of increased data sharing among the public, government bodies, and

research entities, but it does not adequately address the context of settler colonialism in relation to data. The CARE Principles are people and purpose oriented and meant to reflect the crucial role that data can have in advancing Indigenous innovation and self-determination.[196]

In Canada, the guiding principles of Indigenous data sovereignty include the principles of ownership, control, access, and possession (OCAP). OCAP was first introduced in 1998 by the First Nations Information Governance Centre as a framework for managing and protecting First Nations data. These guidelines were developed by and for First Nations-specific data. Métis and Inuit communities have similar principles that are in accordance with their community teachings and needs. The OCAP principles set out the following:

> **Ownership** refers to the right of Indigenous Peoples to own their data and information regardless of colonial conceptions of copyright law. Indigenous Peoples have the right to determine how their data and information is used and shared.
>
> **Control** refers to the right of Indigenous Peoples to control the collection, management, use, and sharing of their data and information. This principle means Indigenous Nations have the right to establish their own policies and procedures for managing their data and information. They have the right to decide who collects the data, how it is collected, and how people use that data.
>
> **Access** refers to the right of Indigenous Peoples to access their data and information. This principle means Indigenous people and communities have the right to access the data and information that institutions, churches, and governments have collected about them since the start of colonization. Access also means that Indigenous people and communities have the right to know who has access to their data and information and for what purpose.
>
> **Possession** refers to the right of Indigenous Peoples to possess and control their data and information. This principle states that Indigenous peoples and communities have the right to have their data and information stored and managed in a way that respects their cultural values and traditions. They have the right to determine who has physical possession of their data and information and ensure that archives and databases manage their data securely and confidentially.[197]

Currently, many communities that are working to recover the missing and disappeared children and the unmarked burials are having to enter multiple memorandums of understanding and memorandums of agreements (MOAs), coupled with NDAs, with government, church,

university, and other entities that hold records relating to the children. Many contain substantial restrictions such as prohibiting the ability to download records or share records with community members and requiring permission from the institutional archive to reproduce or publish any records or reports related to the records. Communities are entering these agreements as interim measures only. The Sacred responsibility of investigating and finding the missing and disappeared children must proceed without delay for there to be truth, justice, and healing for Survivors, their families, and communities. However, such agreements are not in compliance with the OCAP principles, the *UN Declaration*, or Indigenous data sovereignty and Indigenous laws.

Jeff Ward, the founder and chief executive officer of Animikii, an Indigenous-owned technology company committed to driving positive change for Indigenous Peoples through technology, has been working collaboratively with Indigenous communities to implement Indigenous data sovereignty. At the National Gathering in Vancouver, he emphasized that there needs to be careful consideration about the definitions of Indigenous data, Indigenous technology, and Indigenous sovereignty and how they relate to one another. Ward noted that:

> [S]ome data is held in families, not recorded but held in oral histories; this makes you think about data differently. We try to shift the narrative. [Indigenous Peoples] have always been technologist, inventors, scientists. Data is not an object—they're people, they're stories.[198]

He talked about the importance of reframing data from Western concepts of something to be exploited to Indigenous concepts of data as Sacred. He emphasized the need for Indigenous data sovereignty to include questions and changes to where data is stored, where it is accessed, how it is governed, how it is managed, and how it is interacted with. Ward asks, "how can we re-imagine Indigenous people as keepers of this data?"

The long history of disrespect and unauthorized use of Indigenous knowledge and data has created challenges for Indigenous people to access, reclaim, and control data collected and kept by the State, colonial institutions, and churches. Yet many communities that are leading the searches and investigations for the missing and disappeared children and unmarked burials are asserting their sovereignty over the data that government, churches, and other colonial institutions have in their possession. They are creating their own archives and research centres that respect Indigenous sovereignty and community consent. Indigenous communities are exercising their data sovereignty in their distinct ways according to their laws.[199]

The Sḵwx̱wú7mesh Úxwumixw (Squamish Nation) Yúusnewàs Project

Yúusnewàs means, "taking care of each other," which describes the Sḵwx̱wú7mesh Úxwumixw approach to researching and documenting the experiences of stélmexw (people) who were taken to the St. Paul's Indian Residential School in North Vancouver, British Columbia. The project is focused on searching for the missing and disappeared children and unmarked burials and "lift[ing] the incredibly heavy burden of truth from those that are holding it." Ashley Whitworth, the Yúusnewàs Project's director, described the unique, care-driven approaches to research, data collection, and analysis that guides the project based on Sḵwx̱wú7mesh Úxwumixw cultural protocols. The research starts with yúusnewàs, which applies to how research is done and how the researchers understand and present data. The researchers are tracking and analyzing massive amounts of data from different sources, including oral histories, health and financial data, and other records. They are first documenting all the open access information available before focusing on records that have access restrictions.

The Yúusnewàs Project aims to build, "an easy, accessible, friendly, collaborative, and cooperative platform"—a National Indigenous Archive—that would enable Indigenous communities to share information as they search for the missing and disappeared children and unmarked burials. Those leading search and recovery investigations will be able to add and link information inside the platform that will connect different pieces of data together, including oral histories. Whitworth notes that what, "was said to us by an Elder is, 'This is the right time for this work. It's the right time because the ancestors are ready. It's the right time because the Survivors are strong. It's the right time because the community wants to know.'" Once the platform is built, the Yúusnewàs Project envisions creating data-sharing agreements among Indigenous communities searching for the missing and disappeared children and unmarked burials. These agreements would enable the sharing of records and provide a way around the barriers created by colonial laws. Built by Indigenous people, for Indigenous people, this archival model will affirm Indigenous data sovereignty.

CONCLUSION

Indigenous data sovereignty is integral to truth-finding. Many Indigenous communities are asserting their sovereignty and establishing their own data and information systems to support search and recovery work. However, settler colonial archives still hold mass amounts of information that has remained inaccessible. Survivors, Indigenous families and communities, and their researchers have identified significant barriers that still exist in archives, as described in detail in the Vancouver National Gathering's Summary Report[200] and in my Interim Report.[201] In a settler colonial country like Canada, State, church, and university archives can either perpetuate settler amnesty and a culture of impunity or strengthen truth, accountability, justice, and the non-recurrence of mass human rights violations. These institutions of collective memory hold important records of human rights violations perpetrated against Indigenous Peoples. These record collections are vast and largely out of the control of Indigenous people themselves.

Archival legislation must be changed. Archives must commit to decolonizing their systems, policies, and operational procedures by working closely with, and being accountable to, Indigenous people and communities. The federal government has international legal obligations to take effective measures to provide access to records to support the search and recovery of the missing and disappeared children and their unmarked burials. Pursuant to the *Joinet-Orentlicher Principles* and the *UN Declaration*, archives must proactively re-evaluate their collection, acquisition, access, and retention policies and practices. Integrating the *UN Declaration*'s principles into archival practices necessitates the development of protocols and policies that prioritize Indigenous Peoples' rights, including upholding Indigenous laws, protecting privacy, ensuring informed consent, supporting cultural autonomy, and, importantly, affirming and upholding Indigenous data sovereignty.[202] Indigenous data sovereignty is essential for a full investigation to be done into the atrocity crimes committed against the missing and disappeared Indigenous children and for finding all of their burials. By knowing the truth, Indigenous people and communities can pursue justice, healing, and meaningful reparations.

APPENDIX A

Decolonizing Archives and Affirming Indigenous Data Sovereignty

Request for Information to Church Organizations across Canada

The Office of the Independent Special Interlocutor (OSI) sent requests for information in chart form to 63 different church organizations from seven different denominational groups which included:

- Anglican;
- Baptist;
- Mennonite;
- Moravian;
- Presbyterian;
- Roman Catholic; and
- United.

Out of those 63 entities contacted, only 25 acknowledged the request. Out of those 25, 21 sent responses to the questions. The quality of these responses varied. Many church entities felt that the questions asked did not directly apply to them, they defaulted to statements of support, or they directed the OSI to the National Centre for Truth and Reconciliation. Such responses are insufficient and do not match the efforts being made by Survivors, Indigenous communities, and families who are doing the Sacred work of searching for the missing and disappeared children. Responses from the national bodies of church entities could explain why few responses were received from the local diocese, for both the Presbyterian and United Churches. However, some of the responses, such as the response from the Anglican Church of Canada's General Synod Archives, indicate that there are responsibilities and initiatives that do not occur at the national level and pointed the OSI towards individual diocese. Of the 22 Anglican entities contacted, only one Anglican diocese, the Diocese of Athabasca, provided a response.

Questions Asked

The request for information to church entities was made to enhance transparency and accountability from all levels of church leadership, whether they had direct involvement in an officially recognized Indian Residential School. As seen in *Sites of Truth, Sites of Conscience*, church organizations were interconnected and controlled the daily lives of Indigenous people in various institutions. Church commitments to the Truth and Reconciliation Commission of Canada's Calls to Action, to the *UN Declaration*, and to a new legal framework are required. The request for information focused on key areas that support the rights of Indigenous Peoples:

- Progress on implementing the TRC's Calls to Action 73–76;
- Progress on implementing Articles 11 and 12 of the *UN Declaration*;
- Current policies and procedures to access records within the church entity;[203]
- Current actions by the church entity that relate to information sharing and any informational resources developed in relation to search and recovery work;[204] and
- Any emerging practices that church entities have implemented to support search and recovery efforts and access to records for Indigenous communities, families, and Survivors.[205]

Responses Received from Canadian Church Organizations

Denomination	Church Name	Calls to Action 73–76	*UN Declaration* Articles 11 and 12	Access Policy Info	Information Sharing	Emerging Archival Practices	Fees?
Anglican	Anglican Church of Canada, General Synod Archives	●	●	●	●	●	
Anglican	Council of Indigenous Peoples						
Anglican	Primate of the Anglican Church of Canada						
Anglican	Reconciliation and Indigenous Justice Animator						
Anglican	Chinook Winds Regional Council						
Anglican	Northern Spirit Regional Council						
Anglican	Diocese of Algoma ○						
Anglican	Diocese of the Arctic						
Anglican	Diocese of Athabasca	◐	◐	●	◐	◐	
Anglican	Diocese of Calgary						
Anglican	Diocese of Brandon						
Anglican	Diocese of British Columbia						
Anglican	Diocese of Moosonee						
Anglican	Diocese of New Westminster						
Anglican	Diocese of Niagara						
Anglican	Diocese of Qu'Appelle						
Anglican	Diocese of Quebec						

Denomination	Church Name	Calls to Action 73–76	*UN Declaration* Articles 11 and 12	Access Policy Info	Information Sharing	Emerging Archival Practices	Fees?
Anglican	Diocese of Ruperts Land						
Anglican	Diocese of Saskatchewan						
Anglican	Diocese of Saskatoon						
Anglican	Diocese of Yukon						
Anglican	Territory of the People						
Baptist	The Fellowship Pacific		◐	◐	◐		
Mennonite	Canadian Moravian Historical Society						
Moravian	Living Hope Ministries						
Presbyterian	First (Portage la Prairie) Presbyterian Church						
Presbyterian	First Presbyterian Church of Regina						
Presbyterian	Moderator of the 147th General Assembly	●	●	●	●	●	
Roman Catholic	Archdiocese of Saint-Boniface	●	●	●	●	●	
Roman Catholic	Mary Immaculate Lacombe Canada OMI	●	●	●	●		
Roman Catholic	Missionary Oblates of Mary Immaculate Assumption Province						
Roman Catholic	Missionary Oblates of Mary Immaculate Notre-Dame du Cap	●	●	●	●	●	

Denomination	Church Name	Calls to Action 73–76	*UN Declaration* Articles 11 and 12	Access Policy Info	Information Sharing	Emerging Archival Practices	Fees?
Roman Catholic	Archdiocese Grouard-McLennan	●		●	●	●	$
Roman Catholic	Archdiocese of Edmonton	●	●	●	●	◑	
Roman Catholic	Archdiocese of Halifax-Yarmouth	●	○	●	◑	◑	
Roman Catholic	Archdiocese of Keewatin-Le Pas	●	●				
Roman Catholic	Archdiocese of Regina	●	●	●	●	●	
Roman Catholic	Archdiocese of Vancouver	●		●			
Roman Catholic	Archdiocese of Winnipeg	●	●	●	●	●	$
Roman Catholic	Canadian Conference of Catholic Bishops ○						
Roman Catholic	Canadian Catholic Indigenous Council						
Roman Catholic	Diocese of Calgary	●	●	●	●	●	
Roman Catholic	Diocese of Prince George	●	●	●	◑	●	$
Roman Catholic	Diocese of Amos						
Roman Catholic	Diocese of Baie-Comeau						
Roman Catholic	Diocese of Chicoutimi						
Roman Catholic	Diocese of Churchill-Hudson Bay	●	●	●	●	●	$
Roman Catholic	Diocese of Hearst Moosonsee						
Roman Catholic	Diocese of Kamloops						
Roman Catholic	Diocese of Mackenzie-Fort Smith ○						

Denomination	Church Name	Calls to Action 73–76	*UN Declaration* Articles 11 and 12	Access Policy Info	Information Sharing	Emerging Archival Practices	Fees?
Roman Catholic	Diocese of Nelson						
Roman Catholic	Diocese of Prince Albert	●	●	●	●	●	
Roman Catholic	Diocese of Sault Ste. Marie	○					
Roman Catholic	Diocese of St-Paul	●	◐	●	●	●	$
Roman Catholic	Diocese of Thunder Bay	◐	◐	●	●	◐	$
Roman Catholic	Diocese of Whitehorse	●	●	●			$
Roman Catholic	Jesuits of Canada	●	●	●	●	●	
Roman Catholic	Our Lady of Guadalupe Circle						
United	The 44th Moderator of the United Church of Canada	●	●	●	●	●	
United	Antler River Watershed Regional Council						
United	Pacific Mountain Regional Council						
United	Prairie to Pine Regional Council						

Notes: ● = full response; ◐ = partial/incomplete response; and ○ = acknowledgement only (provided a statement instead of a response).

1 Fabián Salvioli, *International Legal Standards Underpinning the Pillars of Transitional Justice: Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence*, UNGA Doc. A/HRC/54/24, July 10, 2023, 8, https://www.ohchr.org/en/documents/thematic-reports/ahrc5424-international-legal-standards-underpinning-pillars-transitional.

2 Vannessa Prescott, "Youth Perspective on the Importance of Data Sovereignty and Access to Records in the Search and Recovery of Missing Children," Voices of Survivor Families Panel, National Gathering on Unmarked Graves: Affirming Indigenous Data Sovereignty and Community Control over Knowledge and Information, Vancouver, British Columbia, January 18, 2023.

3 Louis Joinet, *Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political): Revised Final Report*, Doc. E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997, https://digitallibrary.un.org/record/245520?ln=en.

4 Joinet, *Question of the Impunity*, 5.

5 Joinet, *Question of the Impunity*, 7.

6 Diane Orentlicher, *Impunity: Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, Doc. E/CN.4/2005/102/Add.1, February 8, 2005, https://digitallibrary.un.org/record/541829?ln=en&v=pdf. On the inalienable right to truth, Principle 2 states that, "every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations." Orentlicher, *Impunity: Addendum*, 7; see also, Diane Orentlicher, *Impunity: Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, Doc. E/CN.4/2005/102, February 18, 2005, https://digitallibrary.un.org/record/543366?ln=en&v=pdf. These principles were subsequently reflected in the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law*, issued in December 2005. UN General Assembly, *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*, Doc. A/RES/60/147, December 16, 2005, 8–9.

7 Diane Orentlicher, "Prologue," in *The United Nations Principles to Combat Impunity: A Commentary*, ed. Frank Haldemann and Thomas Unger (Oxford: Oxford University Press, 2018), 1.

8 Jens Boel, Perrine Canavaggio, and Antonio González Quintana, "Introduction," in *Archives and Human Rights*, ed. Jens Boel, Perrine Canavaggio, and Antonio González Quintana (London: Routledge, 2021), 2–3.

9 Boel, Canavaggio, and Quintana, "Introduction," 3. For more information on the inclusion of human rights-oriented archives in Canada on UN Educational, Scientific and Cultural Organization Registers, see *Upholding Sacred Obligations*, part 4, chapter 15.

10 International Council on Archives Human Rights Working Group, *Basic Principles on the Role of Archivists and Record Managers in Support of Human Rights: A Working Document of the International Council on Archives*, September 2016, 3, https://www.ica.org/resource/basic-principles-on-the-role-of-archivists-and-records-managers-in-support-of-human-rights/.

11 Pablo de Greiff, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Doc. A/HRC/24/42, August 28, 2013, 29, cited in Truth and Reconciliation Commission of Canada (TRC), *Canada's Residential Schools: Reconciliation*, vol. 6 (Montreal and Kingston: McGill-Queen's University Press, 2015), 144.

12 Pablo de Greiff, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Doc. A/HRC/30/42, September 7, 2015, 29.

13 De Greiff, *Report of the Special Rapporteur*, 29.

14 Fabián Salvioli, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: Transitional Justice Measures and Addressing the Legacy of Gross Violations of Human Rights and International Humanitarian Law Committed in Colonial Contexts*, Doc. A/76/180, July 19, 2021, 12–13, https://justice.skr.jp/documents/A_76_180_E.pdf.

15 Salvioli, *International Legal Standards*, 8.

16 TRC, *Reconciliation*, 143–44.

17 *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA Resolution 61/295, UNGAOR, 61st Session, Supplement no. 49, UN Doc. A/61/49, September 13, 2007 (*UN Declaration*).

18 *UN Declaration*, Articles 11, 12, 22–23.

19 Mary Musqua-Culbertson, "Breakout Session: What Records Are Available and How to Access Them," National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty and Community Control over Knowledge and Information, Vancouver, British Columbia, January 17, 2023.

20 TRC, *Canadian's Residential Schools: Missing Children and Unmarked Burials*, vol. 4 (Montreal and Kingston: McGill-Queen's University Press, 2016), 2–12; see also TRC, *Reconciliation*, 138–48.

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27 Jim Burant, "Doughty's Dream: A Visual Reminiscence of the Public Archives," *Archivaria* 48 (Fall 1999): 117.

28 TRC, *Reconciliation*, 138–39.

29 Letter from Grand Council Chief Reg Niganobe of the Anishinabek Nation to Mr. José Francisco Cali Tzay, UN Special Rapporteur on the Rights of Indigenous Peoples, March 7, 2023 (on file with the Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools [OSI]).

30 *Library and Archives of Canada Act*, SC 2004, c. 11, https://laws-lois.justice.gc.ca/PDF/L-7.7.pdf.

31 *Library and Archives of Canada Act*, ss. 9, 11, 12.

32 TRC, *Truth and Reconciliation Commission of Canada: Calls to Action* (Ottawa: TRC, 2015), 8, Call to Action 69.

33 Meaning the Association of Canadian Archivists. This was a minor typographical error in the Calls to Action, which caused some debate in the Canadian archival community over the technicalities over who should respond to this Call to Action. It is plain and obvious that this meant the Association of Canadian Archivists.

34 TRC, *Calls to Action*, 8–9, Call to Action 70.

35 Hugh A. Dempsey, *Always an Adventure: An Autobiography* (Calgary: University of Calgary Press, 2011), 131.

36 Orentlicher, *Impunity*, paras. 21, 23, 33–35.

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39 Treasury Board Minute T160481B, June 2, 1936, R776-30-3-E, RG55-A-2, LAC.

40 Treasury Board Minute T260350B, March 16, 1944, R776-30-3-E, RG55-A-2, LAC.

41 The British government created its first Indian Department in the colony in 1755 as a means of countering French-Indigenous alliances during the Seven Years War. Colette E. Derworiz, "Federal Departments of Indigenous and Northern Affairs," Canadian Encyclopedia, last modified April 18, 2020, https://www.thecanadianencyclopedia.ca/en/article/aboriginal-affairs-and-northern-development-canada; William John Eccles, "Seven Years' War," Canadian Encyclopedia, last modified November 30, 2023, https://www.thecanadianencyclopedia.ca/en/article/seven-years-war; Yasuhide Kawashima, "Colonial Government Agencies," in *Handbook of North American Indians*, vol. 4: *History of*

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43 Because most of the men in logging and timber were away at war, there were not enough people to cut down trees or work in pulp and paper mills. Those at home started salvaging paper, and, by December 1943, the National War Services was asking for more than seventeen thousand tons of waste paper every month. "War Work," *Kayak: Canada's History Magazine for Kids*, April 2022, 15, https://www.canadashistory.ca/getmedia/a78df56f-e73b-4cc8-a656-701ebfe2f4aa/Kay2022AprWarWork.pdf.aspx; "Salvage Drive to Be Started across Nation," *Globe and Mail*, February 6, 1941, https://collections.warmuseum.ca/warclip/objects/common/webmedia.php?irn=5071151; James M. Whalen, "The Scrap That Made a Difference," *Legion Magazine*, November 1, 1998, https://legionmagazine.com/the-scrap-that-made-a-difference/.

44 Treasury Board Minute T260350B, March 16, 1944.

45 Unclear if this record group included records of Métis or non-status Indian children who were considered legal non-Indians.

46 Treasury Board Minute T260350B, March 16, 1944.

47 Treasury Board Minute T260350B, March 16, 1944.

48 Bill Russell, "Probing a Dark Decade: Recordkeeping in the Indian Affairs Branch, 1937–1947." *Archivaria* 96 (Fall/Winter 2023): 98–135.

49 Russell, "Probing a Dark Decade," 116.

50 Russell, "Probing a Dark Decade," 133.

51 "Government Burned Evidence: Indians," *Edmonton Journal*, December 30, 1960.

52 Letter from P.F. O'Donnell to Senior Administrator, December 15, 1964, file 1/1-6-3, vol. 2, box 6, RG10, LAC.

53 Letter from O'Donnell to Senior Administrator, December 15, 1964.

54 Sadowski, *Preliminary Report*.

55 Jean-Pierre Morin, "What Records Are Available and How to Access Them," Interactive Breakout Session, National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty, Vancouver, British Columbia, January 17, 2023.

56 The pass system was a policy introduced after the North-West Resistance in 1885. The policy required First Nations people who lived on reserve to get a pass signed by an Indian Agent whenever they wanted to leave the reservation boundaries. If First Nations people were caught outside of their reserve without a pass, they could be incarcerated or promptly returned to their reserve without consent. This policy had no legal basis and was enforced throughout the prairies at the whim of Indian Agents. For more about the pass system and the documentary directed by Alex Williams, see Stephanie Cram, "Dark History of Canada's First Nations Pass System Uncovered in Documentary," *CBC News*, February 19, 2016, https://www.cbc.ca/news/indigenous/dark-history-canada-s-pass-system-1.3454022; "About" The Pass System, accessed August 5, 2024, http://thepasssystem.ca/about-the-documentary/.

57 Ian Mosby and Alex Williams, "'It Is Apparent That There Has Been Some Laxity in the Preservation of Important Agency Records': Document Destruction and the Emptying of the Indian Affairs Archive," presentation at the Owning History Conference, Fort Garry Hotel, Winnipeg, Manitoba, April 26, 2024.

58 Mosby and Williams, "'It Is Apparent That There Has Been Some Laxity.'"

59 Mosby and Williams, "'It Is Apparent That There Has Been Some Laxity.'"

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204 This includes the creation of lists or databases of known deaths, development of finding aids, maps of former church-operated sites, identification of funeral homes or organizations that may have worked with clergy to bury children, repatriation efforts, access to sites, and records of police investigations.

205 The OSI requested examples of concerns that Survivors, families, and communities have expressed to the church entity, current work with Indigenous communities, if there is an Indigenous advisory group in place within their organization, any funding or fundraising efforts to support search and recover work, the implementation of new policies and procedures to support Indigenous researchers' access to records, the repatriation of lands, or any other innovative initiatives that are directly in partnership with Indigenous communities.

CHAPTER 10

Searching Sites of Truth

> These searches are about finding the truth, finding out what happened, who was responsible, and how we can get justice—if we can get justice. It's about bringing communities together—these schools were divisive and isolating. We need to come together to collaborate to bring these children home. It's about honouring the Survivors and their stories and honouring the Spirits of those who did not make it home.
>
> — Benjamin Kucher, Métis Youth, supporting Indigenous communities with ground searches[1]

SURVIVORS ARE THE LIVING WITNESSES

Survivors are at the heart of searching sites of truth—the cemeteries and unmarked burials at former Indian Residential Schools and associated institutions where their siblings, cousins, and friends who are missing and disappeared may have been buried. Survivors have carried the heavy burden of painful memories for decades. As they walk the sites with the search and recovery teams, they remember and speak for the children whose voices were silenced too soon. They point to the buildings and location of adjacent burial grounds—the traumatic memory landscape that shaped their childhoods—and describe the lived experiences that still haunt them. These oral history interviews provide crucial evidence that does not exist in archival records. Archival scholars Krista McCracken and Skylee-Storm Hogan (Haudenosaunee)

note that, "the power of place in eliciting memories, emotions, and reflections are evident throughout the recorded words of the [S]urvivors.... By pairing these oral records with other documents, it is possible to further understand life at ... [Indian Residential Schools] and begin to tell ... [that] history from the [S]urvivor perspective."[2] Survivors across the country who broke the silence about the horrendous abuses they suffered in these places are once again sharing their unique historical knowledge. Still seeking truth, they are helping to guide forensic investigations in the cemeteries and surrounding areas of the institutions they were taken to as children.

Archaeologists working with Indigenous communities to locate the unmarked burials of the missing and disappeared children emphasize the critical role of Survivors in the process. Archaeologist Dr. Kisha Supernant (Métis/Papaschase/British), from the Institute of Prairie and Indigenous Archaeology, highlights, "the importance of this work being [S]urvivor-centred and [S]urvivor-led"[3] and notes that ground searches are conducted, "based on knowledge shared ... [by] [S]urvivors and families—places they wanted us to look."[4] Dr. Scott Hamilton also points to the importance of Survivors' testimonies, "What do the Survivors say? That is your primary resource.... Written records are by and large bureaucratic documents created by the institutions.... Those data sources do not necessarily tell the same story."[5]

Photograph of Dr. Kisha Supernant presenting at the National Gathering on Unmarked Burials, Edmonton, Alberta, September 13, 2022 (Office of the Independent Special Interlocutor).

Dr. Sarah Beaulieu, an anthropology expert in ground-penetrating radar (GPR), explains that Survivors' testimonies help her to determine where to search for potential burials, "Ground-penetrating radar is the scientific approach, but we really need to hold Indigenous knowledge systems [and] oral tellings [in] an equal space ... [that] has to be honoured and respected."[6] Archaeologist Dr. Andrew Martindale, a member of the National Advisory Committee on Residential Schools Missing Children and Unmarked Burials (NAC) and the Canadian Archaeological Association's Working Group on Unmarked Burials, notes that the work to find the specific locations of unmarked or clandestine burials, "begins with Survivors. Their knowledge, their understanding ... that's where our attention belongs. Ground searches can be done in the years ahead. The land will still be there, the children will still be there. Survivor knowledge and their support is where we must begin, and it will guide that work in the future."[7] At the Montreal National Gathering in September 2023, c̓išaaʔath̓ (Tseshaht) First Nation's elected Chief Councillor Wahmeesh (Ken Watts) told participants that those working with Survivors must remember that, "this isn't quick work. Timing is important because we know that we are losing Survivors all the time. But this work is not a race. Put Survivors at the centre. Be patient and nurturing and integrate culture into everything."[8]

Survivors' knowledge about the missing and disappeared children and unmarked burials has also been shared amongst families over time, becoming part of the community's collective memory. Cree feminist scholar Robyn Bourgeois notes that Indigenous families and communities have known for generations that children were buried, often in unmarked and mass graves, in cemeteries at Indian Residential Schools:

> These are not "discoveries"; instead, they are confirmation of what Indigenous Peoples have always known—like the contemporary phenomenon of missing and murdered Indigenous Peoples, our children were "disappeared" at [Indian] [R]esidential [S]chools, their deaths secreted away in unmarked graves. This knowledge has been shared through stories in our families. In my family, it's a story about how nimosôm (my grandfather) dug graves for other children during his time at St. Bernard's Indian Residential School in Grouard, Alberta. It's absolutely chilling to me to imagine my young grandfather digging graves for children just like him—burying his own and likely wondering if some day he might not end up in one of these graves. We have always known—the rest of Canada is just catching up with us.[9]

Shortly after the Tk̓emlúps te Secwépemc made their public announcement (see Appendix A for a list of public confirmations up to July 2024), many Survivors and family members recalled

hearing about burials in the apple orchard at the Kamloops Indian Residential School. Chief Michael LeBourdais, "remembers hearing stories from his uncle who attended the residential school in the 1950s about holes being dug in the orchard.... [He said that] it wasn't long before the boys caught on, they weren't just digging holes, they were digging graves for their classmates."[10] Now that knowledge is being shared, gathered, and documented as an integral part of the search and recovery process, David Shaepe, lead researcher for Stó:lō Nation's Xyólhmet Ye Syéwiqwélh's (Taking Care of Our Children) search and recovery process said that, when they interviewed Survivors, "what we learned from speaking with only a handful of [S]urvivors is devastatingly traumatic and sad.... We heard cases of children being killed, we heard of the secretive burial of children who died, and the forced burial of children by other children."[11]

At the Iqaluit National Gathering, Alexina Kublu, a Survivor who was taken to the Charles Camsell Hospital for one year and then to the Indian Residential School in Chesterfield Inlet, said that so many families had relatives who were taken south to hospitals and were never returned home. She shared how difficult it is for families to believe that their loved ones had died as they have not been able to see for themselves since their bodies were never brought back home. She said that this leaves the parents hoping and thinking that maybe their child is still alive and out there somewhere. She said that, "it is hard to make it real when you don't know where they are."[12] After decades of carrying these disturbing memories, Survivors are hoping that these searches will finally bring answers to the questions that they have never stopped asking. What happened to these little ones? Where are they buried?

Chapter 1 of *Sites of Truth, Sites of Conscience* focuses on the history of cemeteries at former Indian Residential Schools as sites of truth and conscience where children are known to be buried. It documents how federal government and church officials were aware that many children would die in these institutions and planned for their burials accordingly by establishing cemeteries. Building on the Truth and Reconciliation Commission of Canada's (TRC) work, *Sites of Truth, Sites of Conscience* illustrates the complex challenges of conducting historical and forensic investigations to determine the circumstances of the children's deaths and burials. This chapter of the Final Report highlights several examples of the many Indigenous-led search processes now underway on the sites of former Indian Residential Schools and associated institutions across Canada. While archival records, such as government reports and correspondence, photographs, site plans, maps, and architectural drawings are essential sources of information, they also have limitations. They are only one type of historical evidence that Indigenous communities are gathering to conduct forensic investigations.

This chapter focuses on the site-based components of the search and recovery process, beginning with the critical role of Survivors as the living witnesses to atrocities and mass human rights violations relating to the children's deaths and burials. Search and recovery efforts on the scope and scale now being conducted by Indigenous communities is unprecedented in Canada.[13] Therefore, it is crucial for these searches to meet international legal principles and forensic human rights standards established to govern such forensic investigations worldwide. Equally important, they must meet Indigenous legal criteria, incorporating both Indigenous and Western legal, historical, and scientific concepts, methodologies, and practices. Indigenous-led search and recovery processes are combining Survivors' testimonies with archival records to map new conceptual, spatial, and relational understandings of the lands, cemeteries, and potential unmarked burials. This forms the basis for establishing ground searches using various technologies that have rich anti-colonial and transformative potential. Survivors, Indigenous families, and communities are finding truth in healing ways that affirm their sovereignty, self-determination, and human rights through establishing collaborative relationships to share knowledge and emerging practices within and between Indigenous Nations. This also serves to strengthen accountability, justice, and reconciliation to counter settler amnesty and impunity across Canadian society.

DEVELOPING A FORENSIC HUMAN RIGHTS APPROACH FOR SEARCH AND RECOVERY PROCESSES

As previous chapters demonstrate, Canada must establish a robust human rights-based approach to forensic investigations of unmarked burials and mass graves associated with the Indian Residential School System. Canada has legal obligations to uphold Western-based international law, principles, guidelines, and standards relevant to the missing and disappeared children and unmarked burials.[14] Equally important, applying Indigenous laws in forensic investigations can achieve important forms of justice and accountability for mass human rights violations based on Indigenous criteria. As noted earlier, "the promise of forensic human rights is not solely about identifying remains."[15] Forensic search and recovery processes must uphold, protect, and advance the human rights of Survivors, Indigenous families, and communities. Forensic human rights can provide opportunities for families and communities to grieve the deaths of the children, restoring human dignity. They can also encompass various forms of reparations such as public memorialization and commemoration and the rewriting of national history, correcting the historical record to counter settler amnesty and impunity.[16]

In applying forensic human rights approaches to Indigenous-led search and recovery processes, several of the 16 *Guiding Principles for the Search for Disappeared Persons*, established by the United Nations Committee on Enforced Disappearances (UNCED) in 2019 are particularly relevant:

- The right of victims and families to participate in searches and to receive information, progress reports, and search results must be protected and guaranteed.
- Searches must take a distinctions-based approach to consider the specific interests and needs of women and children as well as the cultural practices of Indigenous Peoples.
- There must be a comprehensive, coordinated strategy for search investigations using appropriate forensic methods, forensic experts, and other specialists with technical or other areas of expertise.
- Searches must be coordinated under a competent body and governed by public protocols to ensure effectiveness and transparency; search protocols should be revised and updated periodically to incorporate lessons learned, innovations, and good practices.[17]

Upholding the UNCED principles in the development of anti-colonial Indigenous-led search and recovery processes within Canada will ensure that Indigenous and Western historical and scientific methodologies work effectively together.

However, doing so requires interpreting these principles through an anti-colonial lens. Indigenous Peoples, as holders of inherent, Treaty, and constitutional rights, not only have the human right to participate in searches but also to lead them. In taking a distinctions-based approach, it is insufficient to simply consider the cultural and spiritual practices of Indigenous Peoples; rather, they must be understood as integral to Indigenous legal systems transmitted through oral histories and practised in protocols and ceremonies. It is important to reiterate that the rights of Indigenous Peoples to uphold and apply Indigenous laws are recognized and affirmed at international law in various mechanisms and agreements, including the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*).[18] There is growing international recognition that the participation of Indigenous Peoples in transitional justice mechanisms, such as truth and reconciliation commissions, must respect their cultural and spiritual practices. However, these practices, for the most part, are not understood as integral elements of Indigenous legal systems.[19]

Nevertheless, in several countries where efforts to locate missing and disappeared persons have been conducted for years, some forensic investigators have designed holistic search and recovery processes involving Indigenous people that maintain both cultural and forensic integrity.[20] For example, Fredy Peccerelli and Erica Henderson of the Forensic Anthropology Foundation of Guatemala (FAFG) note that Maya families and communities are integral to the FAFG process and that their ceremonial funerary and spiritual practices, "are welcomed and invited into these forensic investigations through FAFG's family-centred approach."[21] They explain that, as part of its holistic approach, the FAFG gathers life history testimonies from Survivors of armed conflict and genocide, "These audio-visual testimonies present the full life of the survivor. This effort has generated unequalled histories of perseverance, survival, conflict, and life that individually and collectively contribute to historical memory, identity, resilience, and education."[22] At the National Gathering in Edmonton, Alberta, Peccerelli said that:

> When you think of a crime scene usually you think of a "do not cross" tape. But here, families first need to perform a ceremony; they need to act with a lot of ceremony and reverence when we are disturbing Mother Earth. The ceremonies are a permanent part of everything we do. Normally, as a scientist and archaeologist, you look where you have evidence—satellite images or soil removed.... But sometimes a loved one will come to a family in a dream and the family will say "they told me they are buried over there by this tree." So it's important for the family to know that we work for them—so we will look by the tree, we look there. We will look everywhere. So they know that we are not going to leave anyone behind.[23]

Within Canada, the TRC's Final Report was informed by a new oral history record of public and private statements gathered from almost seven thousand Survivors about their life experiences and the abuses they endured in Indian Residential Schools. Many Survivors spoke about the children who died and were buried at these institutions.[24] Now community researchers are using Indigenous oral history research methodology, protocols, and interview practices to more fully document Survivors' testimonies about the missing and disappeared children and unmarked burials.[25] These interviews are invaluable contributions to the search and recovery process.

Survivors' Testimonies in a Human Rights Context

The Sioux Valley Dakota Nation has been working since 2012 to locate the unmarked burials of the missing and disappeared children who were sent to the Brandon Indian Residential

School in Brandon, Manitoba. Survivor and Elder Gerald Bell said that he has had to defend the investigation to outsiders, "Some of the attitudes we ran into were, 'They're dead. We don't know who they are. Why are you so concerned? You know, it's not your child. It's not your relative,' but it is.... All [N]ations, we're all related. So that's a concept, I think, that the people outside the Native community don't understand."[26] Katherine Nicholls, an anthropologist and forensic investigator who is conducting the ground searches, pointed out that, "communities need to know where their children are. It's a fundamental human right."[27] Sioux Valley Dakota Nation former Chief Jennifer Bone said that, "our [E]lders are getting older and it's important that their story is told, that their knowledge is shared, and that the history is documented."[28] Survivors' testimonies are individual oral histories about atrocities, genocide, and mass human rights violations that become part of the oral tradition and collective historical record of their communities and Nations. Historians Winona Wheeler (Cree/Assiniboine), Charles Trimble (Ogola Dakota), Mary Kay Quinlan, and Barbara Sommer explain that, "to Indigenous communities, knowledge about the past is overarching and is conveyed orally through *oral tradition*. Oral histories of individuals are part of oral tradition, as are stories and teachings, songs, chants, ceremonies, and histories about significant events.... Indigenous oral history also includes personal stories, family stories, and community stories, that may, in their telling, incorporate information about culture and tradition."[29]

In the context of search and recovery processes, Survivors' testimonies are part of a global phenomenon that links life history narratives to human rights discourse in pursuit of justice.[30] While Western-trained social scientists have long used oral history methods to gather information, these methods are not necessarily applied through a human rights-based, anti-colonial lens. Some Latin American scholars observe that, when North American or European oral history methods fail to apply a human rights lens in countries with unjust histories of genocide, mass human rights violations, and colonialism, they are of little use in documenting these atrocities.[31] Similarly, many Western-trained oral historians working with Indigenous communities are unfamiliar with Indigenous oral history methodology and practices. However, Indigenous oral history methodology and practices are well established across the globe, including in many First Nations, Inuit, and Métis communities leading search and recovery processes. In 2021, the Institute of Prairie and Indigenous Archaeology developed an oral history resource guide to assist Indigenous communities who are conducting interviews with Survivors and others regarding the search for unmarked burials.[32]

Chapter 9 of this Final Report outlines the negative impacts of colonial historical and archival methodology and practices in searching for records. The scientific disciplines of archaeology and anthropology are also deeply implicated in the settler colonial project. However, as Yacqui legal scholar Rebecca Tsosie points out, just as Western scientific disciplines can reinforce

the unjust legal and public policy structures that have oppressed Indigenous Peoples, they can also support Indigenous self-determination and human rights in the service of justice.[33] Noting the importance of upholding the *UN Declaration*, she concludes that:

> by incorporating human rights standards and honoring [I]ndigenous self determination as both a legal right and a moral consideration, domestic public policy can more equitably respond to [I]ndigenous [P]eoples' distinctive experience. Similarly, scientists and scientific organizations can incorporate human rights standards into their disciplinary methods and professional codes of ethics in order to explore the ethical and legal implications of their work on [I]ndigenous [P]eoples.[34]

Chippewa sociologist Duane Champagne calls for repatriation processes (which would include the search and recovery phase) to adopt a, "more multicultural government-to-government approach that incorporates both [Western] scientific and [I]ndigenous values."[35] It is encouraging that many of the non-Indigenous historians, archivists, archaeologists, and anthropologists working as part of Indigenous-led search and recovery teams have adopted this anti-colonial multidisciplinary approach. This becomes evident when Survivors are honoured and respected for their knowledge and experience and are valued members of search and recovery teams.

For Survivors, Indigenous families, and communities exercising their right to truth, the purpose of the searches is to find out what happened to every child who was never returned home. They want answers to their questions because as Peccerelli told people attending the Edmonton National Gathering, the FAFG has found that, "the last thing that the families lose is hope."[36] Might their child still be alive somewhere? Did they die in one of these institutions, and, if so, where are they buried? These questions haunt families and communities. The search for truth to restore dignity to the children and their families is a process of reclamation, repatriation, and commemoration. He emphasized that the FAFG's searches for the disappeared begin and end with community engagement, traditional protocols, and ceremony.[37] In June 2023, at a Gathering in Carcross, Yukon, for Survivors of the Chooutla (Carcross) Indian Residential School, Judy Gingell, a member of the Yukon Residential Schools Missing Children Working Group, said:

> It is our responsibility to uncover the truth and acknowledge the past. Ultimately, families have been searching for decades for answers they deserve.... Through this search, we hope to provide some sense of peace and healing to families and communities affected by past wrongdoings.

> As the ground search begins, we do not know what will be found.... All areas that will be searched were identified by former residents, families and through thousands of records. What is known from the stories and information, many Yukon First Nation students went to these schools and some never made it home."[38]

At every National Gathering, participants emphasized that the forensic search and recovery process itself is as important as the outcome and must be Indigenous-led and sustainable over many years. This is consistent with the literature on reparations and the views of international experts with extensive experience in leading forensic investigations.[39]

In a meeting with the Office of the Independent Special Interlocutor (OSI), Peccerelli emphasized that the independence and sustainability of forensic investigations is critical because political and financial support for this work from governments is unpredictable. He said that, for the search and recovery process to be sustainable over time, it must be led by the families and communities. For them, "the purpose of the process is to follow and find the truth about their loved one's fate; it is also part of their history, part of their community, and they will be doing this work for a very long time."[40] At the National Gathering in Edmonton, Nicholls said that this process takes time, and, "this is not just a question about how long will this project take, but is there support and funding for this work forever? The work is far from over and we want to acknowledge the children whose graves have not been recovered and who remain missing."[41] It should be noted that, while significant research has been done on Indian Residential Schools recognized under the *Indian Residential Schools Settlement Agreement* (*IRSSA*), the work on non-recognized Indian Residential Schools and associated institutions such as hospitals, sanitoria, and reformatories is just beginning.[42] Similarly, there are calls to investigate the cemeteries and unmarked burials located at former sites of nineteenth-century mission schools and colleges established prior to the Indian Residential School System.[43]

Sussex Vale Indian College

The Indian College at Sussex Vale opened in 1786 near what is today Sussex Corner, New Brunswick, and was operated by the New England Company, an Anglican missionary society, until 1826.[44] It was established as an industrial school with the aim to "civilize" Indigenous children, convert them to Protestantism, teach them English, and train them to be domestic servants and farmers. The institution also took in non-Indigenous children whose farming parents wanted them to

learn to read and write.[45] Throughout its operation, the Sussex Vale Indian College was criticized for failing to adequately feed the children, failing to send them to school, and conducting exploitative labour practices. Beginning in 1807, children in the care of the New England Company at Sussex Vale were sent out to work under the guise of apprenticeship, while their "masters" were provided financial compensation in the amount of 20 pounds per child per year for their part in the arrangement. This change was aimed at removing children from their families to hasten their conversion to Protestantism.[46] Parents were required to sign, "indentured servitude contracts," and then the children were sent to reside with settlers in the local area with the understanding that they would learn to read, write, and be trained in a trade.[47]

Documentary evidence shows that some girls were sexually exploited and that there was no limit on the number of indentured servants a family could have.[48] Reverend Oliver Arnold was the Master of the Sussex Vale Indian College. He was known to have five or six indentured servants and was paid 20 pounds a year for each.[49] One of his indentured servants was a Wolastoqiyik (Maliseet) girl named Molly Gell. Reverend Arnold's son, Joseph, impregnated her.[50] The baby was kept, becoming one of Reverend Arnold's indentured servants.[51] Unfortunately, this maltreatment and sexual abuse of the girls and the birth of "illegitimate" children was common. The TRC noted that, "in response to complaints about the school, the New England Company commissioned two investigations, both of which concluded that the children were being used as cheap labour, were receiving little training, and were not being sent to school."[52] In his 1882 report, William Bromley, "had particularly harsh words for Arnold, who, he believed, was using the New England Company's money to line the pockets of his dissolute relatives."[53] The New England Company subsequently closed the institution, focusing its missionary efforts on Southern Ontario and the Mohawk people. The Mohawk Institute, operated by the Anglican church and the federal government from 1828 to 1970, was the longest-running Indian Residential School in Canada.[54]

In a report from the Aboriginal Healing Foundation in 2000, the following information was shared about Sussex Vale in oral testimonies about children's deaths, their unmarked burials, and the contrast with the marked burials of the institution's officials:

> Oral history stories continued to be told in the 40s, 50s, and 60s about babies being killed and buried under the cement basement of the school. The perpetrators are buried in a cluster, amongst

> each other, at the Anglican Cemetery in present day Sussex. Their headstones proudly display their names, and memoirs. "In loving memory of" George Arnold and his son Oliver Arnold (reported rapist and sex offender), who brought disaster to many of the Indian children; George Leonard, prominent Loyalist and Treasurer of the New England Company's board of Commissioners.... Judge Isaac Allen ... who fraudulently stole "Savage Island" (Ekpahak) from the Maliseets at St. John River, direct descendants of the people presently living at St. Mary's. The stories continue to be told [through oral history].[55]

A description of the Sussex Vale Indian College published in 1892 noted that Reverend Oliver Arnold, the first rector of Sussex, described the last remaining evidence of the institution as, "pathetic little wooden crosses in Ward's Creek cemetery."[56] This was likely a reference to the old section of the Trinity Anglican Cemetery near present-day Sussex Corner, New Brunswick.

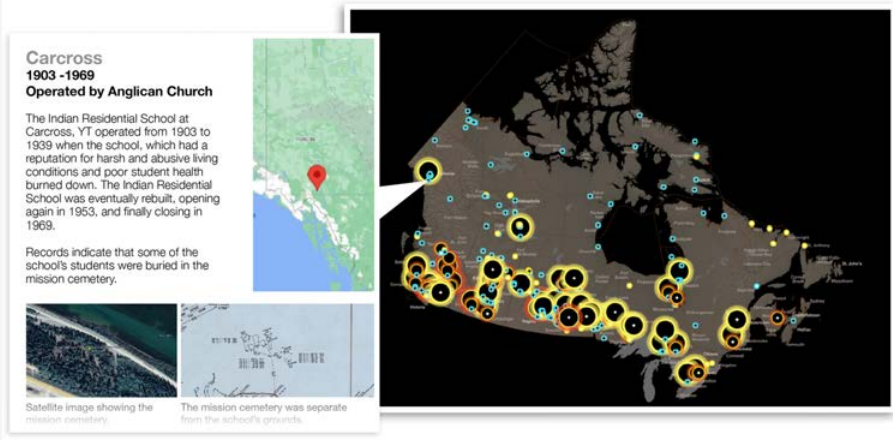
In June 2021, the Wolastoqey Chiefs called for an investigation into the former site of the Sussex Vale Indian College, including a GPR survey of the grounds. They said that the province must, "stop pretending as if New Brunswick has no history of these horrific institutions."[57] By November 2023, no formal investigation had begun, and representatives of the Atlantic Policy Congress of First Nations Chiefs Secretariat brought the Sussex Vale Indian College to the attention of the Independent Special Interlocutor.

LAYERING EVIDENCE AND MAPPING SITES OF TRUTH

Indigenous-led mapping and search and recovery processes have two dimensions: the macro-level of systemic patterns of genocide and mass human rights violations that become evident as communities share knowledge and research across sites of truth and the micro-level of site-specific investigations that are unique to each individual site. While most of this chapter focuses on site-specific search and recovery processes, there is a need to map these sites of truth on a national scale. The purpose is to both map the cemeteries and unmarked burials across the country and to educate all Canadians about this aspect of Canada's history to advance truth, accountability, justice, and reconciliation. The following examples are representative of mapping cemeteries and unmarked burials at the macro- and micro-level.

EMERGING PRACTICE: CANGEO NATIONAL MAP OF UNMARKED BURIAL SITES

The Office of the Independent Special Interlocutor (OSI) signed a memorandum of understanding with *Canadian Geographic* to work collaboratively to create a publicly available interactive map of sites being searched for cemeteries and unmarked burials.[58] This information was compiled by Dr. Scott Hamilton over many years, including when he worked on his report for the TRC titled "Where Are the Children Buried?"[59]



Canadian *Geographic*'s Unmarked Burial Sites Map, which shows some of the locations of unmarked burials that have been identified to date. An example of what users see when they select a site to learn more information (excerpt from *Canadian Geographic*).

The map was launched on September 30, 2022. Its purpose is to promote public education and awareness about the truths of unmarked burials and missing and disappeared children and to provide information to support those leading search and recovery efforts. The map includes a description, along with aerial and historic map images, of Indian Residential School sites recognized under the *IRSSA*. It also contains some information relating to sites that are not recognized under the *IRSSA*. Work is underway to add more information about all the sites where unmarked burials of missing and disappeared children may be located. The map continues to be updated as new information is provided by those leading search and recovery processes. *Canadian Geographic* has created a teacher's guide and several educational activities so that teachers can incorporate the map as a teaching tool in their curriculum.[60] In addition, *Canadian Geographic* has partnered with the OSI to establish information booths at the National Gatherings, Assemblies,

and at several other conferences to promote awareness. Through discussions that have occurred at these information booths, new images and information have been added to improve the accuracy of the map. At the time of writing this Final Report, the map has been viewed almost thirty thousand times.

Various communities are at different stages of the micro-level, site-specific search and recovery process; some have been doing this work for several years, while others are just beginning. The work of the Carlisle Indian Industrial School Digital Resource Center in the United States, which has been mapping the site of the former Indian Industrial School since the mid-2000s, demonstrates the power and potential of mapping cemeteries both in terms of locating unmarked burials and as commemorative sites of truth and conscience. Given the Carlisle Indian Industrial School's influence on establishing the Indian Residential School System in Canada, it is of particular interest.

Mapping the Carlisle Indian Industrial School Cemetery and Unmarked Burial Sites

Susan Rose and James Gerencser, co-directors of Carlisle Indian School Digital Resource Center, highlight a digital mapping project created by the Carlisle Indian School's Digital Resource Center (CISDRC) to document the history of the Carlisle Indian Industrial School in Carlisle, Pennsylvania, which was established by Richard Henry Pratt in 1879. The institution served as a model for Indian Boarding Schools across the United States and for the Indian Residential School System in Canada.[61] Part of the project was to map the stories of two Lipan Apache siblings who died at Carlisle and were buried there. Using Lipan Apache oral histories, various archival records, and geographical information system (GIS) tools, researchers created a visual timeline of key moments in their lives. The project subsequently began to investigate other burials in the two cemeteries located at the former Carlisle site. The authors explain that:

> Since the local cemetery did not admit the burial of non-Whites, the school established its own cemetery early in 1880. By the time of the school's closing in 1918, this cemetery held more than 190 occupants. A few years after the US Army took control of the Carlisle Barracks, it sought to have that cemetery moved to another part of the grounds. By that time, many of the headstones and other markers left by the graves had deteriorated so that the names and dates were no longer legible. After the cemetery was moved during the summer of 1927, there

> were 14 fresh new headstones that read, simply, "Unknown." Over the years, staff at the Cumberland County Historical Society, project partners with the CISDRC, have sought to identify those 14 unnamed individuals.... During the summer of 2017, CISDRC team members Frank Vitale and George Gilbert began an effort to map the burial locations of the individuals in both the original cemetery and the new location. Through this work, we wanted to make information about the deaths and burials of Carlisle's students more easily discoverable, but we also hoped that the mapping itself might provide new clues about the unnamed burials.[62]

Rose and Gerencser described the project team's ongoing efforts to map the old and new cemeteries and identify the children buried there:

> Taking all of the information they had been able to gather to that point, Frank and George set about mapping both the old and new cemeteries. Using the diagram of the old cemetery, they plotted each burial in chronological order so that visitors to the site could visualize the incremental growth of the cemetery over its 39 years of use. They created one view of the cemetery colour-coded by the nation or tribe of each of the students, and created others showing burials in 5-year and 10-year groupings. For the relocated cemetery, Frank and George created similar views reflecting nation or tribe and groupings by decade, but they also took advantage of basic GIS mapping to pinpoint each headstone as it currently stands. Each point on this interactive map shows the information about who is buried there; filters allow the user to again visualize the burials by the individuals' nation or tribe, or by decade groupings for dates of death....
>
> Accompanying these various maps and diagrams are the different sources that were used to confirm each person's death and burial. Each individual has a webpage on which is mounted a compilation of the available documentation found thus far, including items from the student files as well as notices in newspapers, mentions in a day book, or notes in enrolment ledgers. Names, tribal affiliations, dates of decease and burial plot locations are also available in tabular form as a downloadable Excel spreadsheet. Finally, other sources that have documented the cemetery over time, each of which provides additional clues to the burial sites of

> the students, are included. This work has been useful as various nations have discussed the possible disinterment of their family members.[63]

The CISDRC's digital mapping records two dimensions of the history of the cemeteries and unmarked burials at the Carlisle Indian Industrial School. At the micro-level, it creates individual life histories of the children who died there; at the macro-level, it traces the changing patterns of burials in the cemeteries over time. The CISDRC has also created a dedicated webpage for the cemeteries, with information to assist family and tribal members searching for a child who may be buried there.[64] Searchable online resources include student records; headstone and burial records by name, date of death, and burial plot; government records; photographs, newspapers, and magazine clippings; and lists and rosters. On the national level, the US Department of the Interior investigated the Indian Boarding School System, which included research relating to cemeteries and marked and unmarked burial sites of Indigenous children at these institutions across the country.[65]

Using Cybercartography

Some communities have begun using cybercartography to collate and triangulate data to create iterative site-mapping processes uniquely designed for a specific site. Cartographer Stephanie Pyne was part of the five-year Residential Schools Land Memory Mapping Project. Working on a cyber-cartography atlas for the reunion of Survivors of the Assiniboia Indian Residential School in June 2017, she said that, "an important purpose of community mapping is to 'ground truth' policy by including community perspectives in various ways on maps, in addition to 'scientific' and other perspectives."[66]

What Is Cybercartography?

D.R. Fraser Taylor defines cybercartography as:

> [A] complex, holistic, user-centered process which applies location-based technologies … for all kinds of qualitative and quantitative information [to be] linked by location and displayed in innovative, interactive, multimodal and multisensory formats. Cybercartographic atlases permit user communities to tell their own stories. Both mapping and storytelling are basic human instincts and are a central part of the holistic nature of cybercartography. The process of creating these atlases is as … important as the atlas [itself].[67]

Pyne noted that project researchers had regular meetings with Survivors who were guiding the overall project:

> While we had begun to get a better understanding of the school building, site and other aspects through our research with archival records and historical and academic publications, photo, video and audio documenting the events and activities at the [Survivors] reunion would be our first chance to get on the ground itself, and to meet the reunion attendees.[68]

Survivors' testimonies are layered together with archival documents such as photographs, site plans and maps, architectural drawings, and correspondence related to a specific Indian Residential School to produce a more complete historical picture of the institution and the land and how these have changed over time. McCracken and Hogan note that:

> the importance of recorded oral histories from [S]urvivors who have passed on is invaluable for contemporary Indigenous [P]eoples who want to know more about their own history. Tying these oral histories to a place gives meaning and purpose back to the land. The land has stories and history woven within it, and [E]lders are the keepers of that history. Through systems of colonization and genocide, access to these once readily available truths have become limited. As [R]esidential [S]chool [S]urvivors pass on, there is a threat of their lived history passing away with them.... Linking the physical points of the map to [S]urvivor voices adds a new component for Indigenous users while resonating with the forever histories of that land; as histories were passed down since time immemorial through the words of [E]lders.[69]

Ground Searches Are Corroborating Survivors' Testimonies and Truths

As search and recovery processes proceed across the country, the accuracy of Survivors' memories is being corroborated in archival records and ground searches. In September 2022 at the Edmonton National Gathering, Survivor Charlene Belleau indicated that the Williams Lake Investigation Team, who are leading the recovery of missing and disappeared children and unmarked burials in relation to the St. Joseph's Mission Indian Residential School in British Columbia, has been able to build on the truths and testimonies shared by Survivors. She said that they, "were able to find blueprints which we were then able to match with the

stories shared by Survivors and former students. For example, the Survivors told us, 'They did this at the lake, there may be children there.' Then we go to the archives and it's all there, in black and white, examples of a cabin or barn at that lake."[70] In February 2023, Chief Councillor Ken Watts publicly announced that their research initiative, ʔuuʔatumin yaqckwiimitqin (Doing It for Our Ancestors), guided by Survivors testimonies and historical records, found that 67 children had died at the Alberni Indian Residential School in British Columbia. A GPR survey of 10 acres—of a site that was close to 250 acres—found 17 potential unmarked burials. He said that, "this isn't just another number. For Survivors this is the truth they've been sharing from the very beginning.... Knowing that some children never made it home. This is verifying what they've always known."[71]

In August 2023, the English River First Nation confirmed that their search team had found 83 potential unmarked graves on the site of the former Beauval Indian Residential School in Saskatchewan:

> In August 2021, English River First Nation (ERFN) began searching the site of the former Beauval Indian Residential School (IRS) using Ground Penetrating Radar (GPR). Phase 1 of the search is now complete and covered a large area in and around the school grounds cemetery. The GPR findings have produced several positive hits or Areas of Interest (AOI's) at this site, which are consistent with what we now believe are 83 possible unmarked graves. "It is with sincere sadness that we announce that upon further investigation and study of these possible unmarked grave sites, most of them were labeled as 'child-sized' or 'sub-adult' in length. Further to this, 12 of these unmarked graves average only 2.5 feet in length, which is consistent with the burial of infants, and in line with several witness accounts of infant births, and subsequent deaths, by Survivors of this school," said English River First Nation Chief Jenny Wolverine. A special council of community members, Elders, and Survivors are providing guidance and direction on next steps. Additional sites that have been identified by Survivor accounts will be searched by the GPR team.[72]

The English River First Nation Elders Council also released a statement, noting that:

> these children and babies are no longer lost. They were never forgotten, and we find some relief in that they have been discovered. Their final resting places can now be properly marked and cared for. We believe that the spirits of these little ones were calling out to us, and their calls

> were finally heard, and they've now been found. Their spirits can now be honored, fed, and prayed for as proper protocol and ceremony dictates.[73]

These are just a few of many examples where the information gathered from Survivors is being corroborated by archival records and GPR investigations in these initial phases of the search and recovery process. This also opens new lines of investigation for communities to pursue and assists them in making decisions about next steps.

TAILORING SEARCH PLANS, METHODOLOGIES, AND TECHNOLOGIES

At every National Gathering, participants shared many reasons for doing this Sacred work. Not every community has the same goals or objectives when it begins to search for the missing and disappeared children and unmarked burials. Different community or family needs may lead to different processes in the way in which the searches are implemented. These differences are important to explore, understand, and respect. However, there were some common messages that emerged throughout the Gatherings:

- **Truth seeking:** Survivors have spoken about the children who are buried on or around former Indian Residential School sites. The searches are part of the TRC's unfinished truth seeking, and carrying this work forward is an important part of healing.
- **Advancing justice and accountability:** while not every Survivor, family member, or community wishes to engage with the criminal legal system, the process of searching for and recovering missing children is, for many, its own form of justice. Regardless of which direction a community or family chooses, this work is essential to creating a pathway for justice and accountability.
- **Dignity:** all participants shared an understanding that the search for missing and disappeared children and unmarked burials is Sacred work. Search plans and processes must ensure the utmost dignity and respect for each and every one of those missing children.

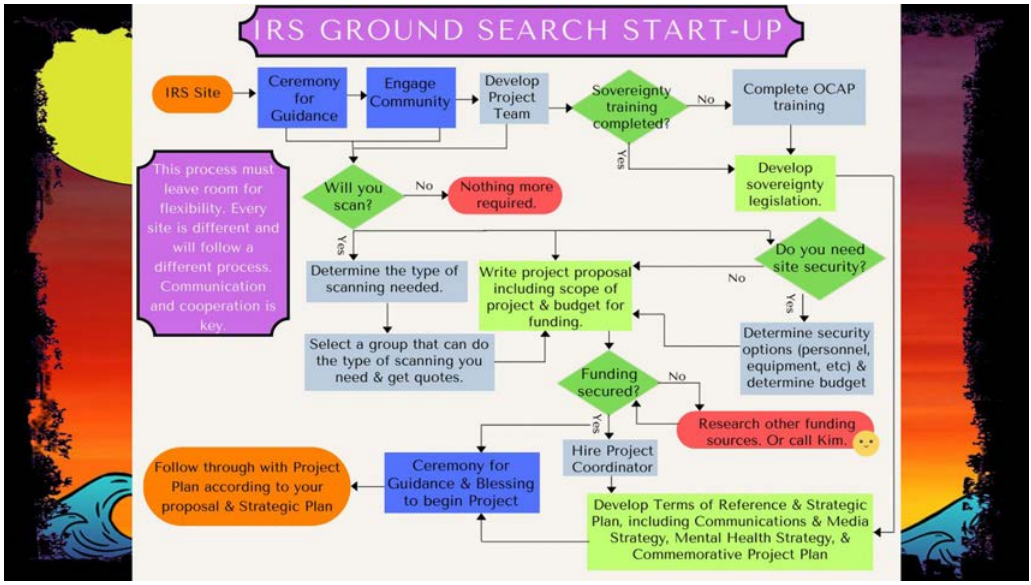
While archaeological search tools such as ground-penetrating radar have gained significant attention in the media, the search and recovery process does not begin there. As Dr. Kisha Supernant and others have pointed out, the process begins with Survivors' testimonies about the children and their substantive knowledge about the institutional sites where they

are buried. Kristin Kozar, executive director at the University of British Columbia's (UBC) Indian Residential School History and Dialogue Centre, told participants at the Vancouver National Gathering that they have established an Oral Testimony Program to ensure that the experiences of those directly affected by Indian Residential Schools, other institutions, and systems of colonialism are recorded. The program will make oral testimonies accessible for future use in accordance with community protocols. She noted that, "oral history and written records often exist in a complimentary relationship. Without access to both ... a community is left with only partial versions of its own history and identity."[74]

Creating Search Plans and Site Timelines

As communities gather Survivors' testimonies using Indigenous oral history methodology and protocols, they are also searching for archival documents for information on the sites and on the burials of individual children. At the Vancouver National Gathering, Ryan Shackleton, chief executive officer of Know History, told participants that creating a preliminary research plan to determine the goals of the research is essential. Is the purpose to collect names of the children, support GPR work, or collect perpetrators' names? Each of these goals requires specific research strategies, including identifying the archives to be searched.[75] For this work to be sustainable over time, communities must maintain control of the knowledge and information they are accumulating. As the previous chapter indicates, asserting Indigenous data sovereignty involves all aspects of the research process—from developing a research plan to determining how to hold, protect, and share data, knowledge, and information in relation to search and recovery work.

There is significant complexity to search and recovery work. As Hamilton has noted, determining the location of unmarked burials requires a historic understanding of the institutions' operations and the patterns relating to how children died and where they were buried.[76] The search for unmarked burials involves identifying the location and boundaries of former Indian Residential School cemeteries as well as other unmarked burials, including potentially clandestine/hidden burials. Indian Residential School cemeteries may contain unmarked burials since they were often established informally and poorly documented and regulated by the federal government. The federal government also failed to consider how these cemeteries would be cared for after Indian Residential Schools closed.[77] Hamilton emphasizes that, in preparing a search plan and timeline, multiple sources of information must be gathered and analyzed, including Survivor testimonies, archival records, and maps. All data should then be organized in a timeline to document the history of construction, operation, renovations, closure, and repurposing of the buildings and lands over time.[78] After gathering all this data into a timeline, using multiple sources of information, priority areas for ground searching can then be identified.[79]



Search Process Pathway Chart, Starblanket Cree Nation: Qu'Appelle Indian Residential School Ground Search Project (excerpt from presentation at Iqaluit National Gathering, February 1, 2024).

Due to the many variables that may impact remote sensing results, it may be necessary, depending on the terrain, to use several methods of remote sensing in the same area to verify the results. Data must be collected and archived carefully to document how the data was processed. This is important to enable test results to be replicated.[80] Ideally, peer review should be done to check data analysis and interpretation.[81] Given the lack of available experts to analyze the data, Indigenous people should be trained to develop this expertise. Each step of the process can take years—from gathering Survivors' truths, obtaining and reviewing records, gaining access to the sites, and creating and carrying out robust ground search plans to analyzing the results. In addition, as new information is learned from Survivors' truths and records are reviewed, further searches may be required of other areas within the same sites or at new sites. As a result, the timeline for completing this search and recovery work is likely to span over a decade.

SEARCHING SITES: GATHERING KNOWLEDGE AND USING SEARCH TECHNOLOGIES

Many participants at National Gatherings spoke about the need to create reliable maps of former Indian Residential School sites and potential burial grounds, building on the wisdom of Survivors and community knowledge. This work can be challenging due to the geography and changing land use over time, especially where the Indian Residential School buildings

were moved to multiple locations. Two trustworthy and credible educational resources have created frameworks, resources, and tools, and they are available to assist communities preparing for, conducting, and analyzing site searches.

Canadian Archaeological Association's Working Group on Unmarked Graves

The Working Group on Unmarked Graves has created two documents: *Searching for Missing Children: A Guide to Unmarked Graves Investigations*,[82] which comprises online educational resources, including videos and guidelines, to assist communities in developing search and recovery plans,[83] and *Recommended Pathway for Locating Unmarked Graves around Residential Schools* (also known as the *Pathways Framework*), which is a navigator document that explains that the investigations of lands where missing and disappeared children might be buried is complicated by physical and social geography and by shifting land use.[84] Many areas have changed over time, so information about the history of land use, geology, and development is needed. The *Pathways Framework* notes the following important considerations for those leading or supporting Indigenous communities in conducting searches:

- Identify geological conditions that influence the location of missing children and can impact remote sensing methods. Some remote sensing technology works best for some environments while others do not.
- Note impacts such as construction, prior archaeological work, and other landscape modifications.
- Create a detailed surface topographic base map of the landscape, using unmanned aerial vehicle (UAV) (drone) light detection and ranging (LiDAR) as a valuable method to create a digital elevation model (DEM) of the current landscape. Burial locations can include surface contour patterns that are visible in high resolution DEMs.
- Conduct a walkover survey with the entire search team, including Survivors if they are able, to approach the land in a culturally respectful manner, gain familiarity with the physical landscape and the former layout of buildings and other features, and work with communities to select priority locations for remote sensing.
- Prepare the area by removing obstacles and clearing vegetation in areas identified for remote sensing investigations, being careful to not remove evidence of old grave markers that might remain hidden.

- Conduct archival research into records held by communities, governments, and churches, the National Centre for Truth and Reconciliation, and all other relevant archival institutions.
- Develop a secure database, such as a GIS platform, to compile, analyze, and archive spatial data, including both quantitative (for example, documents and maps) and qualitative (for example, Survivor testimony) evidence.
- Conduct subsurface remote sensing fieldwork using GPR and other appropriate technologies to locate potential unmarked burials.
- Develop a communications plan and submit reports on findings and share these with the community.
- Plan appropriate memorialization of the children.
- Discuss and determine whether the community wants to proceed with site excavation and/or exhumation of children's remains.

The *Pathways Framework* also provides important guidance on respecting Indigenous protocols and ceremonies, seeking appropriate permissions, and working respectfully with Indigenous communities and Survivors. It emphasizes the need for health and wellness supports for Survivors, community members, and everyone involved in doing this very difficult work.[85]

National Advisory Committee on Residential Schools Missing Children and Unmarked Burials

The NAC was established in July 2022 and is guided by a Circle of Survivors. The NAC provides Indigenous communities with access to trustworthy information about all aspects of the search for the missing and disappeared children. The NAC is made up of independent experts from a wide range of backgrounds, such as archival research, archaeology, forensics, police investigations, health and well-being, and Indigenous laws and protocols. Most NAC members are First Nations, Inuit, or Métis who have a wide range of expertise, including:

- Working with Survivors;
- Researching Indian Residential School records;
- Conducting ground searches for unmarked burials;

- Forensic investigations;
- Securing evidence for potential prosecutions;
- Culturally safe approaches to information sharing and disclosures; and
- Community health and wellness.

The NAC has developed online educational resources and tools to guide all aspects of the search and recovery process.[86] On January 19, 2023, the NAC launched a navigator document, *Navigating the Search for Missing Children and Unmarked Burials: An Overview for Indigenous Communities and Families*, drawing on the experiences of First Nations, Inuit, and Métis communities actively engaged in searches to identify key factors that communities should consider when designing their search process. These factors are summarized as follows:

- Discuss and identify goals, which may include finding the children, locating and protecting their burial sites, memorializing, repatriating, and gathering evidence for possible legal action or other accountability measures.
- Identify the affected communities because the children were sent to Indian Residential Schools from many different communities. The TRC recommended that the most affected community take the lead and that the process be inclusive of all communities, including those whose children were taken far from home.
- Determine how long the process will take and develop a leadership structure, assemble a team, and establish work plans for all phases of the process, including gathering Survivors' statements; providing trauma-informed, culturally safe health and wellness supports; integrating Indigenous customs, protocols, and traditions; conducting archival research and creating a secure database to keep all the information; and engaging with police services, who may have a role in protecting sites and conducting criminal investigations.
- Obtain funding and resources and develop an internal and external communications plan.[87]

The NAC has provided educational videos to explain emerging practices and new technological advances to support the search and recovery efforts. For example, in December 2023,

the NAC hosted a webinar titled "Beyond Ground Penetrating Radar: How Other Techniques Can Complement GPR and Help in the Search for Residential Schools Unmarked Burials." Presenters included Dr. Kisha Supernant and Dr. Andrew Martindale, who are both NAC members, along with Dr. Sarah Beaulieu; Edward Eastaugh, an anthropologist from Western University; and Dr. Terence Clark, an archaeologist from the University of Saskatchewan, and they, "shared first-hand experience using LiDAR, sonar, search dogs and other technologies to gather more information about potential unmarked graves and other burial sites."[88] Clark's presentation focused on the use of shallow subsurface soil spectroscopy (S4) called Subterra Grey, which was developed and used by S4 Mobile Laboratories to search for unmarked burials at forensic and historical sites.[89] It finds burials, directly, by detecting the salts of fatty acids that are produced in human remains as bodies decompose in the soil and, indirectly, by detecting softer soil within the grave excavation. It can be used in rugged terrain and confined search areas, is minimally invasive, requires no additional scientific training, can be operated by one person, and provides immediate quantitative indications of a burial.[90] S4 can be used in conjunction with GPR to, "enhance the overall effectiveness of unmarked graves search, providing a more comprehensive understanding of subsurface conditions."[91]

Subsequently, in the spring of 2023, Clark collaborated with Cowessess First Nation and S4 Mobile Laboratories as part of the search and recovery team that, "worked tirelessly to uncover unmarked graves and burial sites using a combination of ground-penetrating radar (GPR), cadaver dogs, and S4's cutting-edge Subterra Grey technology."[92] By providing communities with information about how different technologies can be used in site searches, the NAC supports decision-making about which of these methods are best suited to a specific site.

Sharing Expertise at National Gatherings

At National Gatherings, experts in search technologies shared information with participants about tools and resources available to support searches. At the National Gathering in Edmonton in September 2022, Supernant, Beaulieu, and geophysicist Paul Bauman provided presentations on the uses and limitations of various search technologies. They emphasized the need for a tailored search plan that is specific to each site being investigated. Many variables affect the use and effectiveness of the search technologies as set out below. Participants were encouraged to consider how communities might layer the use of the many tools and search techniques available to narrow down the areas to be searched and to ensure the most effective process. The expert presenters on search technologies indicated that first-person truths and Survivors' testimonies about the sites and location of potential burials are critically important

to creating an effective search plan.[93] They recommended that several technologies and multiple sources be used to ensure the accuracy of the results and increased confidence in burial identification:

Aerial-based remote sensing involves satellite imagery and can be useful for looking at patterns by mounting cameras and sensors on drones or planes that can include LiDAR (described below) and multi-spectral imagery, which shows vegetation patterns. Plants grow differently based on the composition of the soil and may help indicate the location of graves.

LiDAR is utilized by mounting a sensor onto a drone or plane and sending a laser beam down to the ground. This process excludes vegetation such as forests or bush areas and allows the searcher to map the ground. LiDAR does not search below the ground surface. Aerial methods are often quicker and generate large amounts of data that must then be processed and interpreted by experienced individuals.

Ground-based geophysics searches for physical differences on or below the ground surface by using technology along the ground surface such as GPR. Electrical currents can be used to find things beneath the ground. GPR works well when there are organized burial grounds such as existing cemeteries. It is used in situations where Survivor testimonies have identified areas where possible unmarked burials may exist. Radio waves are sent from the GPR, which bounce back when they encounter a different type of material within the ground. The data shows patterns to help provide confidence in finding a grave. It can be a very slow process, with one-quarter acre being covered each day. GPR only detects reflections or anomalies in the ground and requires expertise in data interpretation. This method is not useful:

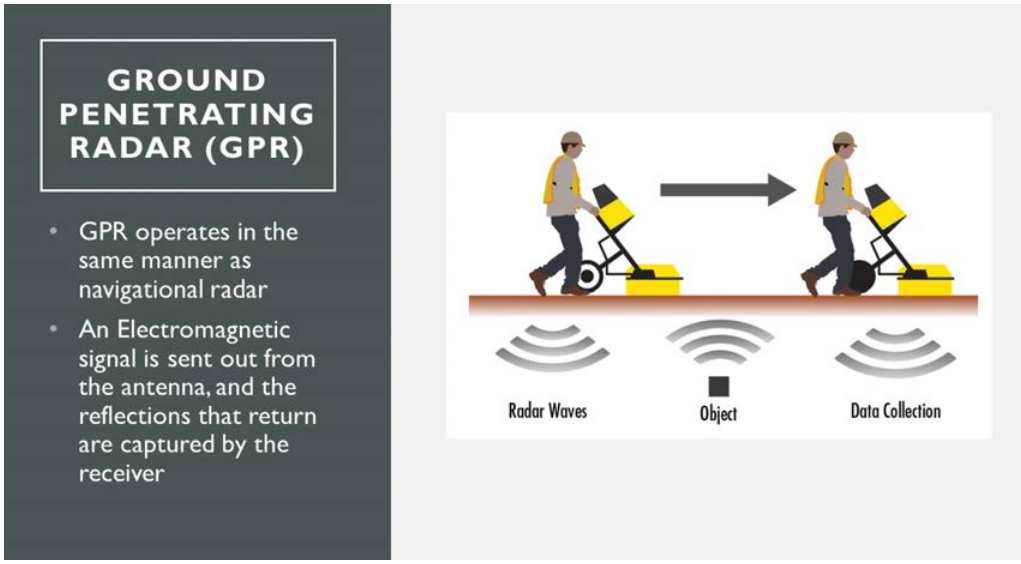
- In areas where soil holds moisture such as clay-rich soils or areas with a high water table;
- In areas where soil has high salinity (high salt content);
- During rain or deep snow;
- In areas where there are structures or obstacles on the surface; or
- In rough terrain, such as trees, brush, large stones/boulders, and areas of animal tunneling.

It was emphasized that burials outside a formal cemetery are more complex to find using GPR for several reasons:

- Non-burial features can hold similar characteristics to unmarked burials;
- Background geology can be more varied; and

- Grave shafts are less structured in terms of size, shape, regularity, pattern, and quality.

When GPR is not a useful method to use, other non-invasive methods are available.



Slide from the presentation of Dr. Sarah Beaulieu, a GPR specialist who works with several Indigenous communities in their search for unmarked burials associated with former Indian Residential Schools.

GPR Terminology

Many Survivors, Indigenous families, and communities leading search and recovery efforts are using different remote sensing technologies to search for and recover unmarked burials. There is a particular interest in GPR, and it is important to understand the various terminologies associated with GPR, particularly in the context of public confirmations of findings. GPR is a technology that sends microwaves into the ground, which are then reflected to the GPR box that maps any objects or disturbances within the ground. The results of GPR are often referred to using several terms, including:

- **Anomalies**, which are areas of disturbed ground that look different from the surrounding ground as seen with GPR. This is used as a term to describe areas of interest where burials may be present.
- **Reflections**, which are hyperbolic (also known as "U" shaped) echoes/images that are the result of the radar wave hitting an area of ground that is different from the surrounding area.

- **Hits**, which are reflections/anomalies that have been identified as areas of importance when searching for unmarked burials.
- **Targets**, which are reflections/anomalies that have been identified as areas of importance when searching for unmarked burials.

All experts emphasize that, where anomalies, reflections, hits, and targets are located, these results link the Survivors' truths to specific areas within a site.[94]

Electrical resistivity/conductivity is a very slow process. This is done by using a large battery and electrical probes, which are inserted into the ground. A current is then run between the two electrodes, and the resistivity is measured to determine what objects/features may be below the surface. This approach maps known graves and can supplement and explore areas where GPR is difficult to use, such as clay-rich areas or those with a high water table.

Magnetometry is used to measure the differences between the magnetic fields of the earth and those below the ground. Magnetometry can be used where there is a grave with metal in it or a building foundation. It can detect magnetic field variations; this can be seen when there is a hole, such as a grave shaft, which has been filled with soil. Magnetometry can detect the magnetic field differences from soil that was used to fill a space versus existing soil. This can be used where GPR is not feasible. The speed with which it collects data is much quicker than the other methods. This technology does not work well in areas that are developed or have been disturbed.

Historic Human Remains Detection (HHRD) dogs can be used to aid searches. These dogs are trained to detect the smell of human decomposition in historical burials. Some dogs can also be trained to detect cremains, or cremated remains, which is helpful in situations where a physical body may not be present. These search dogs can locate burial areas but not individual graves, so they are utilized to help confirm GPR findings or narrow down areas for GPR work to continue.

Using Historic Human Remains Detection (HHRD) Dogs

Some communities are using HHRD dogs in addition to GPR and other technologies to search the sites of former Indian Residential Schools and associated institutions. At the National Gathering in Edmonton in September 2022, Survivor Barbara Lavallee, from Cowessess First Nation, said that, when they were told

science could not take them any further in their search at the former Marieval Indian Residential School in Saskatchewan, they turned to ceremonies to find a path forward. She explained that they were told that, "science has its limitations and that this is as far as we go. I did not accept that as an answer and we carried on. So, my husband and I went to a Sun Dance and really prayed that the help we needed was on the way. When we left, I fell asleep, and the answers came. When I woke up, I told my husband: 'we needed to use dogs, they will help us.' So, that is what the Cowessess team did."[95] The Kanien'kehá:ka Kahnistensera (Mohawk Mothers) reported that evidence of human remains was found by HHRD dogs on the grounds of the old Royal Victoria Hospital in Montreal.[96] Karonhianoron said that when all three search dogs found this evidence in the same place, "it felt very surreal.... For me, it wasn't unexpected, but I guess to have concrete evidence to show to people who maybe don't know the whole story about this place, about the Royal Vic and the Allan, that was very powerful for me to sit with."[97]

Survivor George E. Pachano from the Cree Nation of Chisasibi, who is part of the search and recovery team at the former site of St. Philips Indian Residential School in northern Quebec, told the media on August 21, 2023, that when the specially trained dogs arrived on the site, he was able to point them in the right direction on the grounds of the demolished institutions. As he shared, this, "makes it a little harder for us because it's all rubble and we're trying to use all the resources we can to find any missing graves.... There are families whose siblings never made it back and they would like to know what happened.... I know that it's going to be a long process. I think it's still a subject that is very hard to talk about. So, we're trying to encourage people to come out and tell their stories, come and see us."[98]

The Battlefords Agency Tribal Chiefs (BATC) Acahkos Awasisak – Star Children Project is conducting search and recovery work on the former site of the Delmas Indian Residential School in Saskatchewan. After experts determined that the terrain was unsuitable for GPR, HHRD dogs were brought to the site in the fall of 2023, and human remains were detected. The BATC told media that, "in a pivotal turn of events, oral [E]lder testimony has been validated through the deployment of cadaver dogs specially trained to detect historic human remains."[99] Alayna Tootoosis, the project's lead researcher, said that Elders were then consulted and a commemorative feast was held, and she noted that, "this research has been a project of the heart, addressing the concerns of our people.... The findings are of a sensitive nature, but it is crucial to transparently present our discoveries."[100]

eDNA is used to test the soil for human DNA, which may indicate that a burial is present in the area. eDNA is the presence of environmental DNA. Tests can determine the species of DNA but not the individual genetic profile. This means that human DNA can be detected but a single individual cannot. This tool is expensive, and resources to support this type of DNA search have not been readily available in many communities.[101] At the Montreal National Gathering in September 2023, Supernant spoke again about some of the considerations and limitations of GPR that communities must assess. The context of each site must be evaluated. Survivor knowledge is essential in considering the unique circumstances of each possible search site. She said that:

> GPR works really well in certain conditions, certain types of soil, certain types of environments work quite well. But I have now been involved in two separate places where GPR did not work at all—where we are in a cemetery where there are graves—we know there are graves there—the GPR just doesn't see them because the soil is not right. So, if you are investing in a ground search, it's really important to have a trusted source of information and someone who can give you good advice about what is possible.
>
> There are vast landscapes around every single [Indian] Residential School, and these landscapes are obviously places that Survivors, Elders, and communities are looking to search. It's really important to remember that every school is unique in its own way. It has its own unique history both in terms of how long it was in operation, which children were stolen to that place from which communities, but also what has happened since the Residential School was in operation.... [There] will be a different history of the land, what has happened to it.... I have had the privilege of working with the Métis Local in St. Albert on the Youville Institution, for example. The Youville Institution was in the heart of what is now the City of St. Albert so the lands that the school was on are almost entirely under the centre of the city. So, this is a case where GPR may not be much help, since there isn't much left there to search.[102]

The highly technical information about search technologies that experts shared with participants at the National Gatherings emphasized how important it is for those leading searches and investigations to learn about these different tools and to obtain the technical assistance they need to support their work. The experts used practical examples of how these technologies

are working to illustrate the factors that should be considered when deciding which technologies are best suited to each particular circumstance.

The results of GPR and aerial imaging can also be further corroborated through contextual information. Experts in the identification of unmarked graves can also draw conclusions based on common burial practices. For example, Christian burials are most often east facing, so a rectangular shaped anomaly detected in an east-west orientation has even more likelihood of being a burial site.[103] There is an abundance of evidence being produced by Indigenous communities, including the results of expert-analyzed GPR data and other remote sensing technologies, aerial images, Survivors' testimonies, and archival records.

EMERGING PRACTICES OF INDIGENOUS-LED FORENSIC SEARCH AND RECOVERY PROCESSES

> It is time for all levels of government to support First Nation families and communities. We must work to help the spirits of our children come home to rest. It is time to right the wrongs. It is time for our people to author the narrative of our history. It is our history, it is our truth, it is our children, it is our spirit, it is our healing and it is our time to lead. For many years, our [E]lders have told us of the unmarked graves they knew were at residential schools. We now have the ability to bring the truth to light and through technology, we can now help the Spirits of our children to rest. Manitoba Keewatinowi Okimakanak will continue to honour our children by following our protocols and using our ceremonies that they were denied. When directed by the First Nations, we will work to repatriate the remains of our children who are buried in unmarked graves, away from their home communities. We will work to ensure First Nations have the opportunity to memorialize their children and create commemorations in honour of our ancestors who died at residential schools.
>
> **— Grand Chief Garrison Settee, Manitoba Keewatinowi Okimakanak**[104]

At National Gatherings, statements from Survivors, Indigenous families, and communities from across Turtle Island echoed Grand Chief Garrison Settee's words. While it is beyond the scope and timeline of this Final Report to highlight the important work that so many communities across the country are leading, the following representative examples provide valuable

insights into the complex, non-linear, and time-related characteristics of Indigenous-led models of search and recovery processes. The principles, protocols, and practices of Indigenous laws must guide every aspect of searches and investigations relating to the missing and disappeared children and unmarked burials. This begins with Survivors' truths and testimonies. At National Gatherings, many communities also shared the legal principles they have developed, which are highlighted in an earlier chapter in this Final Report.[105]

Preparing for Site Searches: Indigenous Laws, Cultural Protocols, and Ceremonies

Photograph of Voices of Survivors Panel: Elder William Osborne, Dr. Levinia Brown, and Manitoba Métis Federation Vice-President Andrew Carrier, National Gathering on Unmarked Burials, Winnipeg, Manitoba, November 29, 2022 (Office of the Independent Special Interlocutor).

Conducting the preparatory work for using GPR and other technologies to search a site involves researching and understanding its history and topography, guided by Survivors' truths. Throughout this process, communities keep the memory and Spirits of the children close to their hearts. While they are anxious to find answers, each step of the search is carefully considered. Dr. Kona Williams, a Cree and Mohawk forensic pathologist, said that, "I think in the very beginning when these burial sites were first discovered, there was a push to do this quickly.... And given the information that I have about the process and what is involved, I have discovered that people sort of pull back a little bit. They're like, 'let's do this right.' You know, the children deserve this. They deserve a certain amount of respect that they did not receive

in life."[106] In working with communities, Dr. Sarah Beaulieu notes that, "cultural protocols are as equally important as the science behind GPR and given the nature and given the sensitivity of this work, one cannot be done without the other."[107] Each Indigenous Nation across Turtle Island has its own laws, cultural protocols, teachings, and ceremonies to guide the Sacred work of searching for and finding the missing and disappeared children and unmarked burials. These laws convey the responsibilities that the living must fulfill to care for the children's bodies, Spirits, and burial places.

Penelakut Ceremony to Prepare for Searches at Kuper Island Indian Residential School

Investigations, including GPR searches, have been ongoing at the former site of the Kuper Island Indian Residential School in British Columbia since 2014. In July 2021, there were media reports that the Penelakut Tribe had sent a newsletter to neighbouring First Nations communities to inform them that 160 unmarked and undocumented graves had been found at the site.[108] Survivor Steve Sxwithul'txw told the media that, "I know some families want to identify their lost loved ones and bring them home in a proper way … [a]nd personally, for me, I have relatives that have died over there, so I would like to know, and I think it's important that they get the proper respect and burial that they deserve."[109]

In an interview with Anishinaabe journalist Duncan McCue, Survivor Jill Harris, former Chief of Penelakut, a Hul'qumi'num community, said that protocol and ceremony have been very important to prepare properly for the difficult and ongoing search and recovery work at Kuper Island Indian Residential School, "It's not just going and digging up the ground. They prepare themselves."[110] McCue explains that, "the Hul'qumi'num approach to death is intricate and time consuming. And you have to get that to really understand how deeply hurt this community is about the kids who died at Kuper Island. It's not only that the children were neglected in life, they were also neglected in death."[111] He describes the feast that was held for the children, "On a huge homemade cedar table, they set fifty extra plates for their ancestors, piled them high with food, then burned them in the fire. The Hul'qumi'num believe that's how food moves from the physical world to the spiritual one."[112] Jill Harris said that, "our children had been calling out for their families, you know, crying for their families and no one would go get them and they couldn't be released. We thanked the children for coming."[113]

The Role of Indigenous Cultural Monitors in Search and Recovery Processes

Indigenous laws are living legal systems that adapt to meet changing circumstances. Every community has its own cultural protocols and ceremonies to honour and care for the bodies and Spirits of the missing and disappeared children and to protect the search and recovery teams before, during, and after site searches. Many participants at the National Gatherings spoke about how their Nations' laws are being upheld and applied during searches.[114] While recognizing that each Indigenous Nation has its own culturally distinct laws, 13 overarching legal principles that are guiding this difficult work have been identified and described in an earlier chapter of this Final Report. These principles affirm that search and recovery work is Sacred, that Indigenous cultural protocols and ceremonies are integral to the process, and that it is important to take the necessary time to ensure that the work upholds Indigenous laws. The following representative examples illustrate the critical role of Indigenous Cultural Monitors in search and recovery processes and identify the need to ensure their well-being and safety as they fulfill their Sacred responsibilities.

Survivors' Secretariat Cultural Monitors: Protecting Search and Recovery Teams and Identifying Cultural Artifacts

The Survivors' Secretariat appointed Cultural Monitors to ensure that Haudenosaunee and Anishinaabe laws, customs, ceremonies, protocols, and processes are respected and observed when searching the former site of the Mohawk Institute. In July 2022, prior to beginning a search of the Mohawk Lake, Peter Schuler, the Secretariat's Cultural Monitor, explained that, "it is important to use our ceremonial ways when we do this work, and with that in mind I used my Pipe to seek help from those entities that we recognize as Spiritual Helpers so that the people conducting the search remained safe and were able to see what is required of them.... We recognize that the work is required because a harm was done and that in itself is reason to be cautious. Even if the perpetrators of that harm thought no one saw it, the Ancestors were [witnesses]. The perpetrators tried their best to cut off our communication with the Ancestors, but someone will always hear them and the truth will come forward."[115]

In their role as Cultural Monitors, Knowledge Keepers and Elders may also determine the cultural significance of artifacts found with human remains that can assist in forensic identifications.[116] At the National Gathering in Toronto in March 2023, Wendy Hill shared information with participants about her role as a Survivors' Secretariat Cultural Monitor.[117] When unidentified human remains predating 1814 were found on private property in Brantford, Ontario, that was formerly owned by the principal of the Mohawk Institute between

1837 and 1872, the Mississaugas of the Credit First Nation, the Haudenosaunee Development Institute, Six Nations of the Grand River, and the Survivors' Secretariat were consulted. When the human remains were exhumed during the coroner-led investigation, over five hundred small glass beads were located adjacent to the bones associated with the lower leg, consistent with the presence of clothing. Wendy Hill described how she, and Dr. Beverly Jacobs, the Survivors' Secretariat's Human Rights Monitor, were able to confirm that the beads were from a boy's, or man's, regalia, likely leggings or a breechcloth. Further forensic analysis, including an osteological report, radiocarbon dating of the bone sample, and chemical dating of the glass beads, supported the conclusion that the remains were from a boy between the age of 11 and 14 years old, who had likely died in the late 1600s.

Kanien'kehá:ka Kahnistensera (Mohawk Mothers): Protecting the Safety of Cultural Monitors during Site Searches

In March 2022, the Kanien'kehá:ka Kahnistensera (Mohawk Mothers) filed a civil suit with the Superior Court of Quebec seeking an injunction to halt the redevelopment of the grounds of the old Royal Victoria Hospital in Montreal in order to conduct an Indigenous-led search for potential unmarked graves of Indigenous children who were forcibly transferred to the institutions located on this site. Their actions (which are part of a much longer history of intervention on this site), the litigation, and the subsequent Settlement Agreement are examined in more depth in other chapters.[118] Here, it is important to note that the Settlement Ageement included a court-ordered provision for, "Cultural [M]onitors, appointed by the Mohawk Mothers ... [to] be present during the execution of the techniques to conduct appropriate ceremonies and to ensure that Indigenous protocols regarding burial sites are respected at all times."[119] The Cultural Monitors are upholding Haudenosaunee laws, cultural protocols, and ceremonies to honour and protect the bodies and Spirits of the children, protect the search and recovery team, and safeguard the site until the search is completed. While fulfilling these responsibilities, the Cultural Monitors experienced risks to their personal well-being and safety.

In July 2023, the Mohawk Mothers reported that the archaeological site search had been halted after security guards hired by the Société québécoise des infrastructures verbally harassed the Cultural Monitors, ordering them to leave the site and telling them that the police had been called.[120] Kwetiio, one of the Mohawk Mothers, said that, "I felt like a protector, not just of the grounds, but there's a 79-year-old, there's an 83-year-old, they're older people. And also, some of our cultural observers are not geared to deal with violence.... They're just doing their cultural job and they weren't prepared for that. So I kind of felt protective of all of them."[121] Although Indigenous security guards were subsequently hired, the Mohawk

Mothers observed that the defendants were failing to comply with other terms of the Settlement Agreement.[122] A media report noted that, "the temporary agreement sees that there is Indigenous security onsite following an incident in July which saw Cultural Monitors and Elders kicked off of the site, but even with Indigenous security, the Kahnistensera say they are being left out of the process, and recommendations by an expert panel chosen by all three parties ignored."[123]

These representative examples illustrate the critical role of Cultural Monitors in search and recovery processes. Their presence during site searches ensures that Indigenous laws, cultural protocols, and ceremonies are respected and upheld. Their cultural knowledge and expertise relating to Haudenosaunee burial practices can also inform forensic investigations. However, there is an urgent need to provide Indigenous-led protection and security for Cultural Monitors fulfilling their Sacred responsibilities on the sites of former Indian Residential Schools and associated institutions.

Indigenous-Led Search and Recovery Processes Are Complex, Non-linear, and Lengthy

Indigenous-led search and recovery processes are integral to the holistic process of truth-finding, reclamation, repatriation, healing, and commemoration. The information shared at the National Gatherings, on sites with Survivors and communities, and in various meetings and community Gatherings and conferences over the past two years confirms the complex, non-linear, and lengthy nature of the search and recovery process. Some of this work has already been going on for many years, led by Survivors, Indigenous families, and communities. The search and recovery process is much more than a scientific exercise; it is a search for truth, a reclaiming of Indigenous history and identity, and a call for accountability and justice.

Sacred Heart Indian Residential School: Fort Providence Métis Council, Northwest Territories

In the 1990s, Survivor Albert Lafferty, president of the Fort Providence Métis Council, began searching for an abandoned cemetery near the former site of the Sacred Heart Indian Residential School in Zhahti Kue (Fort Providence, Northwest Territories). He grew up hearing about the old cemetery from his parents, uncles, and Métis Elders, and, as he recalled, "they would sometimes talk about the old cemetery, which was in that area and had been ploughed over and the crosses had been taken down."[124] Beginning with extensive archival research into the cemetery, Lafferty then brought in archaeologists to scan the site with GPR. Roman Catholic archival records confirmed that, in 1929, "the remains of missionaries buried in that

cemetery were relocated to a new cemetery, while the other remains apparently were not relocated."[125] In 1948, the fence that surrounded the cemetery was removed, and the remains of, "two priests, two brothers, and four nuns" were exhumed and moved to the new cemetery.[126] Once this was done, the old cemetery and the remaining burials of at least three hundred Indigenous people, including the burials of 161 children[127] were ploughed over and turned into a potato field by the Catholic mission as part of its agricultural operations.[128] The old cemetery is marked with a single permanent monument, built in 1994, to commemorate those buried there. For Dene and Métis people, as Lafferty has stated, "it is a sacred area. It has meaning to us. They were our ancestors. We're the living people, the descendants today that live here in Fort Providence. It's important that this is documented, and it remains preserved, sacred, and undisturbed so that there's no future development at that site."[129]

In 2002, the Fort Providence Métis Council asked geographers from the University of Alberta to conduct a geophysical survey of the old cemetery to determine its boundaries. In 2003, working with Lafferty and using information gathered from Elders' oral histories, archival records, and historical aerial photographs, the team conducted a GPR survey to map out the cemetery's parameters.[130] In their subsequent report, the search team explained the background context for this work, noting that:

> In the mid 1970s a prominent Métis Elder, Jean Marie LeMouel (1911–2004), was asked to mark the boundaries of the original cemetery. From memory and local landmarks, Mr. LeMouel marked the four corners of the fence constructed around the original cemetery. The corner locations were corroborated by Mr. Eddie Sanderson, another local Métis Elder, in 1992. These activities culminated in the installation of permanent steel posts to indicate the extent of the original cemetery.... In 2002, concerned that expanding development might impact the original cemetery, Albert Lafferty ... initiated a research project to relocate the original cemetery and identify if graves are present. It was determined that historical aerial photographs held the potential to locate the boundaries of the original cemetery, while ground penetrating radar (GPR), a shallow geophysical technique, would be used to resolve subsurface conditions.[131]

While the GPR data did not find evidence of human remains, it confirmed that, "the posts placed by the Elders appear to represent the approximate location of the original cemetery, though the actual dimensions appear to be slightly larger according to the aerial photographs."[132] The work to locate all the unmarked burials associated with the former Sacred Heart Indian Residential School is not complete, "[The] families are still wondering."[133] In

July 2021, the Deh Gáh Got'ı̨ę First Nation announced its intention to lead further work to search the site for other unmarked burials.[134]

Regina Indian Industrial School

At the National Gathering in Edmonton in September 2022, Sarah Longman, the Board Chair of the Regina Industrial School Commemorative Society, shared the decade-long journey of work done to identify the children who were never returned home from the Regina Indian Industrial School. The institution operated from 1891 to 1910 and was run by the Presbyterian Church of Canada. The former site of the Industrial School spans 329 acres in the southwest corner of what is now Regina. At least 39 different Indigenous communities had children taken to the Regina Indian Industrial School. In 2012, GPR results identified over 32 potential unmarked burials at the site of the institution's cemetery. Longman said that, "talking to Survivors from many of the communities after this, they recommended that we continue doing more searching."[135] A subsequent search identified the unmarked burials of six more children outside the fence line of the cemetery. The old fence was removed, and a new one was put up to ensure that all of the burials were protected. Provincial heritage designation was sought and granted for the site to protect it from development. In 2019, the land was transferred by the federal government to the Regina Indian Industrial School Commemorative Association. The 38 burials located have been protected and commemorated.[136]

The hard work continues as they plan how to expand their search efforts to find more of the missing and disappeared children. Longman said that, because Survivors are passing away, "this work can't happen fast enough, and yet we need to take our time ... it's going to take a couple of generations to go through this work. We looked at the school building itself, and we looked at some of the archival maps.... We also talked to the Survivors, we heard their stories and if there was repetition within the stories, we knew that we were onto something, and we took those stories seriously. So many of our Survivors said that their voices were never heard."[137] In her presentation, Longman recognized that each search is necessarily unique. She also recognized the importance and weight of this work:

> I'm hoping that part of this journey is that we understand that there's no right way, there's no wrong way to do this work. There's no linear way. There's no solid framework. You're going to go in circles. You're going to hit a lot of emotional walls. It's hard work and you're going to feel it. It's going to tug at your heart. You are going to have trouble sleeping. But that means you are doing the right thing.[138]

Longman's reflection emphasizes how difficult this work is for Survivors, Indigenous families, and communities. It also points to the dynamic, shifting nature of the search process as it evolves over time. Search plans must be flexible enough to make the necessary adjustments as new information comes to light. Communities are gathering knowledge, conducting ground searches, holding gatherings with other communities to share information, and organizing commemorations and memorials simultaneously. This work takes time.

Survivor-Led Ground Search at the Mohawk Institute

> This is heavy work that needs to be done. As Survivors, we take comfort in knowing that this Sacred work is being done in a good way, with our community members' participation.
>
> — Sherlene Bomberry, Survivor of the Mohawk Institute[139]

The Survivors' Secretariat was established to search the grounds of the former Mohawk Institute, which spans over six hundred acres, for unmarked burials. The Secretariat has noted that the TRC, "documented the names of 48 children that died while being forced to attend the Mohawk Institute. We don't know where they are buried, or if other children died during the Institute's 136 years of operation. Survivors have stated that children 'just disappeared' and that they don't know if something bad happened to them or if they returned safely to their homes."[140] The Mohawk Institute was the longest-running Indian Residential School in Canada, operating from 1828 to 1970. The Survivors' Secretariat is governed by a Board of Directors comprised of seven Survivors of the Mohawk Institute. The work of the Survivors' Secretariat is an example of a Survivor-led approach to ground searching. Survivors provided direction on which areas should be searched and which areas should be prioritized.

Prior to commencing the ground search, Survivors and community members were trained in how to operate the GPR machines, and, as noted earlier, Cultural Monitors were hired to ensure that Haudenosaunee and Anishinaabe laws, customs, ceremonies, protocols, and processes are respected and observed during the search processes. Over the fall of 2021, 60 grids were laid for GPR scanning, and 37 of these grids were scanned before snowfall stopped their work. Data from the GPR was then sent to experts for processing and analysis. In the preparations leading up to the search, Dr. Beverly Jacobs said that, "it makes me feel sad. It makes me feel angry. Angry that this happened. That they got away with it. That is a human rights violation."[141]

As of August 2022, the Survivors' Secretariat had GPR scanned a total of 387 10-by-10-metre grids. This represented approximately 1.5 percent of the total area to be searched.[142] The Secretariat estimated that it will take several more years to search all the land associated with the Mohawk Institute.[143] The Secretariat is also gathering archival and modern-day maps, records, and documents to support its ground searches of the Mohawk Institute. The Secretariat is working collaboratively with the City of Brantford to update official maps. In addition, the City has agreed to alert the Secretariat of any development that may be planned on lands associated with the former Mohawk Institute.[144]

The Survivors' Secretariat reported that, by the end of 2023, "a total of 9.6 acres of the Mohawk Institute grounds was scanned, representing 1.5% of the total search area.... A primary step to ground search also includes incorporating records, documents and oral histories to give historical context to the land being searched. According to the historical archives and records collected to date, 96 children are known to have died while attending the Mohawk Institute Indian Residential School. This number has doubled from what the National Centre for Truth and Reconciliation initially reported."[145]

COLLABORATIVE RELATIONSHIPS AND EMERGING PRACTICES WITHIN AND BETWEEN INDIGENOUS NATIONS

At the National Gathering in Iqaluit in January 2024, President Natan Obed, of the Inuit Tapiriit Kanatami, said that the Sacred work of searching for the missing and disappeared children is, "not a 'distinction-based' issue. We all must work together to find the children, to honour the children, and to hold Canada and the churches to account."[146] His observation highlighted the need for collaborative relationships and emerging practices to guide this work within and between Indigenous Nations. Speaking on an Indigenous leadership panel at the National Gathering in Montreal, Chief Councillor Ken Watts outlined the components of the ʔuuʔatumin Yaqckʷiimitqin "Doing It for Our Ancestors": Alberni Indian Residential School (AIRS) – Tseshaht First Nation Research and Scanning Initiative/Project. He described the community-led and community-driven process evolving in Tseshaht Territory in British Columbia and spoke about the pressures of leadership. He said that, "while it may feel like the weight of the world is on your shoulders as a leader, remember that there are people standing behind you, holding you up, ones you can see and ones you cannot.... But remember, who is supporting the support staff?"[147] He explained that, "over 90 First Nations had children removed from their communities [and sent to AIRS]. Providing space for them to come here and do their work is important, but with so many languages and cultures, sharing information isn't easy."[148]

On that same panel, Grand Chief Garrison Settee spoke about legislative and policy tools and the work that the Manitoba Keewatinowi Okimakanak (MKO) is doing to ensure the protection of burial sites, human remains, and cultural items.[149] In particular, Grand Chief Settee described the US *Native American Graves Protection and Repatriation Act* as a possible legislative model in Canada.[150] The MKO has called on government to co-develop this kind of legislation with Indigenous Nations.[151] His presentation highlighted the important role of national, provincial, and territorial Indigenous political and advocacy organizations in Nation-to-Nation consultation and engagement between Indigenous Nations and governments in creating a new legal framework and in advocating for substantive long-term government funding. Leadership at all levels—political, technical, and administrative—is essential to developing robust Indigenous-led models.

An earlier chapter in this Final Report on upholding Indigenous laws, principles, and protocols notes that participants at the National Gatherings identified inter-jurisdictional collaborations to support search and recovery processes as essential. Collaborative structures and initiatives within and between sovereign Indigenous Nations are being created so that communities can build expertise and share knowledge, information, and promising practices. The importance of having political, administrative, and technical leadership and expertise at community, regional, and national levels cannot be overstated. The Indigenous children who were sent to Indian Residential Schools, Federal Hostels, and associated institutions came from many different and often very distant communities. Given this reality, the TRC's Call to Action 76 recommended that searches be conducted based on the principle that the Indigenous community most affected should lead the investigation.

What does this look like in practice? Determining the lead community is somewhat less complicated when a former institution was located on or near a reserve and most of the children came from within one Nation. However, First Nations, Inuit, and Métis children from different Nations were often sent to the same Indian Residential School by government and church officials. Addressing this diversity and complexity in search and recovery processes is critical. While it is beyond the scope of this Final Report to survey all the community-based and inter-jurisdictional models being developed across the country, their very diversity confirms that there can be no one-size-fits-all approach to Indigenous-led search and recovery processes.

In some regions, several Indigenous Nations are implementing their own community-based models while also participating in inter-jurisdictional collaboration and information-sharing networks and forums. Others are taking a more centralized approach, and several Nations in one geographical area have created a regional Indigenous-led working group to collaborate

with local communities, providing expertise, coordination, and health supports for search and recovery work at various institutional sites. These two different models are tailored according to the specific cultural, political, historical, and geographic circumstances of the Nations involved. The representative examples below illustrate how these inter-jurisdictional structures and processes are building knowledge and expertise at both community and regional levels.

Collaboration within and between Indigenous Nations in British Columbia

There are more than two hundred First Nations within British Columbia, each with their own culturally distinct territories, laws, and history. With 35 different languages and more than 60 different dialects, Indigenous Nations in British Columbia are the most culturally and linguistically diverse within Canada.[152] The regional model emerging in British Columbia incorporates both Nation-led community-based search and recovery processes and regional collaborative networks and forums involving lead communities from various Nations.

Stó:lō Nation Chiefs Council: Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children) Residential Schools Project

In 2021, the Stó:lō Nation Chiefs Council (SNCC) established a Nation-wide initiative to coordinate search and recovery efforts in Stó:lō Territory. In a written submission to the OSI, the SNCC described the cultural, political, and technical structure of the Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children) Residential Schools Project, including its relationships with other communities from Nations across the province. The submission explained:

> The Stó:lō Nation Chiefs Council (SNCC) launched our own project to investigate the [R]esidential [S]chool institutions that were operated by the Federal government and various religious groups in S'ólh Téméxw, Stó:lō lands.... After careful consideration and guidance from our House of Respect Care Taking Committee and [E]lder Siyamiyateliyot (Elizabeth Phillips) who shared her knowledge of our Halq'emeylem language, we came up with this name for this work: Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children).
>
> In 2021, following the findings of unmarked graves at Tk̓emlúps (Kamloops), Penelakut Island (Kuper Island), and elsewhere across Canada, the SNCC launched a broad-based and inclusive initiative

> to investigate potential unmarked graves and missing children related to three of the four Residential Schools within S'ólh Téméxw. This initiative includes the former St. Mary's, Coqualeetza, and All Hallows institutions in Mission, Chilliwack, and Yale, in the Fraser Valley of British Columbia. A political Steering Committee with representatives from the SNCC, Stó:lō Tribal Council, and Independent First Nations oversees this work. The initiative is being operationalized through the Stó:lō Service Agency Board of Directors, and the work undertaken by the Stó:lō Research and Resource Management Centre (SRRMC). Our work is connected to an initiative that is being led by Grand Chief Pennier and the Stó:lō Tribal Council which focuses on [R]esidential [S]chool [S]urvivors and experiences within the Coast Salish communities.
>
> Our Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children) Project encompasses archival research, interviews to gather information from our community members, and surveys of potential burial sites through geo-physical and remote sensing methodologies. The work has been organized into phases and undertaken by the staff with the assistance of technical experts. Guiding the work are the [E]lders and cultural Knowledge Keepers, who make sure that the work is done in a good way, and respects Stó:lō culture and people. This important and difficult work will take time and needs to be carried out with great care to individuals' and communities' well-being, cultural protocols, confidentiality, and certainty of findings.[153]

At the same time, the Stó:lō Nation is participating in regional gatherings to share knowledge, information, and experiences with other lead communities from different Nations to advance search and recovery work province-wide. In July 2021, the province of British Columbia announced funding and other supports for Survivors, Indigenous families, and communities leading searches at the 18 former Indian Residential Schools and three Indian Hospitals in British Columbia. The BC Residential School Response Fund provided Indigenous communities with up to $475,000 in funding to support First Nations–led strategies to investigate, identify, document, maintain, commemorate, and protect Indian Residential School or Indian Hospital cemeteries or other sites where the children may be buried.[154]

BC Provincial Liaison and Lead Community Gatherings

In 2021, the Honourable Murray Rankin, BC Minister of Indigenous Relations and Reconciliation appointed Survivor Charlene Belleau as the BC First Nations Liaison. She is a Survivor of the St. Joseph's Mission Residential School, former Chief of Esk'etemc First Nation, and former chair of the First Nations Health Council. She is also part of the search and recovery team investigating the missing and disappeared children and unmarked burials at St. Joseph's Mission Residential School.[155] The purpose of the First Nations Liaison position is to build and maintain a network of relationships amongst Indigenous communities in British Columbia. This is to ensure that they have the tools and resources required to move ahead with site research and searches and to support each other in the process. The mandate of the First Nations Liaison includes:

- Providing advice and assistance to First Nations at different stages of the investigative process, including support for accessing federal and provincial funding and related supports;
- Providing advice to the province of British Columbia on the response to findings at former Indian Residential Schools and Indian Hospitals in British Columbia; and
- Acting as a communications link between First Nations investigating the sites of former Indian Residential Schools and Indian Hospitals in British Columbia.[156]

Since 2021, the province of British Columbia, with the support of the First Nations Liaison, has supported five in-person provincial Gatherings:

- Tk'emlúps te Secwépemc in October 2021;
- Stó:lō Nation Chiefs Council in May 2022;
- Squamish Nation in November 2022;
- Tseshaht First Nation in May 2023; and
- Nadleh Whut'en Nation in May 2024.

The provincial Gatherings bring together Survivors, Indigenous leaders, and project leads from each of the communities planning or conducting searches on or

near Indian Residential Schools and Indian Hospitals in British Columbia. The agenda for the provincial Gatherings is based on feedback from communities leading searches and often reflects common challenges or priorities, including issues related to archival research, oral history testimonies, ground searches, federal and provincial funding, commemoration, and the recovery, identification, and repatriation of human remains. The provincial gatherings create a safe, supportive, and collaborative space for communities leading searches to share promising practices and to explore common challenges and possible solutions.

At the most recent Gathering, Nadleh Whut'en First Nation Chief Beverly Ketlo said that, "Nadleh Whut'en is honoured to have been chosen to host this gathering.... Our Nation has a long history of trauma associated with the Lejac Indian Residential School—and we carry a heavy burden in stewarding this site since children from over 70 Nations attended the institution."[157] A geophysical search of the former site had begun in 2023. Chief Ketlo explained that, "there is already a well-established cemetery on the site where children from Lejac are buried.... The surveys are focusing on areas outside the cemetery identified by [S]urvivors.... Geophysical surveys are being performed using ground-penetrating radar and magnetometry to detect irregularities beneath the ground's surface. Further investigation will be required if the surveys indicate the presence of geophysical signatures that are representative of burial shafts."[158] Noting the importance of these Gatherings, Chief Ketlo said that, "we need to learn from each other, what process do we use, what needs to be on the list to make sure that we don't miss anything when it comes to the investigation.... What teams do we bring in? Which support teams do we bring in for wellness for our [S]urvivors?... This process is not a one or two-year project.... This process is going to take years."[159]

Chief Robert Michell of the Stellat'en First Nation said that, "as a [S]urvivor of Lejac, I am proud to assist our neighbours at Nadleh as our two [N]ations, and so many others from all over the north of the province, undertake this process to uncover the truth of what occurred there.... I commend Nadleh for hosting this gathering, and as we are at the very beginning of our communities' search process, we are grateful for the wisdom being shared by other communities who are further along."[160] Chief Michell said that, "to have all of them gather and exchange stories, exchange ideas, exchange processes going forward on how to deal with the findings and what to do next goes a long way."[161]

The Stó:lō Nation is also a member of the BC Technical Working Group on Missing Children and Unmarked Burials, along with representatives from other lead communities and archaeological and anthropological experts in ground search technologies.[162] In their submission to the OSI, they explained that, "in addition to leading our Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children) Project, our staff members have also taken the lead in organizing and supporting the Technical Working Group ... a network of technical staff who are supporting the lead communities across British Columbia, and is a place to share challenges, information, and general support."[163]

In September 2023, the Stó:lō Nation confirmed the deaths of 158 children who died at the St. Mary's Indian Residential School, the two All Hallows institutions and the Coqualeetza Indian Hospital, based on oral history interviews and archival records. The search team is using various technologies to investigate the grounds at St. Mary's Indian Residential School, and GPR has found anomalies that may indicate unmarked burials. Grand Chief Doug Kelly said that, "our people are carrying mixed emotions. We're on a journey to confirming the truth that we carry in our DNA. We're on a journey to discover facts about what we have already heard from our great grandparents, our grandparents, past chiefs and leaders, about what took place in residential schools."[164]

In an update in March 2024, the SNCC reported that archival research, oral history gathering, and the ground search to locate unmarked graves are ongoing. They are working to identify Stó:lō children who were sent to Indian Residential Schools elsewhere and never returned home. The project is also supporting memorialization and commemoration initiatives.[165] Moving forward, the plan for the Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children) Project is to continue locating documentary evidence supporting Survivors' testimonies and conducting geophysical fieldwork to identify potential unmarked burial sites on the grounds of the former Coqualeetza, St. Mary's (Mission), and All Hallows institutions. The project will continue to use technologies such as GPR, LiDAR, photogrammetry, and HHRD dogs as needed. The project will also continue to support a network of technicians for lead communities in British Columbia.[166]

Regional Collaborative Coordination: Yukon Residential Schools and Missing Children Working Group

In volume 2 of its Final Report, the TRC highlighted the many differences between the Indian Residential Schools that operated in the South and the institutions established in the North where the history of the Indian Residential School System is more recent. The TRC pointed out that, "by 1950, there were only six residential schools and one hostel in the North."[167]

The Commission found that the federal government did not just template the system from the South into the North. Instead, it created a different system of "day schools and hostels" and placed this system under the direction of the Department of Northern Affairs rather than the Department of Indian Affairs. This system had many of the same problems as the Indian Residential Schools. The geography of the North also meant that children were taken great distances and separated from their parents, families, and communities for long periods of time—sometimes for years on end.[168] The regional model emerging in the Yukon reflects these distinctive historical and geographical differences.

In 2023, the Chooutla Residential School Project which was investigating the Chooutla Indian Residential School, expanded to become the Yukon Residential Schools and Missing Children Working Group (YRSMCWG), a territory-wide Survivor-led initiative representing all 14 Yukon Nations.[169] The federal government and the Yukon Territorial government contributed funds to complete their work.[170] While the Chooutla Project focused only on the Chooutla Indian Residential School, the YRSMCWG, now housed with the Council for Yukon First Nations, is mandated to conduct research and site searches at other Indian Residential Schools and Hostels in the region.[171] It has representatives from most of the First Nations in the Yukon Territory, and they are recruiting and training more people to help with research and to interview Survivors.[172] The YRSMCWG serves as a government liaison and coordinates and facilitates all elements of the search and recovery process, which avoids duplication, supports the consolidation of data, and enables knowledge sharing among First Nations communities across the Yukon. Culturally appropriate, trauma-informed wellness supports are provided. Adeline Webber, the former YRSMCWG Chair,[173] and Judy Gingell, the current Chair,[174] who are also Survivors, said that they are committed to working with Survivors and communities to find out as much as they can as gently as possible.[175] Before ground searches begin on a specific site, an Executive Committee, including a local Elder, is established to collaborate with the local community to develop protocols, guidelines, and a search plan reflective of its traditions, values, and needs.[176]

In the summer of 2023, the YRSMCWG team, including statement gatherers and wellness supports, began travelling to all Yukon First Nations communities. The research mandate of the Working Group involves Survivor interviews, archival records, and historical maps, which, when combined, will help determine possible burial locations well before the Working Group starts any ground searches. Webber said that the Catholic and Anglican churches have been cooperative in providing access to archival documents.[177] She noted that transparency and consultation with communities throughout the process is essential and that, "cultural protocols are really important" for the YRSMCWG to follow.[178] In preparing for the GPR site search at the Chooutla Indian Residential School in June 2023, Webber emphasized that

nothing further would be done to investigate any potential burial sites, "without consulting the First Nations involved because the children that attended Chooutla residential school were from all over the Yukon."[179] The results of the GPR scans would be presented to the community first, and they will decide when to share the information with the public and whether any further work will need to be done to examine the results. Webber said that, "we want to have a pretty good level of certainty before we make the important decision that such and such a location on the map is a suspected grave."[180]

In September 2023, the YRSMCWG announced that historical researchers had found that more children had died at the institution than previously estimated. They noted that the GPR search at Chooutla Indian Residential School also identified 15 anomalies as potential grave sites. The Working Group made it clear that, while the anomalies were not necessarily grave sites, "the sites met several criteria to be considered 'potential' grave sites and would require further investigation to confirm exactly what was discovered there.... In addition ... 12 [of the sites] are all in locations that have been mentioned by ... [S]urvivors and community members as possibly containing graves."[181] Gingell said that this was, "something we've waited for a long time.... We need the truth and we found it. It's here with us today."[182] Elder Sandra Johnson, a YRSMCWG advisor from Carcross/Tagish First Nation, said that the ground search results have, "uncovered long-buried wounds.... We call upon the [S]acred fires to be lit across the Yukon in honour of the missing children, and to guide us on the path of healing and reconciliation. Let these fires represent our collective commitment to listen, learn and stand in solidarity with you. May the warmth and light they generate symbolize the love and support that surround you from all directions."[183]

Following the ground search at the Chooutla Indian Residential School in June 2023, searches also began at other sites in 2024 and will continue throughout 2025 and beyond. In April 2024, Ta'an Kwäch'än Council (TKC) and Kwanlin Dün First Nation (KDFN) confirmed their full support for ground searches on the former sites of two residences that operated in the 1960s and 1970s—Yukon Hall and Coudert Hall—in Whitehorse. In a media release, the TKC and the KDFN said that ceremonies would be held privately for the communities before the searches commenced.[184] Chief Sean Uyenets'echia Smith, of the Kwanlin Dün First Nation, said that:

> in Whitehorse, many of my people from Kwanlin Dün and others stayed at Yukon Hall and Coudert Hall in Whitehorse, Yukon. This search will allow for the beginning of healing for KDFN and TKC Citizens who attended schools in Whitehorse. When we face truths

> of what happened in those institutions and acknowledge their stories, then healing can begin. There have been many community groups in Yukon and across Canada involved with unmasking the truths of what occurred in residential school. Kwanlin Dün First Nation leadership raise our hands to Yukon Residential School Missing Children Project, Ground Truth Technicians and First Nations for the hard work they are doing in our respective communities.[185]

As forensic searches at other Indian Residential Schools expand across the Yukon in 2024 and 2025, the YRSMCWG will continue to do archival research and conduct oral history interviews with Survivors, mapping out the geophysical features of the sites to guide forensic ground searches.

Once again, it must be emphasized that these two inter-jurisdictional models of search and recovery processes are not templates. Rather, they highlight the importance of establishing collaborative structures and initiatives within and between sovereign Indigenous Nations. Communities are building expertise by sharing knowledge, information, and promising practices, working in solidarity to determine the truth about the missing and disappeared children and unmarked burials.

CRITICAL DECISIONS IN INDIGENOUS-LED FORENSIC SEARCH AND RECOVERY PROCESSES

As forensic search and recovery processes progress, there are several critical decisions that will determine their pathway forward. When Survivors, Indigenous families, and communities make the difficult decision to begin forensic ground searches, they do so with mixed emotions and different opinions about what they hope to find. The Southern Chiefs Organization in Manitoba made this important point in a written submission to the OSI:

> In June 2023, a staff member from the Pathways to Healing Program was invited to attend the ground search at the former Guy Hill Residential School located in Clearwater, Manitoba. The weeklong event was highly emotional as families and Survivors found it extremely difficult to comprehend and process what they witnessed and experienced while conducting the search. At the beginning of the ground search, some Survivors expressed the hope that they would not find any graves because of the pain that would be felt. Other Survivors had differing

> opinions, seeking evidence of what occurred. During the search, many Survivors said that they were not ready to share their stories about the deaths of siblings and friends who went missing or died at the hands of adults meant to care for them. Those who were ready to share their stories said that they needed to be heard, expressing a desire for more circles and ceremonies because that is where Survivors and families find answers and healing.[186]

As previously noted, a GPR search may indicate potential unmarked burials, but only further investigation can confirm the presence of human remains. Difficult decisions must be made about whether to excavate the area or use less intrusive methods such as core sampling and DNA testing so that the graves are left undisturbed. The process of deciding the most appropriate next step may take considerable time as community members hold internal discussions. On March 28, 2024, Tk'emlúps te Secwépemc Kukpi7 (Rosanne Casimir) told the media that a decision on whether to excavate potential unmarked burials on the former site of the Kamloops Indian Residential School had not yet been made, "We have not yet started excavation. That is a very sensitive step moving forward and definitely would entail a lot of steps in place and conversations and working with our [S]urvivors and community and the Nations that have been impacted. We are still at the oral telling, the truth telling part of [the process]."[187]

Photograph of Micaela Champagne, Cree-Métis GPR Indian Residential School Data Analyst, University of Saskatchewan, operating a GPR machine, May 2023 (Office of the Independent Special Interlocutor).

How Do You Know What Ground Search Techniques Should Be Used?

> This will depend on the conditions at the site. Ground-penetrating radar (GPR), the technique used at the Kamloops Indian Residential School, is the most widely used and has the most successful track record for identifying unmarked graves in cemeteries. It has decades of use by archaeologists across the globe. However, there are some conditions where this approach does not work well. Fortunately, there are many other techniques that have also had success in identifying unmarked graves in and outside of cemeteries. While one approach may be enough, the best results are often achieved when multiple techniques are used together, as each provides a distinct data set that can offer different insights on features of interest and help confirm the presence of a grave, thereby improving confidence in the results. Establishing which approach is best should be done by a trained professional with knowledge of the specific site being surveyed, in partnership with the local community.[188]
>
> — Canadian Archaeological Association

Many former Indian Residential School sites across the country are located on large tracts of land with varied terrain, making ground searches very complex. Decisions must be made about which areas to prioritize. The Anishinabek Nation in Ontario notes that typically, "the sites which require attention, research, searches, and potential recovery efforts are not always located in close proximity to each other. Cemeteries, barns, churches, fields where labour took place, yards, housing, and schools could span many kilometers."[189] In 2021, Dr. Sarah Beaulieu, who was part of the Tk̓emlúps te Secwépemc search team, observed that, "all residential school landscapes are likely to contain burials of missing children." She explained that a two-acre plot in an apple orchard was selected for investigation for three key reasons, "[First,] the [K]nowledge [K]eepers recall children as young as 16 years old being woken in the night to dig holes for burials in the apple orchard.... Second, a juvenile rib bone that was resurfaced in the area, [and] third a juvenile tooth that was excavated."[190] In January 2023, the Wauzhushk Onigum Nation told media that a GPR ground search of the former site of St. Mary's Indian Residential School in Kenora, Ontario, identified 170 plausible burials. Wauzhushk Onigum Chief Chris Skead said that the difficult decision to search where they

did was based on Survivors' accounts, "With the exception of five grave markers, the remaining are unmarked by any grave or burial markers.... The site has been secured consistent with the Nation's Anishinaabe protocols.... [More searches are being planned for areas] that have been identified through [S]urvivor testimony, archeological assessment and archival investigations that show burial rituals being conducted by former residential school staff."[191]

While forensic experts can make technical recommendations about which search technologies are best suited to search a specific area, the final decision rests with communities, guided by Knowledge Keepers, Elders, and Survivors. The following examples highlight two communities that have chosen different pathways in making this difficult and sensitive decision.[192] In both cases, Survivors and other community members began the searches with some trepidation; on the one hand, they hoped to find nothing, while, on the other, they wanted to confirm the burials and potentially identify the children so that their families would finally have answers.

Minegoziibe Anishinabe: Pine Creek Indian Residential School

> As a community, we undertook to walk this difficult path together, so that the grandchildren of our grandchildren would know that their ancestors were strong and resilient people who survived the very worst times of the genocidal policies of colonization.
>
> **— Niibin Makwa (Derek J. Nepinak), Chief of the Minegoziibe Anishinabe**[193]

The Minegoziibe Anishinabe (Pine Creek First Nation) are leading a forensic search and recovery process on the former site of the Pine Creek Indian Residential School in Manitoba, which operated from 1890 to 1969. At the Winnipeg National Gathering in November 2023, Niibin Makwa (Chief Derek Nepinak) spoke about the importance of conducting this process in accordance with Anishnaabeg ceremonies and protocols. He emphasized that the whole community, including Survivors, Spiritual Leaders, Fire Keepers, Grandmothers and Grandfathers, and elected leadership, were involved in establishing the process and protocols.

In July 2023, Minegoziibe Anishinabe held ceremonies and lit a Sacred fire before archaeologists began to excavate potential burial sites under a Catholic church near the former Pine Creek Indian Residential School where GPR had detected 14 anomalies. Chief Nepinak explained to the media that beginning the month-long search in this way, "allows for a trauma-informed, spiritually and culturally sensitive approach to the work that we have to do in

the community."[194] In August 2023, ceremonies were held once again as Chief Nepinak announced that no human remains had been found in this particular place on the site, one of several areas where anomalies have been identified. Many were relieved. Survivor Jennifer Catcheway said, "I'm happy that there's no human remains found, and we do have quite a few people that come and say, 'I wish, I hope they don't find anything.'"[195]

Following this announcement, community meetings were held, and people had mixed feelings about whether the search for human remains should continue in other areas of the site. Catcheway said that, despite her relief that nothing was found, she also, "sensed the urgency that we needed to find out for sure if those anomalies were human remains."[196] Chief Nepinak said that, while denialists would use the results of this particular search to support their claim that no such burials exist, the community remains committed to finding and sharing the truth:[197]

> Our [E]lders, right away, said we have a history here that needs to be told, that needs to be shared. People need to know the truth ... [so while some disagreed] ... I think the vocal majority in the room, in the community engagements, wanted certainty. They wanted to find the truth. They wanted people held accountable, and to that end, you know, we prioritized ... that voice.[198]

He told the media that, although no human remains were found in this particular area under the church, it does not mean that the search and recovery process is over:

> We don't know if those [other areas] will require excavation or not. [T]hey might but it's going to be up to the community and the [E]lders to give us direction on what our next steps are going to be.... And if they say we've done enough, then that will be enough and we'll wrap it up. But I haven't heard that yet. So until I hear that, we're going to continue forward.[199]

Chief Nepinak also pointed out that, "the results of our excavation under the church should not be deemed as conclusive of other ongoing searches and efforts to identify reflections from other community processes including other (ground-penetrating radar) initiatives.... Each search is unique and they should not be compared."[200] When asked what advice he would give to other communities trying to decide how they want to proceed, he said:

> Take the next steps you need to promote the well-being of your community. Sometimes the well-being of your community might be best promoted by doing the excavation, like we've done here. Or you

> know, letting things rest, like I know some communities will choose to do. But do not let the ground-penetrating radar numbers be the conclusive evidence that you need to arrive at your healing pathway.[201]

Starblanket Cree Nation: Qu'Appelle Indian Residential School Ground Search Project

On February 1, 2024, at the National Gathering in Iqaluit, Sherrie Bellegard and Gerald Wolfe from Starblanket Cree Nation told participants about the community's forensic search and recovery process using GPR on the former site of the Qu'Appelle Indian Residential School in Saskatchewan, which operated from 1884 to 1998. They shared a video of the public announcement, held on January 12, 2023, in which Chief Michael Starr and others described how the work was conducted and the emotional impact of the findings on community members.[202] At the public announcement, Chief Starr spoke about the importance of the Sacred ceremonies and protocols that were held earlier to prepare the community for this difficult and highly emotional day. Project Lead Sheldon Poitras said that phase one of the search in the area around the institution was now completed. While over two thousand GPR anomalies were found, these were not necessarily unmarked graves. The next step would be to decide which areas of interest would be prioritized for further investigation. Knowledge Keepers, Elders, and community members have directed the forensic search team to leave any human remains undisturbed, so they will take core samples of potential unmarked graves and use eDNA testing on any human DNA found there. He said that they will use miniature core drilling and test samples for DNA in an area of interest, "The reason why we're looking at getting DNA is because we have some direction from our Knowledge Keepers, from our Elders, from our community, and that direction is, if you find something, leave it be. So in order for us to confirm what is under the ground, this is the best option ... so that we don't disturb what might be there."[203] Using this process in the search is less intrusive than doing excavations.

Poitras explained that their search plan must be flexible so that they can make changes to investigate new and unanticipated information that comes to light during the search. Consistent with Survivors' oral history testimonies, the team found evidence of tunnels and rooms under the Indian Residential School buildings, something that warrants further investigation. They also planned to go off-site and were engaged in discussions with private landowners to gain access to these areas, "Some want to do whatever they can to help while others don't want to get involved."[204] After cautioning those listening that he would be sharing difficult news, Poitras explained that on October 2, 2022, Tyrell Starblanket, a

member of the Starblanket Cree Nation's security team found the jawbone fragment of a young child between the age of four and six. The Saskatchewan Coroner's Service estimated the jawbone to be approximately 125 years old, dating back to 1898, during the early years of the Indian Residential School. Poitras said that, "this is physical evidence, physical proof of an unmarked grave that's been confirmed by both File Hills Police Service and the (Saskatchewan) Coroner's Office."[205] Poitras showed a photograph of the institution from 1888. He noted that the child's partial remains were found in front of the first Indian Residential School building in a garden area, not in a designated cemetery. When they began the project, the Elders told them to watch the gophers. He said that the team did not understand what they meant at the time. He then shared a photograph showing that the child's remains were found beside a freshly dug gopher hole. He explained that when the gophers were digging their underground tunnels, they brought the jawbone fragment along with some small animal bones up to the surface and placed them there. He explained:

> There's a lot of next steps. there's protocol, obviously, that we have to follow ... we're already in discussion on what to do with the remains.... The remains are here, in that teal-coloured box ... there's protocol ... we have to respect the remains of the deceased.... Where do we go from here aside from the cultural protocols? It's going to mean more community consultation. It's going to mean more input from Residential School Survivors ... not just within the community, but all Survivors who attended here.... One of the major things we didn't consider in the beginning days was mental health. There's a lot of project team members, employees ... like security. There's a lot of stress and heaviness in having to be associated with the grounds ... knowing what we're looking for and having to maintain ... confidentiality ... the security team could not say anything [about finding the child's remains] ... until we got all of our documentation in place, until we made all our confirmations.... We also had a very beautiful meeting with the community on the commemorative process.[206]

In his follow-up remarks, Chief Starr said that:

> [T]his discovery has changed everything.... We want to honour this young child ... the remains of this young child. We want the governments to take accountability, the churches to take accountability, the police services to take accountability. That's what we want from this [process].... Over time, we've ... had feasts, we've had ceremony, we've

> had horse dances, we've had ghost dances. We've had different processes to help this area heal ... we are moving with what we have found. We will bring honour to the remains, that of a young child, and now we know it's proof of what ... we knew in our minds and our hearts.[207]

Federation of Sovereign Indigenous Nations Chief Bobby Cameron said that, "we want justice served to those individuals who are still living, breathing, that have done these horrific crimes to our children."[208] File Hills Qu'Appelle Tribal Council Chief Jeremy Fourhorns said that, "our old people have told us these stories for many generations. We know, we've always known, because it's a part of our history, our people have lived it ... this is just physical proof ... that these atrocities we were told of, that they were a reality."[209]

Neither Minegoziibe Anishinabe or Starblanket Cree Nation consider their forensic searches to be complete. Rather, their initial findings have opened new lines of investigation to pursue as they follow the truth of what happened to the missing and disappeared children who were sent to these two Indian Residential Schools from their own communities as well as others. They are using the search technologies that best support the decisions that their respective communities have made, guided by their Nation's laws, ceremonies, and protocols to safeguard and restore human dignity to the children who were never returned home from these institutions.

BUILDING AND SHARING KNOWLEDGE AND EXPERTISE

At the National Gathering in Iqaluit in January 2024, Dr. Andrew Martindale, who has extensive experience with the use and limitations of ground search technologies, explained some of the different search methods that exist. He reminded participants that the technology does not provide or replace Survivors' truths that are already known. He cautioned that none of the technologies were originally designed for finding graves. While many people might know how to use the technology, few currently know how to use it for the purpose of finding burials. National standards do not exist to ensure that search technicians are properly trained and qualified to do this highly specialized work. He said that national standards must be established. The National Advisory Committee believes that the best way forward is for Indigenous communities to be trained in the use of these technologies and lead the searches. He emphasized that the data collected must remain in the control of the community and not with private consultants. He supported Survivors' calls for long-term funding since search and recovery processes will take years, if not decades.[210]

Martindale's observations are consistent with what I have heard from communities over the past two years. It is particularly important to establish national ethical standards and guidelines for those who are working with Indigenous communities. Although there are many ethical experts, technicians, and companies working with those leading search and recovery efforts to search sites, there are some that are charging exorbitant fees; withholding data collected before, during, or after the investigation (that is, the GPR data collected); refusing to have their work peer reviewed; misrepresenting their expertise in searching for and identifying unmarked burials; and deliberately or negligently misleading Survivors, Indigenous families, and communities about the capabilities of search technologies.

Coordinated Strategies, Options, and Practices for Building Indigenous Search Technology Expertise Are Urgently Needed

The following excerpt from the written submission of the Canadian Archaeological Association Working Group on Unmarked Graves to the OSI summarizes the challenges and barriers that communities are facing and identifies potential strategies and options for addressing these issues:

> Based on our roles in supporting multiple community-led investigations across the country, it is clear to our group that the search for missing children and investigating unmarked graves will take decades to resolve and not the short timeline indicated by the funding structure implemented by the federal government. The timeline is also problematic in light of the complexity of achieving community consensus on objectives and approaches, developing and training of project teams within communities, and identifying outside expertise to assist with the searches. The systemic barriers that communities face in terms of local technical capacity, training, racism, safety and security issues, access to records and expertise, land disputes, among other critical issues, are impeding their efforts to determine the whereabouts and number of unmarked graves in a timely manner. The government is providing insufficient financial resources to help communities identify and mobilize necessary expertise and expects them, without individual assistance, to navigate the complicated and tragic circumstances of Indian Residential Schools (IRS), hospitals, and sanitoria.... There remains an important gap in how communities can access training and capacity building.

In our individual work with communities, we have noticed there is significant confusion about how to begin such an enormous and tragic endeavour to find answers and healing for [S]urvivors and families of missing children. For example, [one community] has shared experiences from their approach to mobilize resources to conduct GPR investigations without formally concluding their archival research and oral testimony collection, which would have narrowed the investigation focus. Their experience has demonstrated the importance of following a heavily vetted investigation pathway including the order of operations. This has been highlighted by other communities who are attempting to take on multiple tasks at the same time without first developing strategies to integrate diverse data sources, including the importance of putting together a framework for mapping and data security. As more technologies are employed in unmarked burial searches, the capabilities and limitations of each technology and method must be clearly communicated to communities in order for them to determine which are most suitable for their location, needs and wishes. Each individual community can then select which technologies to deploy, as certain techniques are not suitable in some contexts. In the search for answers, it is essential that the most accurate information about the possibilities of technology are provided in a consistent manner to all communities.

Communities urgently require training in the many aspects of investigations that demand expertise from various disciplines. Training resources must be developed for communities and it would be sensible to centralize their development (nationally or regionally) to avoid duplication of effort. Having a shared core curriculum for certain aspects of the training that could be locally adapted and delivered would allow for the training to be respectful of different contexts and [N]ations while ensuring that there is consistency in the information communities are receiving about the process. We expect that foundational training would require 4–6 weeks, and should include the following topics:

1. Project Management
2. Data Sovereignty and Management
3. Archival Research

4. Documenting Testimony
5. Communications (internal, media, results/reporting, shared language)
6. Geomatics: Area Mapping and Spatial Data Management
7. UAV Survey (Drones)
8. Historic Human Remains Detection Dogs
9. Ground-Penetrating Radar
10. Additional Ground Search Techniques (Resistivity, Magnetometer, and Conductivity)
11. Fatty Adipose Detection and Soil Compactness (S4 unit)
12. DNA and Forensic Limitations and Practices
13. Exhumation Implications, Approaches, and Practices

This training must also devote significant time [to] addressing the complexity of data integration, analysis, and interpretation. The training should be designed to enable field data collection and interpretation of results, effective project management, and critical evaluation of output generated by external contractors. Collecting the data can be straightforward. However, it will take many more hours spent with experts and technicians to learn how to make confident interpretations of the data indicating the location of potential graves. Furthermore, it will be key to maintain consistency in the training and reporting (including language) so that results can be replicated and vetted by other specialists.

With this in mind, we propose several pathways for communities to obtain these essential investigation skills. Potential scenarios for creating an Indigenous and [S]urvivor-led training centre(s):

1. Create an independent, Indigenous-led body ... that will receive funding directly from the federal government to develop and deliver a training model that specializes in developing knowledge and skills for investigating unmarked graves.

2. Creating regional centres because of the many differences involving communities, geography and physical conditions at diverse sites. This could take different forms, such as:

    a. Centres based in Indigenous [N]ations/organizations (such as the Musqueam First Nation's course taught by Martindale)

    b. Centres connected to existing organizations or institutes (such as the Institute of Prairie and Indigenous Archaeology).

3. Create partnerships between communities and colleges and/or universities for more advanced training.[211]

EMERGING PRACTICE: PROVIDING CULTURALLY RESPECTFUL ARCHAEOLOGICAL AND SEARCH TECHNOLOGY SUPPORT AND GUIDANCE TO INDIGENOUS COMMUNITIES

I will never get used to walking over the land that may hold the unmarked graves of Indigenous children. I did not start my journey as an Indigenous archaeologist in Canada with the intention of working with the dead. But I now find myself using my technical knowledge and research abilities to help my relatives find the unmarked graves of our children.... In recent years, many First Nations have begun the [S]acred and difficult work of trying to find the children who are lost, and they are calling on archaeologists for help.... These efforts are an example of how archaeology is transforming to become more engaged, more ethical and more caring about the people whose past we are privileged to study.... This new archaeological practice, which I describe as "heart-centered," brings my colleagues and me back in time to the places touched by our ancestors. We use the material pieces they left behind to try to reanimate their lives, revive their stories—and, by informing their descendants of what became of their loved ones, to help bring closure and heal trauma. Though the journey is long, archaeological methods can be used to tell the stories of the past, both of ancient Indigenous lives and the impacts of colonization, to help build a brighter future.

— Dr. Kisha Supernant[212]

The Institute of Prairie and Indigenous Archaeology, University of Alberta

Under the direction of Dr. Kisha Supernant (Métis/Papaschase/British), the Institute of Prairie and Indigenous Archaeology is an Indigenous-led institute that is committed to supporting Indigenous-engaged archaeological research, developing educational approaches that integrate Indigenous ways of knowing and being into archaeological teaching and training, and changing cultural heritage policies in ways that reflect the values of Indigenous communities in western Canada. The institute is not only the first of its kind in Canada; it is the first one focused on Indigenous archaeology in the world.[213] The institute's focus has centred on developing and applying technologies, including GPR and drones, that allow archaeologists to survey sites with less impact to the sites themselves. These methods can be less time-consuming, less expensive, and cause less disturbance than archaeological excavation. This is an important consideration when searching for the unmarked burials of children who died at Indian Residential Schools and other associated institutions.[214] Using these less-invasive technologies, the Institute's researchers have identified areas of unmarked graves and the boundaries of burial grounds at former Indian Residential School sites. The institute has also published several planning and research guides relating to searching the sites,[215] and it works collaboratively with several Indigenous communities doing search and recovery work to locate unmarked burials.[216]

Training Indigenous Youth in Search Technologies: The Survivors' Secretariat

The Survivors' Secretariat has established the Reclaiming Our Role – Youth Supporting Survivors Program.[217] The program is focused on training young people from Six Nations of the Grand River and other impacted communities to operate the GPR machines on lands associated with the Mohawk Institute.[218] Jesse Squire, a program participant, said, "I felt very inclined to put my name forward to become a part of the work.... My great-grandfather attended the residential school, so it's been very important for me and my family to find out the truth of what happened, and where the children went."[219]

Remote Sensing of Residential School Cemeteries Project: Cowessess First Nation and Saskatchewan Polytechnic

In 2021–2022, working with a research team from the Saskatchewan Polytechnic that conducted a GPR survey on the former site of the Marieval Indian Residential School, Cowessess First Nation developed an interactive map of the cemetery there:

> The coordinates of known graves (those having headstones) and possible unmarked graves were collected using traditional land surveying techniques and were plotted on the digital map. A dedicated research team from Cowessess First Nation worked tirelessly to collect death records of people buried in the graves. These records were used to create an online interactive map with ESRI's ArcGIS online platform[220] by the Saskatchewan Polytech research team.... It is possible to search the graves based on name, birth year, death year, age, and gender for the records that have been added to date. This is an ongoing project, and we seek community feedback and involvement to add more records to the map and improve accuracy.[221]

Dr. Abdul Raouf, the technical project lead who worked closely with Survivors and community members, said that, "the work was very emotional for me. As I was talking with members of the community, I realized that they deserved more than just markers on the ground, more than just the flags. They deserved something to help them heal."[222] He also emphasized the critical importance of Survivors' oral testimonies in developing the map.[223] Barb Lavallee, a lead project researcher, emphasized the importance of finding the truth about what happened to the children who were sent to the Marieval Indian Residential School. She said that, "the truth should help bring some closure for relatives, other local First Nations, and local families in the area.... This project holds the potential for building an understanding of our relationship to those individuals, who may have died as a direct result of their contact with the residential school or church."[224]

DEVELOPING ETHICAL RECIPROCITY IN INDIGENOUS-UNIVERSITY RELATIONSHIPS AND TRAINING: LABORATORY OF ARCHAEOLOGY, UNIVERSITY OF BRITISH COLUMBIA

At UBC, Dr. Andrew Martindale is part of a team in the Laboratory of Archaeology working with the Penelakut Tribe in British Columbia to locate the unmarked graves of children who died while in the care of the Kuper Island Indian Residential School. The team from UBC is using GPR and other search technologies and describes their role in the search process as that of researchers and witnesses. Coming in as outsiders, the UBC team has focused on, "developing trust, and the interactional expertise necessary to work well together, with a good heart."[225] For their part, the Penelakut are seeking, "a reciprocal process of testing, training, and mutual attunement" or harmony, in which trust must be earned by the UBC team.[226] In Chief and Council and Elders' Committee meetings, the researchers were asked why they wanted to do this work:

> Would we fulfill our promises, and would we understand and respect the cultural and spiritual significance of the work? In short, could we be trusted to find the missing children, trusted to follow through, trusted to work in a good way?...
>
> Non-Indigenous researchers who engage in such work carry the legacy of this history of untrustworthiness and face the warranted suspicion that they are complicit in practices that perpetuate colonial agendas and systemic racism. In any context, but especially here, trust is not owed or expected; it must be continually earned. It is entirely appropriate, then, that our work will be closely scrutinized by Penelakut witnesses; they will judge whether they can trust us enough to develop a working relationship, whether we are fit witnesses in general terms and what we are fit witnesses for—what the scope of our expertise and our standing in various social worlds puts us in a position to usefully and responsibly do. Beyond the technical skills we bring to GPR survey work, do we understand enough of the context and what's at stake to do this work well? And are we "of good heart?"[227]

The UBC search team has developed three ethical principles to guide their work with the Penelakut:

1. Relationships must come first: we aim to forge long-term, equitable partnerships that can sustain this work.
2. Reciprocal capacity and expertise: we recognize that the knowledge and expertise of Indigenous scholars and knowledge holders is crucial to any work we do, and that building capacity is a two-way street.
3. Transparency and accountability: we want to ensure that we are accountable to those we work with, and that our practice is appropriate to the cultural context and interests of our community partners.[228]

To support the development of Indigenous-led, community-driven search and recovery processes, Martindale is also working collaboratively with the Musqueam (xwməθkwəy̓əm) Nation to co-develop training and on-the-job experience through courses and training for xwməθkwəy̓əm (Musqueam people) at the UBC Laboratory of Archaeology (LOA). This 12-month training project can be used towards accreditation for work in the cultural resource management sector or to meet British Columbia's provincial criteria for archaeological permit holders. The aim is to make post-secondary education and accreditation accessible to a wider range of xwməθkwəy̓əm. The curriculum is being, "jointly delivered by a Musqueam Archaeology Office sessional instructor and a UBC Anthropology faculty member" to amplify, "Indigenous voices and perspectives, and center Indigenous ways of knowing."[229] There is also a series of xwməθkwəy̓əm-LOA knowledge exchanges that focus on cross-cultural learning and reciprocal training. Participating xwməθkwəy̓əm are compensated for the knowledge, guidance, and time they contribute to research and curriculum design.

The initiative also engages with xwməθkwəy̓əm youth, encouraging them to think about work in archaeology and cultural resource management as potential career paths.[230] Over time, this initiative is intended to advance future practices and programs that emphasize reciprocal, Indigenous community–led research. There is a growing demand for GPR training in Indigenous communities. In response, the Musqueam Chief and Council passed a resolution in June 2021, directing the LOA and the Musqueam Archaeology Office to work together to provide guidance to communities considering the use of GPR in the search for children missing from Indian Residential Schools.[231] They have co-developed a GPR training course to provide training to First Nations community members to gain the skills to confidently complete or participate in GPR studies. This course is provided free of charge and is open to First Nations communities.[232]

CONCLUSION

Survivors are the living witnesses to Canada's history of atrocities and mass human rights violations relating to the missing and disappeared children and unmarked burials. Their unique oral history testimonies are helping to map the geophysical terrain of the sites of former Indian Residential Schools in search and recovery processes across the country. These searches must meet international legal principles and forensic standards while also meeting Indigenous legal criteria, cultural protocols, and practices. Indigenous Cultural Monitors have a critical role in ensuring that Indigenous laws are respected and upheld during site searches; these Knowledge Keepers and Elders must be protected as they fulfill these Sacred responsibilities. Indigenous-led search and recovery processes are combining Survivors' testimonies with archival records to map new conceptual, spatial, and relational understandings of the lands, cemeteries, and potential unmarked burials. This forms the basis for ground searches using various technologies. National ethical and professional standards and practices must be established for all those working with Indigenous communities. There is no one template for tailoring Indigenous-led search plans, methodologies, and search technologies. However, valuable insights are found in collaborative relationships and emerging practices of knowledge sharing and expertise within and between Indigenous Nations. Developing these collaborative structures and initiatives supports the truth-finding work of communities in healing ways that affirm their sovereignty, self-determination, and human rights. As the history and ongoing legacy of the missing and disappeared children and unmarked burials is documented, it also strengthens accountability, justice, and reconciliation to counter settler amnesty and impunity across broader Canadian society.

APPENDIX A

Public Confirmations of Potential or Confirmed Unmarked Burials as of April 2024

This list is compiled based on a survey of media coverage of public confirmations of potential or confirmed unmarked burials up to April 2024.

2021

- In May, the Tk̓emlúps te Secwépemc (British Columbia) announced the confirmation of up to 215 potential unmarked burials at the site of the former Kamloops Indian Residential School.[233]
- In June, the Sioux Valley Dakota Nation (Manitoba) confirmed the recovery of 104 unmarked burials (including 38 unmarked burials already located in 2018–19) in relation to three cemetery sites at the former Brandon Indian Residential School.[234]
- In June, the Cowessess First Nation (Saskatchewan) announced preliminary findings of 751 targets at the cemetery near the former site of the Marieval Indian Residential School. Most of these graves are unmarked among a few marked graves.[235]
- In June, the Ktunaxa Nation (British Columbia) confirmed the recovery of up to 182 unmarked burials near the former St. Eugene's Indian Residential School site.[236]
- In July, the Penelakut Tribe (British Columbia) confirmed the finding of more than 160 potential unmarked burials on the grounds of the former Kuper Island Indian Residential School.[237]

2022

- In January, Williams Lake First Nation (British Columbia) announced that 93 potential unmarked burials were found around the former St. Joseph's Mission Indian Residential School site.[238]

- In February, Keeseekoose First Nation (Saskatchewan) found a combined 54 potential unmarked graves on the grounds of the former St. Philip's and Fort Pelly Indian Residential Schools (12 at St. Philip's and 42 at Fort Pelly).[239]
- In March, Kapawen'no First Nation (Alberta) announced 169 potential unmarked burials on the grounds of the former Grouard Mission (St. Bernard's) Indian Residential School.[240]
- In April, George Gordon First Nation (Saskatchewan) announced their preliminary findings, which indicated 14 possible unmarked burials near the location of the former George Gordon Indian Residential School.[241]
- In May, Sandy Bay First Nation (Ontario) announced 13 potential unmarked graves at the former Sandy Bay Indian Residential School.[242]
- In June, Sagkeeng First Nation (Manitoba) announced it had located 190 anomalies across two sites near the former Fort Alexander Indian Residential School. The investigation team has not confirmed if these are potential unmarked burials. However, they have ruled out other potential causes for the anomalies.[243]

2023

- In January, Star Blanket Cree Nation (Saskatchewan) announced the preliminary findings of two thousand located anomalies on, and near, the site of the former Qu'Appelle Indian Residential School. The investigation's preliminary findings included recovering the partial remains of a child between the age of four and six.[244]
- In January, the Wauzhushk Onigum Nation (Ontario) announced the findings of 171 anomalies that are consistent with possible unmarked burials on the grounds of the former St. Mary's Indian Residential School. With the exception of five grave markers found on the site, other potential burials are unmarked.[245]
- In February, the Tseshaht First Nation (British Columbia) publicly confirmed that the ʔuuʔatumin yaqckwiimitqin (Doing It for Our Ancestors) team had located 17 suspected burial sites of children who were never returned home from the Alberni Indian Residential School.[246]

- In April, at one of the former sites of the Blue Quills Indian Residential School (Alberta) from 1898 to 1931, which is now the University nuhelot'įne thaiyots'į nistameyimâkanak Blue Quills, it was announced that up to 19 anomalies consistent with burial sites were located through ground searches of 1.3 acres of the site.[247]
- In April, the shíshálh Nation (British Columbia) released a video detailing the results of their ground search of the former St. Augustine Indian Residential School, which located 40 potential unmarked shallow graves of children.[248]
- In June, at St. Bruno's Indian Residential School (Alberta), people gathered from across Treaty 8 to release the GPR report from the Institute of Prairie and Indigenous Archaeology, which announced 88 potential unmarked graves.[249]
- In August, English River First Nation (Saskatchewan) reported that its search found 93 unmarked graves. Chief Jenny Wolverine said 79 of those graves are children and 14 are infants. Chief Wolverine clarified that the First Nation, "initially issued a press release that indicated that there were 83. However, the additional number was confirmed by the archeologist when he placed the flags." Chief Wolverine urged that, "this is not a finality. This is not a final number."[250]
- In September, the Stó:lō Nation Chiefs' Council and Stó:lō Research and Resource Management Centre released their findings of 158 child deaths across four BC institutions as part of the Nation's Taking Care of Our Children project. The findings come from archival research, field work involving GPR, and genealogical research into historical sites of three residential schools, cemeteries, and a First Nations hospital.[251]
- In September, the Yukon Residential School and Missing Children Project announced the findings on 15 potential graves at the site of the Chooutla Indian Residential School in Carcross, Yukon. As part of that release, Know History announced 33 confirmed deaths from historical research.[252]

2024

- In January, leaders of the Saddle Lake Cree Nation (Alberta) announced that they are planning on excavating a "communal grave" near the former Blue Quills (Sacred Heart) Indian Residential School. The announcement came after scientists at the International Commission on Missing Persons confirmed that a skull found near a former site of the institution is that of a child under the age of five. The Blue Quills Missing Children and Unmarked Burials Inquiry and the Acimowin Opaspiw Society are calling this, "a humanitarian recovery."[253]

- In April, the Ahousaht community announced that they have likely found unmarked graves near Ahousaht Indian Residential School and Christie Indian Residential School (British Columbia). The Residential School Research Project did not announce a number; they said, "the number is not the important piece." Archival records show 13 recorded deaths of children at the Ahousaht school and 23 deaths at the Christie school, but those records had been highly redacted, and the names of the children were not known.[254]

- In April, the Ta'an Kwäch'än Council and Kwanlin Dün First Nation in the Yukon announced that, after finding 15 potential unmarked burials at the former site of the Chooutla Indian Residential School in Carcross, Yukon, during the previous year, the Residential School and Missing Children Project was extending GPR searches to include the former sites of Yukon Hall and Coudert Hall dormitories in Whitehorse, Yukon.[255]

- In May, Nadleh Whut'en announced that their ground search would begin at the site of the Lejac Indian Residential School, which operated about 140 kilometres west of Prince George, British Columbia, from 1922 until 1976. A team of Survivors and intergenerational Survivors is working to determine how to manage the former site of the institutions, and a news release from Nadleh Whut'en, the Stellat'en First Nation, and the BC Assembly of First Nations noted that, while a cemetery has long been located at the site, the search is looking at other parts of the grounds that have been identified by Survivors.[256]

- In July, Pimicikamak Cree Nation announced their findings of 187, "underground anomalies that may be the remains of children" on the grounds of the St. Joseph's (Cross Lake) Indian Residential School. Chief David Monias reported that their research had already identified 85 missing children prior to starting their ground search. Chief Monias said the ground-penetrating radar picked up, "thousands and thousands of anomalies" that were eventually "filtered" down to 187 anomalies, "with a consistent depth of one metre to two metres."[257]

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12 Alexina Kublu, "Voices of Survivors Panel: Search and Recovery of Missing Children," National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Iqaluit, Nunavut, January 30, 2024.

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14 See Volume 1, Part 1, Chapter 2: The Enforced Disappearances of Children and Crimes against Humanity; Part 1, Chapter 3: Unmarked Burials and Mass Graves.

15 Nicole Iturriaga, "Exhuming the Truth," *Aeon*, September 27, 2022, https://aeon.co/essays/how-forensic-science-can-aid-the-human-rights-movement. Quoted in Volume 2, Part 1, Chapter 3: Unmarked Burials and Mass Graves.

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CHAPTER 11

Rematriating Lands

> No mechanism exists to repatriate and return the land originally taken from First Nations (housing previous Indian Residential Schools or associated unmarked burials and buildings). Uncovering the history of the IRS [Indian Residential Schools] should also include resources and support to research land transfers and purchases and determine how the current owners came to be in possession of the land. In addition, it is suspected in some cases that First Nation's own money may have deceptively been used to purchase land.... Records associated with the school and church financial records and Band Trust records could provide valuable insight into how land was purchased. There are ongoing land claims associated with the sites of previous Indian Residential School sites, the expedition and prioritization of these claims could assist communities in gaining essential access to the sites requiring searching.
>
> — Anishinabek Nation[1]

My Mandate as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burials Sites Associated with Indian Residential Schools directs me to, "consider how a federal legal framework could support pathways for the acknowledgement and methods for the possible return of First Nations, Inuit and Métis lands that were assigned or expropriated to accommodate churches and residential school sites and associated lands."[2] Returning the lands where former Indian Residential Schools were built and cemeteries were established to bury Indigenous children who died in these institutions requires setting this

historical reality in the broader context of settler colonial genocide, strategies of land dispossession, and attacks on Indigenous self-determination. Métis scholar Jeremy Patzer argues that the harms caused by the Indian Residential School System, political land dispossession, and the denial of self-determination are intrinsically connected.[3] He points out that:

> it is the insidiousness and multigenerational harm caused by such a highly interventionist "solution" that invites contemporary suggestions of genocide.... [D]ispossession, the removal of self-determination, and residential schooling—more than simply being of like category or three facets of the Indian problem—should also be connected by the issue of causability.... Indeed one of the ultimate lessons to be drawn from the history of residential schooling is that Aboriginal demands surrounding the restoration of land and self-determination are not just lofty, begrudging demands of principle. They are thoroughly and gravely entwined precisely because being subjected to genocidal institutional arrangements such as the Indian [R]esidential [S]chools represents, par excellence, the disempowerment, dispossession, and loss of self-determination of a people.[4]

The Truth and Reconciliation Commission of Canada (TRC), as discussed in more detail in chapter 14 of this Final Report, described how European States gained control of Indigenous Peoples' lands, including by way of invoking the Doctrine of Discovery and the related concept of *terra nullius*. The TRC noted that both legal concepts are, "a current manifestation of historical wrongs and should be formally repudiated by all levels of Canadian government."[5] It issued Call to Action 47, calling on, "federal, provincial, territorial and municipal governments to repudiate concepts to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts."[6] To date, Call to Action 47 has not been implemented by any level of government in Canada. Numerous legal barriers, as discussed in chapter 7 of this Final Report, continue to exist that are impeding the searches and investigations for the missing and disappeared children and unmarked burials. Notwithstanding these barriers, Survivors, Indigenous families, and communities are finding creative ways to use the limited legal mechanisms that are available under Canadian law to provide access to, and protection of, sites before, during, and after searches and investigations. They are also working collaboratively with various levels of government, organizations, and private landowners to implement cooperative measures. They are reimagining mechanisms and processes so that the lands where the burials are located are protected and that Indigenous Peoples can care for the bodies and Spirits of the children according to their laws and protocols.

These collaborative measures rely on the benevolence and cooperation of governments, churches, and private landowners, which make them vulnerable to changing priorities and dependent on the whim of the political party in power, changes to church leadership, or land ownership. These measures, when put in place, can be important interim measures. However, when States have violated their international legal obligations, and this has resulted in substantive harms, as is the case in Canada, they have a political, legal, and ethical duty to make reparations. As previously noted in this Final Report, reparations are most effective when they include both material and symbolic measures. In the context of protecting the burial sites of the missing and disappeared children, material reparation measures must include the rematriation of the lands where the missing and disappeared children are buried.[7] This would be consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) and would ensure that Indigenous Peoples are able to care for and protect the children who are buried on those lands.[8]

This chapter will first explain the origin and concept of "rematriation" in contrast to the "repatriation" of land. It will then review what the United Nations (UN) Expert Mechanism on the Rights of Indigenous Peoples (Expert Mechanism) has reported in relation to Indigenous Peoples' rights to land as recognized in the *UN Declaration* and will explore what processes, if any, have been put in place to return lands to Indigenous Peoples within Australia, Aotearoa New Zealand, and the United States. Next, the chapter will examine what Canada has done, or not done, generally, to rematriate lands to Indigenous Peoples and, specifically, the lands where the missing and disappeared children are buried. In particular, it reviews recent reports on the restitution of lands to Indigenous Peoples, including the House of Commons' report and the federal government's environmental scan on the status of land tenure of former Indian Residential School properties. Finally, it provides two representative examples of Indian Residential School lands being returned to Indigenous Nations and illustrates the limitations of the current policies and processes.

Terminology Relating to the Return of Indigenous Lands

Various terms have been used, and are used, to describe the concept of returning lands to Indigenous Peoples. Below are some of the terms that are often used interchangeably.

Land Back is a campaign that began on social media as a hashtag (#LandBack) shared by Arnell Tailfeathers (Blackfoot Confederacy).[9] Since 2018, the Land Back movement has come to represent, "the reclamation of everything stolen from the

original Peoples," inclusive of land, language, ceremony, food, education, housing, health care, governance, medicines, and kinship.[10] The Land Back movement recognizes that most people living in settler States today have not participated in land theft and genocide but that all settlers benefit unfairly from this history.[11] Indigenous scholars have noted that Land Back could include, "settlers demonstrating respect for what we share—the land and its resources—and making things right by offering us the dignity and freedom we are due and returning enough of our power and land for us to be self-sufficient."[12] As they explain, "fundamentally, Land Back is about knowing whose lands you're on, educating others, and taking action to promote Indigenous self-determination."[13]

Land restitution is a term for the return of jurisdictional control over lands to Indigenous Nations. In legal and political philosophy, jurisdiction is the right to make and enforce laws over a geographic area. It also often includes control over the extraction and development of natural resources.[14] In a South African context, where the terms were explored legally after the end of apartheid, land restitution is the giving back of lands to those who were forcefully dispossessed of their lands through race-based apartheid laws.[15] By transferring power and wealth back to Indigenous Peoples, land restitution, which includes the water, natural resources, and infrastructure on the land, supports Indigenous sovereignty, self-determination, and economic and environmental justice.[16]

Land repatriation is similar to Land Back and land restitution as it is the act of returning the title and jurisdiction of land to Indigenous Nations. Repatriation as a process or term is most often linked to Indigenous Peoples through the repatriation of cultural property from museums, universities, and private collectors that was appropriated through theft or commerce. Eve Tuck, a Unangax̂ scholar, with her co-author, professor K. Wayne Yang, note that, "decolonization specifically requires the repatriation of Indigenous land and life," and they assert that all acts of "decolonization" must begin with returning land to Indigenous control.[17]

Land rematriation is a term that goes beyond the act of returning land to Indigenous communities. Land rematriation, "encapsulates the idea of re-establishing an inseparable connection between the people and their ancestral land, allowing them to engage in reciprocal relationships guided by respect, reverence, and care. This process acknowledges that the land is not just a physical space, but a spiritual and cultural foundation that shapes the identity and worldview of Indigenous communities."[18] Rematriation recognizes and honours Indigenous women as land stewards and their traditional roles in sustaining and nurturing the land.[19]

> Rematriation is led by Indigenous women that prioritize matrilineal ways of knowing and weaves traditional and cultural knowledge back into harmony with the land.[20]

WHAT IS REMATRIATION?

The protection of the burials of children who died while at Indian Residential Schools and other associated institutions is intricately linked to the exercise of jurisdiction over the lands where the burials are located. Rematriation of these lands is needed to ensure the resting places of the children are treated with respect, honour, and dignity. Rematriation refers to Indigenous women's concept of restoring Indigenous Peoples' deep spiritual bonds and interconnectedness with Indigenous territories.[21] The late Stó:lō thought leader Lee Maracle first coined the term "rematriation" and described it as, "the restoration of matriarchal authority and the restoration of male responsibility to these matriarchal structures to reinstate respect and support for the women within them."[22] The concept of rematriation evolved in contrast to the concept of "repatriation," which means to return but has at its root "patria" meaning "father" and is haunted by, "colonial configurations of ownership."[23] The Expert Mechanism has noted that Indigenous women's, "vital role on and in the protection of land is often overlooked. One of the major structural barriers impeding Indigenous women's access to and control over lands, territories and resources is patriarchal laws."[24]

Rematriation emphasizes the central role and value of Indigenous women within Indigenous communities and the connections of Indigenous Peoples to Mother Earth.[25] The centring of women and Mother Earth is consistent with many Indigenous legal, governance, and social orders. Ts'msyen and Mikisew Cree scholar Robin R.R. Gray emphasizes that, in Ts'msyen society, "hereditary rights flow through women ... [and] Matriarchs hold primary leadership positions and legal authority within our Houses and Tribes."[26] The matrilineal and matriarchal nature of many Indigenous societies contrasts with colonial and patriarchal legal, governance, and social structures. As Cree Métis Grandmother Bernice Hammersmith explains:

> The matriarchy is a social organization in which the mother is head of the family, and descent and inheritance are determined through female lines. Any perception that a matriarchy is an authoritarian form of government similar to modern forms of patriarchy should be dismissed. Matriarchal or egalitarian systems were based on positive values of equality and caring in human relations, most importantly at

> the community and family level, and on respect for the environment referred to as Mother Earth. Much emphasis was placed on kinship, and the interdependency of female and male roles was crucial for survival.... Contrary to Western patriarchal systems that minimize the role of women, a feature of Indigenous matriarchies was the full inclusion of men.[27]

Rematriation therefore reflects the central role of Indigenous women, including as leaders, carriers of culture, and protectors of children and Mother Earth. Gray emphasizes that rematriation is an embodied practice that focuses on recovery, return, resurgence, and refusal.[28] She highlights that, since rematriation identifies, "the need for place-based cultural reclamation, and work to support the collective healing and resurgence of [Indigenous] nations, it can also be described as an embodied praxis of recovery and return."[29] It involves, "revitalizing the relationship between Indigenous lands, heritage, and bodies based on Indigenous values and ways of knowing, being, and doing."[30] This includes upholding key principles of Indigenous legal systems that emphasize the interconnectedness of people with, and the responsibilities they have to take care of, their territories and all the animate and inanimate life forms within them.[31]

Resurgence and refusal are key to the political activism of rematriation. According to Leanne Betasamosake Simpson, a Michi Saagiig Nishnaabeg scholar and artist, resurgence refers to, "the rebuilding of Indigenous nations according to our own political, intellectual and cultural traditions."[32] It redirects Indigenous people's, "energy, attention, activism, and resources toward sustaining, nurturing, managing, protecting, healing, adapting, renewing, creating, and generating ... relationality with all of creation and within and between ... families, communities, and nations."[33] It is intimately connected to inherent rights, Indigenous sovereignty and self-determination. Methods of Indigenous refusal include selectively sharing and protecting Indigenous knowledge and experiences,[34] avoiding engaging in conflicts of interpretation or efforts to soothe settler anxieties about decolonization efforts,[35] refusing to recognize the authority of the settler colonial State,[36] and refusing to cede or relinquish Indigenous sovereignty.[37] Both resurgence and refusal are forms of Indigenous resistance to settler colonial oppression and domination.

A central focus of rematriation is the return of lands and the dismantling of settler colonial structures and power relations.[38] It challenges settlers to understand that their settler colonial privilege is, "predicated on the unfreedom of the colonized"[39] and that they should be unsettled by this reality.[40] The concept of rematriation is crucial to the reclamation of Indigenous territories and to reparations.[41]

Bridge in Ketegaunseebee Garden River First Nation painted in the fall of 1973 by the "original six": Bob, Darrell, Keith and Willie Boissoneau, and Andre and Scott Lesage. Photo taken on February 28, 2023 (Office of the Independent Special Interlocutor).

Rather than relying on settler colonial concepts, such as land ownership, rematriation centres Indigenous worldviews, legal frameworks, and relationships to ancestral territories.[42] The distinction is crucial: ownership implies control and domination, while rematriation supports respectful, symbiotic, reciprocal relationships with ancestral territories and all entities within them. Although the ultimate goal of rematriation is the return of land, rights relating to access, such as to hunt, harvest, and conduct spiritual ceremonies also provide important ways for Indigenous Peoples to uphold these relationships and responsibilities. The framework of rematriation is therefore applicable for the purposes of searching for, recovering, and honouring the burials of the missing and disappeared children as it provides an important means to uphold responsibilities under Indigenous laws to care for the burial sites through the recovery and return of the lands where these Sacred burials are located.

Crown Lands

The majority of lands in Canada are owned and managed by the government. The concept of "Crown land" comes from eleventh-century British law that asserts that only the Crown could properly own lands.[43] Less than 11 percent of land is in private hands; 41 percent is federal Crown land, and another 48 percent is provincial Crown land. These Crown lands generate government income through surface and subsurface rights to the mineral, energy, forest, and water resources leased to private enterprises. Other lands are designated as national and provincial parks, provincial forests, Indian reserve lands, or federal military bases.[44]

Crown lands as a concept is a foundational obstacle to rematriation because it upholds the Doctrine of Discovery, and, currently, there is no Canadian legal pathway to resume full jurisdiction and governance authority over Indigenous lands.[45] As noted in *Tŝilhqot'in Nation v. British Columbia*, the, "content of the Crown's underlying title is what is left when Aboriginal title is subtracted from it,"[46] which supports not only a fiduciary duty to Indigenous Nations but also a right to encroach on Indigenous lands if the government can meet the justified infringement test.[47] Because Canada uses their own legal mechanisms to "give" rights to Indigenous Nations, those Indigenous Nations that have proven title may also still be subject to provincial regulation of land and resources on their territories due to the underlying Crown title claim.[48] The current Canadian legal and policy framework is failing to ensure Indigenous sovereignty and stewardship over the unmarked graves and burial sites associated with Indian Residential Schools. Despite these challenges, Indigenous communities and leaders continue to find ways to use the limited legal tools available to care for the burial sites of their ancestors.

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES: RIGHT TO LAND

The Expert Mechanism on the Rights of Indigenous Peoples conducted a study on the land rights of Indigenous Peoples in 2019. Its report on the study entitled *Right to Land under the United Nations Declaration on the Rights of Indigenous Peoples: A Human Rights Focus*

(*Expert Mechanism Report*) was presented to the UN Human Rights Council in the fall of 2020.[49] The report notes that:

> the *United Nations Declaration on the Rights of Indigenous Peoples* is the only international human rights legal instrument with a specific focus on the all-encompassing significance of lands, territories and resources for [I]ndigenous [P]eoples ... and that "The explicit recognition in the Declaration of [I]ndigneous [P]eoples right to their lands, territories and resources seeks to address a long history of illegal and unjust dispossession, which continues today."[50]

The *Expert Mechanism Report* identifies the importance of land rights for Indigenous Peoples and highlights the following:

1. Land is not a commodity. For Indigenous Peoples, land is a defining element of their identity and culture and their relationship to their ancestors and future generations. Land rights are, "often intergenerational and thus carry an obligation of stewardship for the benefit of present and future members and as the basis for their continued existence as a peoples."[51]

2. Indigenous Peoples, "have their own customs, traditions and land tenure systems which should be respected."[52]

3. Indigenous Peoples have collective rights, "Respect for Indigenous Peoples' self-determination and their customary land tenure systems necessitates recognition of their collective ownership of lands, territories and resources."[53] It is noted that, "across all regions, ownership of [I]ndigenous land remains mostly in the hands of the State"[54] and that Indigenous Peoples, "often have usufruct rights [right to use or enjoy] and are considered beneficiaries rather than owners of the land."[55]

4. "The protection of lands, territories and natural resources is necessary to guarantee other rights of [I]ndigenous peoples, including the rights to life, culture, dignity, health, water, and food."[56]

5. Indigenous Peoples' "rights and responsibilities vis-à-vis land predate" the *UN Declaration*, and the, "articles on land rights were the most important articles for [I]ndigenous peoples during the negotiation of the Declaration and remain a work in progress."[57]

The *UN Declaration*'s articles that most directly relate to the right to land were examined by the Expert Mechanism on the Rights of Indigenous Peoples.

> **Article 25.** Indigenous [P]eoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

The UN Expert Mechanism makes clear that the term "spiritual relationship" must be interpreted broadly. Noting that, "for [I]ndigenous [P]eoples, the spiritual relationship to the land is an inseparable part of every activity on the land. It pertains not only to spiritual ceremonies but also a wide range of other activities such as hunting, fishing, herding and gathering plants, medicines and foods that have a spiritual dimension and are inextricably part of the spiritual relationship to the land."[58] Indigenous Peoples' right to strengthen and maintain their relationship to the land, "may require ensuring access to the land, protecting or restoring specific features or ecologies important to [I]ndigenous customs or traditions, and preventing uses and activities that would be detrimental to those ends."[59]

> **Article 26.1.** Indigenous [P]eoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

It is noted in the *Expert Mechanism Report* that the land rights of Indigenous Peoples, "are not limited to those territories for which there is an unbroken history of use or occupation but includes lands that [I]ndigenous [P]eoples have come to occupy, for example as a consequence of past relocations, settlement of a modern treaty or by purchase."[60]

> **Article 26.2.** Indigenous [P]eoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use as well as those which they have otherwise acquired.

The Inter-American Court of Human Rights has held that, "property rights created by [I]ndigenous customary law norms and practices must be protected" and that, "non-recognition of the equality of property rights based on Indigenous tradition is contrary to the principle of non-discrimination."[61]

> **Article 26.3.** States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted

> with due respect to the customs, traditions and land tenure systems of the [I]ndigenous [P]eoples concerned.

The *Expert Mechanism Report* indicates that the right to legal recognition and protection of lands is, "equivalent to a State-granted full property title"[62] and that, as the Special Rapporteur on the Rights of Indigenous Peoples has stated, "a starting point for any measures to identify and recognize [I]ndigenous [P]eoples's land and resource rights should be their own customary use and tenure systems."[63] Respect for Indigenous Peoples' land systems, "should include respect for [I]ndigenous [P]eoples' customs and traditions in regulating the land."[64]

> **Article 27.** States shall establish and implement, in conjunction with [I]ndigenous [P]eoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to [I]ndigenous [P]eoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of [I]ndigenous [P]eoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous [P]eoples shall have the right to participate in this process.

The *Expert Mechanism Report* notes that Article 27 is part of the requirement to provide redress to Indigenous Peoples as noted in Article 28 and that, "the agreement to include in the Declaration the obligation to establish procedures to recognize and adjudicate land rights was a compromise for not including a specific right to lands, territories and resources lost in the past."[65]

> **Article 28.1.** Indigenous [P]eoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
>
> **Articles 28.2.** Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

The *Expert Mechanism Report* indicates that Article 28.1 applies retrospectively and that it can also be argued, in the alternative, that the, "right to redress for past wrongs can be founded on the basis that Indigenous Peoples continue to suffer the ongoing effects of their loss. Thus they are seeking redress for a wrong they are experiencing at present, akin to the 'continuing violation' argument of the Human Rights Committee."[66] Remedies must be accessible, effective, and timely.[67] The **preferred redress is restitution**, "if actual restitution of [I]ndigenous lands is not possible, just fair and equitable compensation must be provided. Compensation should not be limited to financial awards but also take the form of alternative similar lands, equal in quality, size and legal status or, if freely agreed upon by the [I]ndigenous [P]eoples concerned, other forms of compensation or redress."[68]

The *Expert Mechanism Report* concludes by issuing Advice No. 13 on the right to land of Indigenous Peoples, [69] which contains numerous actions that States should take, including, "abolishing all laws, including those adopted during periods of colonization that purport to legitimize, or have the effect of facilitating, the dispossession of [I]ndigenous [P]eoples' lands,"[70] using Indigenous Peoples' own traditional dispute mechanisms rather than litigating in the courts,[71] instituting measures to end the violence against, and persecution of, defenders of Indigenous lands, and providing redress for the harm suffered.[72] The last recommendation in the *Expert Mechanism Report* is that, "States and Indigenous Peoples should consider and implement innovative agreements for co-management of lands in cases where transfer of title is not desirable or possible."[73]

All of the findings and recommendations contained in the *Expert Mechanism Report* serve as an important basis to evaluate whether the federal government is meeting its international legal obligations in relation to reparations for the mass human rights it has perpetrated against Indigenous Peoples and whether it is complying with its commitments under the *UN Declaration*.

PROTECTING AND REMATRIATING LANDS: INTERNATIONAL EXAMPLES

A comparative analysis of land rematriation internationally can provide some understanding on what should or should not be included in a new reparation framework in Canada. Although, as identified in the *Expert Mechanism Report*, there are many other States that have taken some steps to return lands to Indigenous Peoples within their countries, this section focuses only on Australia, Aotearoa New Zealand, and the United States. These international examples were chosen because they share a similar history with Canada. All three countries,

and Canada, initially rejected the *UN Declaration* when it was adopted by the UN on September 13, 2007, citing concerns with the articles that relate to land and resources.[74] All three countries, and Canada, have perpetrated mass human rights breaches and atrocity crimes against Indigenous Peoples and stolen Indigenous lands to further settler colonialism. The review that follows reveals that land rematriation continues to be a challenge for Indigenous Peoples worldwide. As the following examples demonstrate, the return of Indigenous lands is subject to the changing political agendas and priorities of successive governments over time.

Australia

Australia voted against the *UN Declaration* when it was first adopted in 2007. Two years later, in April 2009, Australia reversed its position and endorsed the *UN Declaration*. Indigenous Peoples within Australia, referred to as Aboriginal and Torres Strait Islander Peoples, have a similar history in their territories with settler colonialism as Indigenous Peoples within Canada. As detailed in chapter 1 of this Final Report, the Stolen Children or the Stolen Generations were separated and forcefully assimilated for nearly one hundred years when churches, governments, and child welfare organizations took them from their families and placed them in institutions or fostered and adopted them into settler families. Advocacy for full reparations for these mass human rights breaches and harms are ongoing. Through this advocacy, Aboriginal and Torres Strait Islander Peoples have regained stewardship and sovereignty over some of their traditional lands through legislation and agreements put in place with Australian governments.

Land Back in Australia

The *Expert Mechanism Report* noted that, "in Australia, since the 1992 High Court decision in *Mabo and Others v. Queensland*, the *Native Title Act* governs the recognition of native title rights. Native title has been determined to exist over approximately 38.2 per cent of the Australian land mass."[75] In the *Mabo* case, Meriam Peoples of the Eastern Torres Straight sought recognition of their occupation and exclusive possession of Mer (Murray Island) according to their own laws and customs since before British sovereignty. The court acknowledged the Meriam Peoples' pre-existing Native title rights interests over their traditional lands and that the common law of Australia recognized rights and interest to land held by Indigenous Peoples under their traditional laws and customs.[76] The High Court overturned the legal fiction of *terra nullius* and confirmed that Indigenous Peoples had complex legal systems in place prior to colonization and enjoyed rights to their lands in accordance with their own laws and customs.[77]

Following the High Court's decision, the *Native Title Act* was passed in 1993, which creates processes through which Indigenous claims to land and title rights can be recognized and protected. Once Native title is determined to exist, the *Native Title Act* requires Native title holders to nominate a corporation, known as a prescribed body corporation, to hold or manage their title rights and interests. In 2016, Raelene Webb, a lawyer and former president of the National Native Tribunal in Australia, wrote that, "across the mainstream and Indigenous political spectrum there is almost unanimous consensus that while native title holds great potential for Indigenous Australians, its full benefits have not yet materialised."[78] She noted that, "once a native title determination has been achieved, ... the challenge of leveraging native title to reach its full potential presents a completely different problem. This is the management problem."[79] The "management problem" that Webb identifies is the, "unstructured but complex network of Anglo-Australian rules and regulations, Indigenous perspectives, and internal and external stakeholder expectations."[80] Webb writes that:

> for most Indigenous people in Australia, native title is a set of relationships with land and with people, viewed holistically with implications for cultural, social and economic ties. For them, native title is a "total social fact" that cannot be compartmentalised into a series of ticked boxes. The holistic approaches of native title holders suggests that the protection and promotion of traditional laws and customs that give rise to native title rights in land and waters are inextricably linked with other social and emotional well-being and economic outcomes. The holistic concept of native title was also accepted in Mabo, evident in its declaration that "the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands."[81]

The *Native Title Act* was amended by the *Native Title Legislation Amendment Act 2021*, which, according to the Australian government, "introduced measures to improve and strengthen the operation of the native title system including measures addressing native title claims resolution, agreement-making, Indigenous decision-making and dispute resolution processes."[82]

Most recently, the Australian government announced on June 4, 2024, that it had engaged the Australian Law Reform Commission (ALRC) to conduct an inquiry of the *Native Title Act*, noting that the review, "will investigate any inequalities, unfairness or weaknesses in the regime, which governs how development projects can occur in land subject to native title."[83] The terms of reference for the inquiry direct the ALRC to consider:

- The operation of the *Native Title Act* and the future acts regime[84] for over 30 years;

- The passage of almost a decade since the last review of the *Native Title Act*;
- The significance of the *Native Title Act*, with native title having now been determined to exist in exclusive and non-exclusive form over a substantial proportion of the Australian land mass, with almost five hundred claims determined and more than one hundred claims ongoing;
- The deep connections of First Nations Australians to Country that are recognized through a determination of Native title and the considerable processes that Native title holders have undergone to achieve this legal recognition;
- The opportunity for the Native title system to contribute significantly to social, cultural, environmental, and economic outcomes for First Nations people, businesses, organizations, and communities;
- The role of the future acts regime as a precursor to economic and other activities on Native title land; and
- The importance of the future acts regime being appropriately designed for Australia's current and future social and economic development in a way that respects the rights and interests of Native title holders.

The ALRC has been asked to provide its final report to the Attorney General by December 8, 2025.[85]

State and Territorial Laws in Australia

Various legislation also exists across the states and territories in Australia including the *Aboriginal Land Rights (Northern Territory) Act 1976*, which was the, "first attempt by an Australian government to legally recognize the Aboriginal system of land ownership."[86] The Central Land Council notes that this Act, "has given some security to those who have moved back to set up outstations on their ancestors' country. It has contributed to the peaceful and responsible development of the NT [Northern Territory] and helped avoid the kind of violent confrontations between [I]ndigenous landowners and developers seen in other parts of Australia and overseas." The *Aboriginal Land Rights (Northern Territory) Act* has resulted in almost 50 percent of the Northern Territory being returned to Aboriginal Peoples.[87]

There have been multiple returns of land in Australia that has placed stewardship of vulnerable ecosystems and Sacred natural sites back in the care of Indigenous Peoples. For example, after negotiating with the state government of Queensland, Australia returned more than

395,000 acres of land to the Eastern Kuku Yalanji people in September 2021. This land included the Daintree National Park, which is believed to be the oldest living rainforest in the world.[88] The Kuku Yalanji Peoples' history in this area dates back fifty thousand years.[89] While the lands are jointly managed between the Eastern Kuku Yalanji and the Queensland government in the interim, the eventual goal is for the Kuku Yalanji to be the sole guardian of the lands.[90] The return of these lands began in 2007 when the Australian government passed the *Cape York Peninsula Heritage Act*, which allowed national parks within the Cape York Peninsula to fall under Aboriginal management.[91]

In September 2022, more than 362,000 hectares of Cape York was returned to the Gudang Yadhaykenu, Atambaya, and Angkamuthi (Seven Rivers) Peoples.[92] This land return included the Denham Group National Park, part of Heathlands Reserve, two offshore islands, and the Jardine River National Park, which was named after an infamous family of Scottish Australian settlers who were extremely violent towards Indigenous people. Indigenous Peoples now control the national park and have renamed the territory Apudthama, which means together.[93]

Aotearoa New Zealand

Aotearoa New Zealand voted against the *UN Declaration* when it was first adopted by the UN in 2007. In April 2010, Aotearoa New Zealand reversed its position and endorsed the *UN Declaration*.[94] In 2019, the Aotearoa New Zealand government announced that it would begin to develop a plan to implement the *UN Declaration* in relation to the Māori. A commissioned report, entitled *He Puapua*, outlined a roadmap to achieve what was called "Vision 2040"—a vision of realizing the *UN Declaration* by 2040—the two hundredth anniversary of the signing of the *Treaty of Waitangi*.[95] The report's recommendations included, among other things, strengthening the legality of the *Treaty of Waitangi* by putting it into law.[96] In 2023, the new national government, a coalition government comprised of the National Party, the ACT Party, and the New Zealand Party announced that it was, "stopping all work on *He Puapua*"[97] and that the government does not recognize the *UN Declaration* as having any binding legal effect on Aotearoa New Zealand.[98]

Waitangi Tribunal

As described in chapter 1 of this Final Report, the Māori have been subjected to generations of colonial violence and land alienation. Much like in other countries, reparations processes and negotiations for the return of lands has taken years and has depended on the settler government's priorities and which political party is in power. There are nearly 150 government-recognized Māori iwi (tribes), which all have their own specific grievances

with the Crown, making the negotiation process different for each iwi.[99] To have their grievances heard and to proceed in the settlement process, iwi must register their claims with the Waitangi Tribunal. The Waitangi Tribunal is a standing commission of inquiry that makes recommendations on claims brought by Māori relating to legislation, policies, actions, or omissions of the Crown that are alleged to breach the promises made in the *Treaty of Waitangi*, which was entered into by the British Crown and Māori rangatira (chiefs) on February 6, 1840.[100] The role of the Tribunal is set out in section 5 of the *Treaty of Waitangi Act 1975* and includes:

- Inquiring into and making recommendations on well-founded claims;
- Examining and reporting on proposed legislation if it is referred to the Tribunal by the House of Representatives or a Minister of the Crown; and
- Making recommendations or determinations about certain Crown forest land, railway land, state-owned enterprise land, and land transferred to educational institutions.[101]

When the Waitangi Tribunal was first established in 1975, it was only able to investigate present-day violations of Māori sovereignty. In 1985, the Tribunal was provided with, "retrospective powers ... to investigate historical violations of Māori sovereignty going all the way back to the 1840 *Treaty of Waitangi*, opening the door to one of the world's strongest examples of reparations."[102]

With these new retrospective powers, the Waitangi Tribunal began to inquire into, and report on, treaty claims and matters relating to the restoration of Māori language and Māori land reform. The Tribunal does not have the ability to negotiate or settle treaty claims; however, it does make recommendations on claims for compensation.[103] The reparations that Māori iwi seek usually include the return of lands, waters, seas, fisheries, minerals, and other resources.[104] The *Expert Mechanism Report* notes that:

> The Waitangi Tribunal in New Zealand has been recognized by the Special Rapporteur on the rights of [I]ndigenous [P]eoples as being one of the most important examples in the world of an effort to address historical and ongoing grievances of [I]ndigenous [P]eoples. Although the Tribunal cannot issue binding rulings, and has other shortcomings, its decisions are "accorded considerable weight and respect by the ordinary courts."[105]

In October 2022, Andrew Little, Aotearoa New Zealand's then minister of the Treaty of Waitangi Negotiations, delivered a Crown apology that acknowledged that the Crown's actions had left the Ngāti Maru, "almost completely landless."[106] Little told the Ngāti Maru that, in addition to financial compensation, reparations would include the return of, "16 sites of cultural significance" across the Taranaki region and that the Ngāti Maru would be granted a right to purchase, "the Te Wera Crown Forest."[107]

Treaty Principles Bill and Treaty Clause Review

Treaty principles have been developed by the courts and the Waitangi Tribunal in Aotearoa New Zealand. However, the ACT Party of the current coalition government has proposed the Treaty Principles Bill, which has just three articles:

> **Article 1**
>
> Māori: *kawanatanga katoa o o ratou whenua.*
>
> The New Zealand Government has the right to govern all New Zealanders.
>
> **Article 2**
>
> Māori *ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou whenua o ratou kainga me o ratou taonga katoa.*
>
> The New Zealand Government will honour all New Zealanders in the chieftainship of their land and all their property.
>
> **Article 3**
>
> Māori *a ratou nga tikanga katoa rite tahi*
>
> All New Zealanders are equal under the law with the same rights and duties.[108]

In addition to proposing this Treaty Principles Bill, the coalition government has launched a review of all legislation with the aim of repealing or replacing any references to the principles of the *Treaty of Waitangi*, which is referred to as the Treaty Clause Review.[109]

Waitangi Tribunal Inquiry

On May 9, 2024, several claimants filed a challenge against the Treaty Principles Bill and the Treaty Clause Review in the Waitangi Tribunal. On August 16, 2024, the Waitangi Tribunal released its interim report.[110] With respect to the Treaty Principles Bill, the Tribunal found that it was:

> unfair, discriminatory, and inconsistent with the principles of partnership and reciprocity, active protection, good government, equity, and redress ... [and] ... also in breach of the Crown's duty to act honourably and with the utmost good faith. For the Crown to entertain "principles" that contain inaccurate representations of the text and spirit of the Treaty / te Tiriti and warped interpretations of te reo Māori from te Tiriti o Waitangi is a breach of the duty to act in good faith and to act reasonably.[111]

The Tribunal held that the Crown failed to engage with Māori and that the bill lacked a policy imperative justifying its development; was based on flawed policy rationales; was novel in its Treaty interpretations; was fashioned on a disingenuous historical narrative; and distorted the text of te Tiriti o Waitangi.[112]

Regarding the Treaty Clause Review, the Tribunal found that, "the Crown breached the Treaty principles of partnership, active protection, equity, redress, good government, and the article 2 guarantee of rangatiratanga [self-determination]. And that the Crown further failed to engage with Māori on this policy."[113] The Tribunal recommended that:

1. The Treaty Principles Bill policy should be abandoned.
2. The Crown should constitute a Cabinet Māori-Crown relations committee that has oversight of the Crown's Treaty / te Tiriti policies.
3. The Treaty clause review policy should be put on hold while it is reconceptualized through collaboration and co-design engagement with Māori.
4. The Crown should consider a process in partnership with Māori to undo the damage to the Māori-Crown relationship and restore confidence in the honour of the Crown.[114]

The United States

The Unites States also voted against the *UN Declaration* in 2007. However, in April 2010, it announced at the UN Permanent Forum on Indigenous Issues that it would reconsider its position after consulting with federally recognized Tribes, non-government organizations, and others. In December 2010, the US government removed its opposition to the *UN Declaration*, and the US State Department issued a 15-page statement.[115] In this statement, the US State Department clearly noted that it did not regard the *UN Declaration* as binding US law. The statement reads:

> It is in this spirit that the United States today proudly lends its support to the *United Nations Declaration on the Rights of Indigenous Peoples* (Declaration). In September 2007, at the United Nations, 143 countries voted in favor of the Declaration. The United States did not. Today, in response to the many calls from Native Americans throughout this country and in order to further US policy on [I]ndigenous issues, President Obama announced that the United States has changed its position. **The United States supports the Declaration, which—while not legally binding or a statement of current international law—has both moral and political force.** It expresses both the aspirations of [I]ndigenous [P]eoples around the world and those of States in seeking to Improve their relations with [I]ndigenous [P]eoples. Most importantly, it expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the US Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.[116]

The statement details numerous instances where Indigenous claims before US courts resulted in court rulings or settlement agreements that provided redress for wrongs committed, noting that these judicial rulings and settlement agreements:

> demonstrate not only that the United States has a well-developed court system that provides a means of redress for many wrongs suffered by US citizens, residents and others—including federally recognized tribes and [I]ndigenous individuals and groups—but also that redress is available from the US Congress under appropriate circumstances. The United States will interpret the redress provisions of the Declaration to be consistent with the existing system for legal redress in the United States,

> while working to ensure that appropriate redress is in fact provided under US law.[117]

With respect to land redress, the statement recognizes that, "some of the most grievous acts committed by the United States and many other States against [I]ndigenous [P]eoples were with regard to their lands, territories, and natural resources." It further notes that the United States has taken steps to protect Native American lands and to provide redress where appropriate and that the:

> United States intends to continue to work so that the laws and mechanisms it has put in place to recognize existing, and accommodate the acquisition of additional, land, territory, and natural resource rights under US law function properly and to facilitate, as appropriate, access by [I]ndigenous [P]eoples to the traditional lands, territories and natural resources in which they have an interest.[118]

At a May 3, 2022, UN side panel hosted by the University of Colorado Law School on the implementation of the *UN Declaration*, Walter Echo Hawk, a lawyer and tribal judge and then president of the Pawnee Nation Business Council, stated that the, "United States lags behind. We are not the leading democracy when it comes to Indigenous rights.... We have no national plan here in the US to implement the declaration, and the Biden administration appears strangely silent on the implementation effort here."[119]

Dispossession of Land in United States

As reported by the Indian Boarding School Initiative, the US Congress has acknowledged that, "from the beginning, Federal policy toward the Indian was based on the desire to dispossess him of his land."[120] To effect this dispossession of land, the Unites States entered into treaties and other agreements with Tribes whereby Tribes ceded approximately one billion acres of land, "Treaties, although almost always signed under duress, were the window dressing whereby we expropriate the Indian's land and pushed him back across the continent."[121] Treaty making with Tribes ended in 1871, after which the US federal government, "used only statute, executive orders, and agreements to regulate Indian Affairs," which included Indigenous lands.[122] Three such pieces of legislation are identified below.

The *Dawes General Allotment Act* and the *Indian Reorganization Act*

In 1934, the US Congress passed the *Indian Reorganization Act*.[123] This Act was partly meant to protect Indigenous lands. It abolished the 1887 *Dawes General Allotment Act* (*Dawes Act*),

which divided up reservation lands that had been held in common by Tribes, into small allotments of land that were given to individual Tribal members.[124] Historian Kenneth R. Philip has noted that the *Dawes Act*, "had shattered Indian homelands and created a class of 100,000 landless people" and that:

> the central purpose of the land allotment had been to exterminate the Indians' group life and cultural heritage. The federal government worked toward this goal by sending Indian students to boarding school, where an all out attempt was made to force them into mainstream society. A strategic offensive was also mounted against Indian land. Reservations were opened up to white settlement after tribesmen received title to 160-acre homesteads. Between 1887 and 1933, the Indians lost over 87 million acres of land under the provisions of the *Dawes Act*.[125]

The *Indian Reorganization Act* stopped the allotment of Tribal lands, extended the trust period for existing allotments, prohibited the taking of lands from Tribes without their consent, and authorized the secretary of the interior to accept additional lands to be held in trust.[126] The *Indian Reorganization Act* provided a mechanism that allowed the federal government to buy back two million acres of land to return to Tribes.[127] Also, through the *Indian Reorganization Act*, other policies were implemented, including, "two policy statements that guaranteed Indian religious freedom and curtailed missionary activities at boarding and day schools," which triggered the beginning of the closures of the Indian Boarding Schools.[128] Many Indigenous people expressed concerns about the *Indian Reorganization Act*, including that it would increase the powers of the federal government over their lives,[129] that the *Indian Reorganization Act* did not provide for self-determination,[130] and that it failed to solve the problems associated with land allotments before 1933.[131]

The *Indian Claims Commission Act*

In 1946, the US Congress established the Indian Claims Commission pursuant to the *Indian Claims Commission Act*.[132] Land was predominantly the issue to be addressed by the Commission. However, the Commission did not have the authority to restore land rights. Instead, where a claim was successful, monetary compensation was provided in lieu of land title. The Indian Claims Commission was disbanded in the late 1970s, and the remaining cases were transferred to the US Court of Claims system.[133] The *Expert Mechanism Report* noted that, "the historic Indian Claims Commission left a mixed legacy because of its decision to award only monetary restitution rather than the restoration of actual lands."[134]

When the Indian Claims Commission was created by the *Indian Claims Commission Act* in 1946, "the law, and the tribunal it called for, were without precedent. No other country colonized by Europeans had ever allowed its displaced natives to sue for wrongs done to them decades, even centuries before."[135] The Commission was fraught with problems from its inception; three non-Indigenous people were appointed as Commissioners,[136] the Tribunal functioned like a court[137] and failed to implement an Investigation Division,[138] and the financial awards issued were relatively small.[139] Once established, the Commission provided notice to all 176 Tribes that were then recognized by the federal government of their right to file petitions with the Commission within a five-year deadline, which ended in 1951.[140] By 1951, 370 claims had been filed.[141] Many Tribes described multiple grievances, including that the US government had acquired Tribal lands without paying any or adequate compensation and that the government mismanaged Tribal funds and other assets.[142] Historian Arthur J. Ray notes that:

> the creation of this commission heralded the beginning of the modern claims era internationally and represents the first attempt in a former British colony to move hearings from the adversarial setting of the courtroom into places that were less confrontational.... The commission unfortunately failed to achieve this basic objective. It became a lawyer-dominated and fiercely adversarial place—like a courtroom—where native voices were rarely heard directly and where the American anthropological community became embroiled in debates over how best to characterize Indian cultures as they related to land use and tenure. The commission's polarized proceedings became drawn-out affairs that forced Congress to repeatedly renew its five-year mandates until 1978.[143]
>
> During the long political battle culminating in [the *Indian Claims Commission Act],* the Justice Department had vigorously opposed the idea of creating the commission, fearing the potential liability the government would face. The department particularly objected to the last clause of the act pertaining to "fair and honorable dealings," believing that it set a dangerous precedent by making the government liable for the moral claims from which it would otherwise enjoy immunity.[144]

From the outset, the Department of Justice, "fought the claims as aggressively as they would any other lawsuit against the United States,"[145] which brought into question the government's "dual position" of being both the defendant to the claims and the trustee of Indigenous Peoples' lands as a conflict.[146]

Lands Associated with Former US Indian Boarding Schools

In June 2021, after Tk̓emlúps te Secwépemc's made the public announcement that it had recovered unmarked burials of children on the grounds of the former Kamloops Indian Residential School, the US Department of the Interior established the Federal Indian Boarding School Initiative, "a comprehensive effort to recognize the troubled legacy of federal Indian boarding school policies with the goal of addressing their intergenerational impact and to shed light on the traumas of the past."[147] The department, under this initiative, released two investigative reports, the first in May 2022 and the second in July 2024, which included policy recommendations to, "chart a path to healing and redress for Indigenous communities and the nation."[148] In its first investigative report, it recommended that the federal government, "support protection, preservation, reclamation, and co-management of sites across the Federal Indian boarding school system where the Federal Government has jurisdiction over a location."[149] In its second report, a finding was made that, "the assimilation of Indian children through the Federal Indian boarding school system was intentional and part of that broader goal of Indian territorial dispossession for the expansion of the United States."[150] The second report contains 8 recommendations including the following related to land:

> 5. **Return Former Federal Indian Boarding School Sites.** The Department should conduct reviews, upon request of Tribes, of property and title documents for former Indian boarding school sites, including land patents provided to religious institutions and organizations or states, including during territorial status. When required by patent, deed, statute, or other law, including reversionary clause activation, the Department should work to facilitate the return of those Indian boarding school sites to US Government or Tribal ownership. This includes reversionary clauses under the *Indian Appropriation Act* of September 21, 1922, 42 Stat. 994, 995 ("1922 Act") and Tribal-specific legislation. Where former boarding school sites revert to US Government ownership or remain in US Government ownership, the Department should engage with Indian Tribes in government-to-government consultation when asked, to address the ownership and management of those sites, including the protection of burial sites and cultural resources.[151]

The US Congress passed the *Indian Appropriation Act* in 1909, which authorized the Secretary of the Interior to, "issue unrestricted land patents to religious institutions and organizations or missionary boards already engaged in religious or school activities on Indian reservations."[152] Thirteen years later in 1922, Congress enacted another statute that authorized, "the Secretary of the Interior to issue land patents of up to 160 acres to religious institutions and organizations or missionary boards already engaged in religious or school activities on Indian reservations."[153] The Federal Indian Boarding School Initiative notes that the US Department of the Interior, "is working with Indian Tribes that wish to repatriate or protect in place any human remains or funerary objects from historical Indian boarding school sites that are currently located on US Government lands consistent with specific Tribal practices under *NAGPRA* [*Native American Graves Protections and Repatriation Act*]."[154]

Native American Graves Protection and Repatriation Act Does Not Rematriate Lands

The purpose of the *Native American Graves Protection and Repatriation Act* (*NAGPRA*) is to recognize, "the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations in Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony."[155] *NAGPRA* is an enforceable legal mechanism for the return of ancestor bones and cultural possessions. It ensures that, "any permit, license, lease, right-of-way, or other authorization issued for an activity on Federal or Tribal lands must include a requirement to report any discovery of human remains or cultural items."[156] The regulations set out as part of *NAGPRA* guide how this process unfolds with the relevant families or Tribal communities.[157] However, much of this legislation focuses on the repatriation of remains from excavated sites that are currently stored in museums, universities, and other federal or cultural institutions. As discussed in more detail in chapter 12 of this Final Report, there are numerous gaps in this process. *NAGPRA* does not protect lands, nor does it rematriate lands.

Return of Lands in the State of California

In June 2019, the government of California issued an Apology to Native Americans in the state, "for the many instances of violence, maltreatment and neglect California inflicted on tribes"[158] and recognized that the state had, "historically sanctioned over a century of

depredations and prejudicial policies against California Native Americans."[159] The press release from the government relating to the Apology noted that:

> in the early decades of California's statehood, the relationship between the state and California Native Americans was fraught with violence, exploitation, dispossession and the attempted destruction of tribal communities. In 1850, California passed a law called the "Act for the Government and Protection of Indians," which facilitated removing California Native Americans from their traditional lands, separating children and adults from their families, languages and culture, and creating a system of indentured servitude as punishment for minor crimes such as loitering.[160]

On the same day that the Apology was issued, the state of California also announced that it was establishing a "Truth and Healing Council," "to bear witness to, record, examine existing documentation of, and receive California Native American narratives regarding the historical relationship between the State of California and California Native Americans in order to clarify the historical record of this relationship in the spirit of truth and healing."[161] The Truth and Healing Council, which is led by the Governor's Tribal Advisor and includes representatives of Native American Tribes, and state and local agencies were tasked to report on their work on an annual basis and prepare a final report of findings on or before January 1, 2025.[162] In its 2020 *Consultation Report*, the Truth and Healing Council identified the following actions as part of its "Issue Areas to Be Examined":

> A. The Council should examine and report on the historical dispossession of tribal land and water in California beginning with the 18 unratified treaties, through the Smiley Commission Report of Mission Indians that supported the *Mission Relief Act* in 1891, up to the passage of the *Indian Reorganization Act* in 1934 and the State's response to those changes in federal policy.[163]

In June 2024, on the fifth anniversary of the Apology, the governor of the State of California announced the state's support for the return of over 2,800 acres of ancestral land to the Shasta Indian Nation, noting that, "this return is one of the largest in state history and part of the state's ongoing efforts to right historical wrongs committed against the Native communities of California."[164] The lands were sacred and culturally important lands to the Shasta Peoples, who had inhabited the region of Northern California since

time immemorial.[165] The lands had been flooded by the Copco I dam in the early twentieth century. The government noted that Shastas' "first extended encounters with settlers occurred with the arrival of gold miners in the 1850s. Following the miners came farmers, ranchers, loggers and other settlers. Shastas in the region suffered greatly from a generation of massacres, forcible marriages and rapes, and the loss of their lands."[166] In 2022, through a dam removal agreement, the lands were transferred from the last owners of the dam to the states of California and Oregon to be managed for public interest purposes.[167] Upon this transfer, the Shasta Indian Nation formally requested the return of their lands.[168] In addition to returning the lands that had been flooded by the dams, the state of California returned the sacred site of K'účasčas.[169]

This return of land to the Shasta Indian Nation is of particular interest because they are a non-federally recognized Nation. Because their lands were taken from them for the dams, they had no land base when the *Indian Reorganization Act* was passed in 1934, leaving them off the list of Tribes deemed eligible to receive services from the Bureau of Indian Affairs or other government agencies. Shasta Indian Nation Chairperson Janice Crowe said that what the Shasta people have experienced over the last 150 years has been a painful story to tell, but the land return, "is transformative and the beginning of restorative justice for our people. We welcome the opportunity to steward our ancestral lands in a manner consistent with tribal values and incorporating tribal ecological knowledge."[170] According to the state of California, it has transferred or supported the transfer of lands to other Tribes, including over 40 acres of the Mount Whitney Fish Hatchery to the Fort Independence Indian Community and 417 acres of land to the Agua Caliente Band of Cahuilla Indians.[171]

Tribal Nature-Based Solutions Program

California, through the California Natural Resources Agency, established the Tribal Nature-Based Solutions Program in July 2023. Funds pursuant to this program can be used by Tribes, "to purchase land, train workforce, expand and communicate traditional knowledge, build tribal capacity, and build projects and programs to protect culturally important natural resources and protect climate change."[172] The California Natural Resources Agency, in partnership with the California Department of Forestry and Fire Protection and the Oceans Protection Council announced that it has awarded $107.7 million to fund 33 projects and support the return of approximately 38,950 acres of land to California Native American Tribes through the Tribal Nature-Based Solutions Program.[173]

APPLYING THE UN *EXPERT MECHANISM REPORT* TO INTERNATIONAL EXAMPLES

The *Expert Mechanism Report* on the *UN Declaration* contained several important steps that States can take to breathe life into the *UN Declaration*'s articles as they relate to land. The review of what Australia, Aotearoa New Zealand, and the United States have done to date demonstrates that much more needs to be done to implement the Expert Mechanism on the Rights of Indigenous Peoples' Advice No. 13.

In Australia, although the High Court overturned the legal fiction of *terra nullius*, the *Native Title Act* and subsequent amendments have created procedural and bureaucratic barriers for Indigenous Peoples to have lands returned to them. The process of having to establish corporations and land councils infuses settler colonial laws and expectations, thus ignoring the *UN Declaration* and the Expert Mechanism's requirements that land dispute processes be respectful of, and led by, Indigenous customs, traditions, and land tenure systems.

Aotearoa New Zealand's Waitangi Tribunal, while an important model of resolving historical and ongoing grievances, does not have the power to return lands. Its recommendations, although given considerable weight by the courts, may go unanswered depending on what political party is in power. The current political climate, and the introduction of the Treaty Principles Bill and the Treaty Clause Review are examples of how easily threatened the mechanisms for Indigenous land rights can be.

The United States relies on its federal court system to resolve land disputes, which is a slow and arduous process. The federal government has no current or concrete plan to implement the *UN Declaration*. The State of California's approach of creating a Truth and Healing Council, which is studying, and will report on, the dispossession of land and presumably make recommendations on how to provide redress, and the creation of a fund that Indigenous Peoples can access to purchase lands is unique. Once more time has passed, a more in-depth analysis can occur to determine if these approaches have resulted in the rematriation of lands and fully meet the *UN Declaration*'s land redress articles.

All of the international examples examined have created some measures to help strengthen Indigenous Peoples relationship to the land, yet some fall short as they do not necessarily rematriate lands. For most Indigenous Peoples, it is the rematriation of land that they seek. The UN Expert Mechanism highlighted this in its *Expert Mechanism Report*. Specifically, it noted the case of *United States v. Sioux Nation of Indians*, whereby:

> The United States Supreme Court held that the federal government violated the Treaty of Fort Laramie of 1868 when it took the sacred

> Black Hills without consent of the Sioux tribes. The court awarded $17.5 million plus interest dating from 1877, however, the tribes refused to accept the award, which remains in a United States Department of the Treasury account now worth over $1 billion, and continue to seek the return of the land."[174]

This accentuates what the Expert Mechanism on the Rights of Indigenous Peoples reported on—namely, that, for Indigenous Peoples, land is a defining element of their identity, culture, and relationship to their ancestors and future generations.

REMATRIATING LANDS IN CANADA

> Over the past two hundred years, without our permission and without our consent, we have been systematically removed and dispossessed from most of our territory. We have watched as our homeland has been cleared, subdivided, and sold to settlers.... We have watched our waterfronts disappear behind monster cottages ... our most sacred places have been made into provincial parks for tourists, with concrete buildings over our teaching rocks.... The land, our Mother, has largely been taken from us.
>
> — Leanne Betasamosake Simpson, Mississauga Nishnaabeg[175]

> One of the loudest and most frequent demands of Indigenous people in the relationship with settlers is for the return of the land.
>
> — Yellowhead Institute, Land Back Red Paper[176]

Like Australia, Aotearoa New Zealand, and the United States, Canada refused to endorse the *UN Declaration* in 2007. And, like Australia in 2009, Aotearoa New Zealand, and the United States in 2010, Canada reversed its stance and endorsed the *UN Declaration* but only as an aspirational document noting that, "although the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws, our endorsement gives us the opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada."[177] Canada waited until May 2016 to fully endorse the *UN Declaration* without qualifications.[178] This long delay is not surprising, given that Canada, as discussed in detail in chapter 7 of this Final Report, tried to defeat, weaken, and delay any progress on the drafting of the *UN Declaration* and,

working with Australia in 2003, attempted to draft a "government-friendly" alternative without input from Indigenous Peoples.[179] It wanted to remove any references to the restitution of lands. At the time, Canada provided numerous faulty and inaccurate claims as to why it could not endorse the *UN Declaration*, including that it was inconsistent and incompatible with Canada's constitutional order, that it would jeopardize Treaties with Indigenous Peoples, and that it would require repealing the *Indian Act*.[180] All such justifications were deemed to have no credible legal rational from over one hundred legal scholars and experts.[181]

As noted in chapter 7, when Canada finally endorsed the *UN Declaration*, without qualifications, in May 2016, the then minister of Indigenous and Northern Affairs Canada said that, "adopting and implementing the Declaration means that we will be breathing life into Section 35 of Canada's Constitution, which provides a full box of rights for Indigenous peoples."[182] The Yellowhead Institute's report entitled *Land Back* notes that:

> there is no doubt that legal recognition of rights has offered Indigenous people negotiating power, leverage, and expanded by degrees Aboriginal and treaty rights. In some cases, this has translated into some decision-making power and material benefits such as gaining expanded access to capital, contracts with companies, resource revenue sharing from provinces, and participation in regulatory processes. But this is unfolding through a relatively weak recognition of Indigenous jurisdiction. Hence, it is a trade-off for incremental change.[183]

The forms of "incremental change" identified by the Yellowhead Institute, whereby Indigenous peoples receive some measure of control over their lands, territories, and resources, include mechanisms such as impact and benefits agreements, government resource revenue sharing, and ownership and equity stakes.[184] It is beyond the scope of this chapter to review such agreements in detail, but what is clear is that these arrangements do not rematriate lands to Indigenous Peoples.

UN Special Rapporteur

The UN Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay, conducted a visit to Canada on March 1–10, 2023. Reporting on his visit, the Special Rapporteur noted that, "Canada has adopted an incremental approach to 'modern treaty' negotiations, which can be characterized as self-government agreements, sectoral agreements, and other constructive arrangements,"[185] highlighting that there were 185 self-government

negotiation tables across the country at various stages of negotiations. The Special Rapporteur found that:

> while these discussion tables can provide flexibility for negotiations based on the recognition of rights, mutual respect, cooperation and partnership, First Nations have criticized them as unilaterally developed by the Government, focused on negotiation instead of recognition, lacking transparency as regards revisions to policies guiding negotiation; and creating asymmetries of information that place First Nations at a disadvantage during the negotiation process. First Nations are calling for an Indigenous-led process to develop new federal policies and legislation recognizing and implementing their inherent rights, title and jurisdiction, including their right to free, prior and informed consent.[186]

Importantly, in his report, the Special Rapporteur held that, "true reconciliation can be achieved only if Canada respects existing treaties and **provides restitution and compensation for the loss of lands, territories and resources**."[187] It was recommended that the federal government should:

> (a) Support an Indigenous-led process to develop new federal policies and legislation addressing the recognition and implementation of treaty rights to land title, and legal jurisdiction; (b) Honour the treaties entered into with Indigenous Peoples and establish effective, transparent bilateral processes with the full participation of Indigenous Peoples to resolve conflicts, ensure implementation, and settle disputes concerning land, water, food, health, consent and other rights affirmed in those treaties; (c) Guarantee in law and in practice the right to free, prior and informed consent, in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples* and other relevant international standards, including the treaties concluded with Indigenous Peoples.[188]

House of Commons Standing Committee on Indigenous and Northern Affairs: "We Belong to the Land"

Recently, in November 2022, the House of Commons Standing Committee on Indigenous and Northern Affairs adopted a motion to conduct a study on the restitution of land to First Nation, Inuit, and Métis communities in Canada.[189] The study was to examine the access to,

and transfer of, Crown lands across Canada and Indigenous rights related to these lands.[190] The findings of this study, after hearing from 32 witnesses and receiving 21 written briefs, were reported in *"We Belong to the Land": The Restitution of Land to Indigenous Nations*, which was released in May 2024.[191] The Standing Committee on Indigenous and Northern Affairs highlighted that, "as a first step towards reconciliation, all Canadians need to understand the history of the land,"[192] identifying several important truths throughout the report, including that:

- "[A]s part of its genocidal policies, the crown signed land-related treaties to intentionally steal First Nation lands for settlement and development."[193]
- Canada, "earned significant profits from economic development on lands stolen through treaties signed with First Nations."[194]
- "Treaty promises were broken through legislation and agreements" (such as the *Indian Act* and Natural Resource Transfer Agreements).[195]
- Non-treaty lands were also taken through federal policies.[196]
- "Regardless of whether they signed treaties or not, First Nation lands were taken and continue to be taken for a variety of purposes, including railways, highways, natural resource development, the creation of national, provincial and territorial parks and military purposes."[197]
- First Nations, "received few benefits from development on their lands, a situation that continues today."[198]
- Métis were dispossessed of their lands through the scrip system.[199]
- The dispossession of lands, "continues today and has lasting intergenerational effects on Indigenous Nations' laws, health, well-being, family relationships, governance, cultures, languages and ways of life, which are all tied to the land."[200]
- First Nations were excluded from economic opportunities and separated from the Canadian economy by being forced on reserves.[201]

The Standing Committee on Indigenous and Northern Affairs observed that Indigenous Peoples have fought, and continue to fight, for their lands to be returned, noting that:

> land restitution is about correcting injustices and respecting Indigenous rights. It includes restoring Indigenous laws, governance, relationships

> and decision-making authority over the land; providing fair access to resources such as wildlife; addressing current inequalities between Indigenous People and other Canadians; and providing access to capital and support for capacity development to ensure that Indigenous Nations can share in Canadian prosperity.[202]

The Standing Committee heard from those that appeared before them that the *UN Declaration* is the foundation for land restitution.[203] It was noted that, "Indigenous Nations can use a variety of approaches to obtain access to their lands including through federal government policies and processes, the courts, international bodies or by asserting their own jurisdiction."[204] Problems exist within each of these approaches.

- **Federal policies and processes,** which include specific and comprehensive (modern) land claims and additions to reserve processes. They are lengthy, onerous, expensive, and outdated.[205] There are massive backlogs; they are restrictive and bureaucratic ("government staff spend time examining their liabilities rather than prioritizing returning lands"),[206] and they often only provide compensation for lands rather than land back.[207]
- **Courts** have defined Aboriginal title narrowly, and it can be very difficult to prove Aboriginal title. Court processes are lengthy and costly, and the Crown respondents rely on technical defences to have the claims dismissed.[208]
- **Asserting jurisdiction** often leads to the criminalization of the land defenders, who do not have the resources to challenge their criminalization in the criminal court system.[209]

The Standing Committee on Indigenous and Northern Affairs, after learning of these problems, stated that it believed that the federal policies and processes, if modified, could contribute to reconciliation and facilitate the return of Indigenous lands.[210] It issued recommendations including that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) work with Indigenous Nations to align its approach with the *UN Declaration*.[211] In addition to reviewing the existing mechanisms for Indigenous Peoples to seek the return of their lands, the Standing Committee recommended that the federal government explore new approaches with Indigenous Nations, some of which are discussed later in this chapter.

Manitoba Keewantinowi Okimakanak's Four-Step Process to Rematriate Lands in Manitoba

Manitoba Keewantinowi Okimakanak (MKO) is an advocacy organization for the citizens of 26 sovereign First Nations in Treaties 4, 5, 6, and 10. Children from these First Nations were taken to at least six Indian Residential Schools in the MKO region, eight Indian Residential Schools in southern Manitoba, and five Indian Residential Schools in Saskatchewan. The MKO Indian Residential School Path Forward Project (Path Forward Project), was established in 2021 after the recovery of unmarked burials at the Kamloops Indian Residential School. It is dedicated to finding and protecting the many children from MKO communities who were never returned home. At the Montreal National Gathering, Grand Chief Garrison Settee highlighted the importance of the living to uphold their responsibilities to find the missing and disappeared children and to be a voice for them.[212]

The Path Forward Project sets forth ways in which federal and provincial governments must support Indigenous-led searches and protections of the sites where the children may be located. MKO has specifically demanded that the province of Manitoba act to ensure its Nations have authority over the lands where the unmarked burial sites are located.[213] The Path Forward Project outlines a four-step process, utilizing existing legal mechanisms to rematriate lands in the province of Manitoba. For the first step, and as a matter of first principle, sites must be immediately protected from development or disturbance. This requires governments to, "make a clear commitment to use all available tools to immediately protect sites whenever and wherever the remains of the children are known to be located or are reasonably believed to be located."[214] Provincial heritage laws provide ministers with wide discretion to designate sites for protection. Section 2 of Manitoba's *Heritage Resources Act* allows the province to:

> designate any site as a heritage site … where the minister is satisfied that the site represents, either in itself or by reason of heritage resources or human remains discovered or believed to be therein or thereunder, an important feature of
>
> (a) the historic or pre-historic development of the province.[215]

This designation would allow sites—both public and privately owned—to be

preserved while their ongoing care and custody are negotiated. As Grand Chief Settee explained:

> [W]hat we are asking for is that there should be an agreement in place to ensure that our people have access to those lands and those gravesites and make sure that they are protected and make sure that they are preserved and that people can eventually go and commemorate their relatives and also to repatriate their people and their relatives … we are demanding that protective steps include an agreement to ensure that culturally affiliated First Nations and their families have control, custody and clear authority to make decisions regarding the disposition of their children.[216]

The second step is the negotiation of such agreements. There is precedent in Manitoba for developing agreements between Nations, governments, and other entities to ensure that Indigenous laws and authority are upheld in ancestor protection and repatriation decisions.[217] Full control and authority to decide if, how, and when to protect the burial sites of the children requires Indigenous Nations acquiring title to the burial sites. The third step of the Path Forward Project calls upon Manitoba to use section 22(a) of the *Heritage Resources Act* to acquire heritage-designated sites—if necessary, through its powers under the *Expropriation Act*,[218] with provincial and federal governments compensating former landowners as necessary. The fourth step is for the government to make an "outright grant" of sites to one or more custodial and culturally affiliated Nations.[219]

The Path Forward Project, in partnership with Sioux Valley Dakota Nation, has been advocating for this four-step process to be followed with respect to the former Brandon Indian Residential School. While these steps are all under provincial jurisdiction, MKO has called upon the federal government to support and fund this process as part of its obligation to Indigenous children under section 91(24) of the *Constitution Act*, 1867.[220] More broadly, MKO continues to urge federal, provincial, territorial, and Indigenous governments to co-develop national legislation, similar to but stronger than *NAGPRA*, in order to affirm and support Indigenous control, custody, and authority over all burial sites, ancestors, and culturally affiliated objects, including decisions regarding repatriation and disposition. MKO has been making these demands for over two years, but as Grand Chief Settee told the National Gathering in Montreal, "governments choose not to enact those tools that are necessary."[221]

UN Declaration Action Plan

As noted in chapter 7, the federal government enacted the *UN Declaration on the Rights of Indigenous People Act* (*UN Declaration Act*).[222] Pursuant to this Act, the federal government was required to, in consultation with Indigenous Peoples, prepare and implement an Action Plan to achieve the objectives of the *UN Declaration*. Of the 166 measures identified in the 2023–2028 *UN Declaration on the Rights of Indigenous Peoples Act Action Plan* (*Federal UNDA Action Plan*) none relate generally to the rematriation, repatriation, restitution, or return of lands to Indigenous Peoples or, specifically, with respect to lands where the burials of the missing and disappeared children are located.[223] The *Federal UNDA Action Plan* identifies, "[l]ands, territories and resources" as one of the priority areas that engages several articles of the *UN Declaration*, including Articles 26 and 28 discussed above.[224] It is noted that, "the goal of this priority area is to ensure a Canada where:

- Indigenous peoples exercise and have full enjoyment of their inherent rights, including the right to own, use, develop and control lands and resources within their territories.
- Indigenous jurisdiction over lands and resources is fully exercised and respected, including through processes for harmonization where necessary.
- The Government of Canada fully respects Indigenous title and rights, and the sacred relationship and responsibilities of Indigenous peoples to their lands, waters and resources, including through its laws, policies and practices."[225]

Pursuant to these goals, 14 actions (Actions 32–45) are identified that the federal government will take. None of the 14 actions relate directly to the return of lands to Indigenous Nations. The actions identified only tinker with existing policies and processes rather than implementing anti-colonial transformative change. None of the actions relate to acknowledging that lands were assigned or expropriated to accommodate churches and to Indian Residential School sites and associated lands.

Who "Owns" Former Indian Residential School Site Lands?

> I wanted to give a perspective of the land. The idea is that our creation story, the Mi'kmaq creation story, explains that we were created on this land and that we

> peeled ourselves from the land as human beings. We belong to the land, not the other way around. The land doesn't belong to us.
>
> **— Elder Stephen Augustine, Hereditary Chief, Mi'kmaq Grand Council**[226]

Speaking as a witness before the House of Commons Standing Committee on Indigenous and Northern Affairs in October 2023, Elder Stephen Augustine succinctly summarized the difference between Indigenous and Euro-Canadian worldviews and relationships with the land. The Final Reports of the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission of Canada, and the National Inquiry into Missing and Murdered Indigenous Women and Girls as well as, most recently, the 2024 report of the House of Commons Standing Committee on Indigenous and Northern Affairs emphasize the importance of these differences, placing them at the heart of the contentious relationship between Indigenous Peoples and the Crown since first contact. Together, these reports confirm that settler colonial strategies of Indigenous land dispossession, the violation of self-determination rights, and the forcible removal of Indigenous children to Indian Residential Schools combined to achieve a singular goal: the theft of lands from Indigenous Peoples who would cease to exist as distinct political, cultural, and economic entities with their own governance and legal systems. The House of Commons report concluded that:

> land is a central part of Indigenous identities, cultures, languages, governance and laws. Land is essential to respecting Indigenous rights, including the right to self-determination. Indigenous Nations were robbed of their lands throughout Canadian history, which continues to affect Indigenous health, well-being, governance, culture and ways of life. Historically, Indigenous Nations were left out of the Canadian economy and received few benefits from development on their lands. The restitution of lands to Indigenous Nations is about truth and reconciliation and is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (*UNDRIP*). Indigenous Nations have and continue to call for the return of their lands and use different approaches to try and get their lands back. Some have taken the Government of Canada to court, used federal polices and processes to settle their claims, or worked through international bodies. For the most part, these options have not been fully successful.[227]

Indigenous Nations have used these strategies of resistance for decades to regain their homelands. While this chapter necessarily focuses on land rematriation within the existing settler colonial legal and policy framework, it is important to note that the concept of Land Back is also interpreted more broadly by many Indigenous scholars and activists. Eve Tuck and K. Wayne Yang argue that decolonization must repatriate land while simultaneously recognizing how concepts and relationships with land have always been understood differently by Indigenous Peoples and settler populations.[228] In an analysis of the Land Back movement, Turtle Mountain Chippewa scholar Lindsey Schneider points out that this creates a dilemma:

> How can Indigenous people reclaim land without reinforcing the legitimacy of western systems of title and property, thereby validating legal principles of "Discovery" and the existence of the settler state? ... [R]epatriation—as the return of land to Indigenous people through the transfer of legal title to Indigenous governments, communities, or individuals—is an insufficient understanding of what "land back" can and should mean. The return of land-as-property does not address, let alone begin to fix, the myriad ways in which the land itself has been shaped by the highly gendered processes of settler colonialism.... "Land back," I contend, should be understood not as the return of title but rather as the full restoration of Indigenous land relationships. Title acquisition may indeed be part of the process, but cannot be its entirety. It is only through the restoration and flourishing of the complex web of Indigenous relationships with land, water, and our more than-human-kin that we can hope to recover from the damage that settler colonial notions of land-as-property—with all their attendant conceptions of gender, heteropatriarchy, and domination—have done to the land and to Indigenous peoples."[229]

Measured against the huge swaths of Indigenous territories seized across Turtle Island that must be accounted for, the acres and hectares of lands of former Indian Residential School sites may seem small in comparison. However, these haunted lands loom large in Canada's history and their importance to Survivors, Indigenous families, and communities should not be under-estimated. As documented in my historical report *Sites of Truth, Sites of Conscience*, "The buildings, burials grounds, and cemeteries on the sites of former Indian Residential Schools are etched deeply in Survivors' memories."[230] They are now sites of truth that must stand as sites of conscience, bearing witness to the atrocities perpetrated not only on Indigenous children, families, and communities but also on the land itself. Indigenous land was stolen and then shaped by settler colonial processes into institutional properties of oppression,

violence, abuse, and death. The federal government must now rematriate these lands, returning them to Indigenous Nations as restitution, one of several forms of reparations that are discussed throughout this Final Report.

Many Indigenous communities want these lands returned to their stewardship so that they can transform them from sites of colonial harm into healing places of truth sharing where the missing and disappeared children and their burial sites can be properly protected, cared for, and commemorated in accordance with Indigenous laws. To do so effectively requires knowing who currently "owns" these lands. Indigenous Services Canada's 2024 environmental scan report surveying the current status of land ownership and buildings on the former sites of the 140 Indian Residential Schools recognized under the *Indian Residential Schools Settlement Agreement* (*IRSSA*) provides a useful starting point.[231]

Indigenous Services Canada's Environmental Scan

At the National Gathering in Iqaluit in January 2024, David Russell, national coordinator of the Residential Schools, Strategic Policy Branch, presented key findings from the federal government's 2023 environmental scan, and further findings were subsequently published in a report released in February 2024. For the purposes of this chapter, only those relating to the status of the land are included in this excerpt. The 140 former Indian Residential Schools recognized in the *IRSSA* occupied a total of 174 sites, with 76 sites located on-reserve and 98 located off-reserve. Of the 140 residential schools, 34 were located North of 60, and 106 were South of 60.

On-Reserve Sites

Some reserve boundaries have changed over time, complicating confirmation of some locations of former residential school sites on reserves. Some residential school sites on reserve land were surrendered by the Department of Indian Affairs to churches. While most of these lands eventually reverted to reserve land status, a small number of these sites remain as "donut hole" land parcels that are not yet converted to reserve land and may be part of "Additions to Reserve" requests—for example, former residential school sites at Lytton, British Columbia, or Pine Creek, Manitoba. Two of the former Indian Residential Schools are designated as national historic sites.[232]

Off-Reserve and Northern Sites

Of the 98 off-reserve and Northern sites, 25 are wholly privately owned; 7 are fully or partially on federal Crown land; 5 are fully or partially owned by Indigenous entities; 17 are on provincial or territorial Crown land; 7 are on municipal land; 40 have mixed types of ownership/multiple jurisdictions (for example, Indigenous, private, federal, provincial/territorial, church, modern treaties); many sites are owned by multiple private owners; 10 are partially or fully owned by churches; and 2 are included in other national historic sites.[233] The report is based on limited engagement with 52 First Nations who had Indian Residential Schools on their reserves[234] and publicly available sources[235] and also includes an Indian Residential School mapping application.[236] While the report provides useful insights, it also highlights scope and research limitations relating to land status, shown in the following excerpt:

- **Institutions:** The project gathered information on the 140 institutions recognized in the *IRSSA* to better understand the current status of former Indian residential schools and federal hostels. Non-*IRSSA* schools, federal day schools, institutions in the *Newfoundland and Labrador Anderson Settlement Agreement*, federal hospitals and sanatoriums were out of scope.

- **Land status changes during operating dates:** The IRS Environmental Scan on the 140 *IRSSA* institutions focuses on what is known about each site when it closed as an Indian residential school. The geographic size of the grounds of many residential schools shifted over time especially those that operated over several decades or longer. Some were initially centred around a church, then may have expanded as more buildings were constructed and lands added for agricultural purposes, with the footprint of many residential schools becoming smaller in the 1960s and onwards when most became student residences.

- **Land ownership status:** Information on the current status of land ownership refers to the present-day status and type of ownership in 2022–2023, and not the ownership or condition of any buildings when the residential school closed. The Canadian common law/civil law concept of Property Law is used to conceptualize land and presumes who "owns" the land. It is acknowledged that land ownership within the IRS Environmental Scan may be considered to be a colonial construct.

- **Land ownership and land titles:** The information in the IRS Environmental Scan is based on GPS information to determine the type of ownership currently involved at each former residential school site (e.g., on reserve, private, public, mixed ownership). Identification of specific ownership of each former residential school location (e.g., the name of the owners for privately owned sites) was not undertaken. Many residential school properties off-reserve were subdivided after the operation of the residential schools ended, and sites may have a number of ownership types as well as multiple private owners. Land title searches would be needed for more specific ownership information, and the current GPS information would have to be converted to plan and lot numbers.

- **Third-party interests:** Third-party interests in former residential school sites have not been identified, such as right of ways or easements for utility or transportation corridors through the properties, lease-holds, liens or other encumbrances from third parties.

- **Provincial/territorial jurisdiction:** The precise jurisdictional role for provincial and territorial governments with respect to former residential school sites located off-reserve requires further research in some cases. Even with sites where there is no provincial ownership, there may still be a provincial role. For example, provincial roadway repair may be needed for highway access to former residential school sites.

- **Modern treaties:** The dynamic of land ownership and land management of particular former residential school sites within modern treaty areas is unique to each agreement. In some 8 cases, ownership of buildings lies with a Hamlet or municipality, but the management of the land is through a land corporation. Every agreement manages their land differently.

- **Law:** The IRS Environmental Scan does not include information on how Western laws apply to former residential school sites (i.e., federal, provincial/territorial and municipal) or how sites relate to Indian Act band council resolutions, *UNDRIP* Free Prior and Informed Consent, *Constitution Act* Section 35, and the Duty to Consult. In addition, the IRS Environmental Scan does not contain information on Indigenous laws, including ceremonies and protocols, that would apply to former residential school buildings and sites.

- **Community/cultural connections:** The scan does not include information related to the communities impacted by residential schools and their cultural connections to these buildings and sites. It does not include information on commemoration of these sites, or [S]urvivor organizations.[237]

While the footprint of a site may have evolved over time during the period the institution operated as a federal Indian Residential School, the environmental scan focused on the extent of the former buildings and grounds that were in use when the institution closed. An off-reserve site may now have multiple jurisdictions, property owners, and third-party interests such as transportation and utility corridors. As Indigenous Services Canada relied on publicly available information, no research was conducted at provincial and territorial land registry offices nor on those lands administered by self-governing Indigenous governments.[238] The report took note of my written submission to the UN Special Rapporteur on the Rights of Indigenous Peoples, prior to his visit to Canada in 2023. In it, I highlighted the, "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.... There are conflicts between Indigenous communities and governments over issues of jurisdictional control, ownership, and use of land."[239] While a comprehensive study of this nature was well beyond the scope and capacity of my two-year Mandate, an analysis of Indigenous Services Canada's report findings on current land tenure and an examination of how several Indigenous Nations are reclaiming jurisdictional control of these sites provides potential lines of investigation that should be pursued.

Understanding Current Land Tenure of Former Indian Residential School Sites

As noted above, the Indigenous Services Canada's environmental scan revealed a wide range of land tenure or land ownership of the 140 former Indian Residential School sites. The question of who currently owns the land has substantive implications for search and recovery work and will ultimately determine whether Indigenous communities and Nations have the necessary jurisdictional control over these lands to fulfill their obligations to care for and protect the missing and disappeared children and their burial places. The following excerpt from the report provides further details on current land tenure, revealing a complex history spanning decades.

Indigenous Services Canada's Land Tenure Findings

The following land tenure findings are excerpted from Indigenous Services Canada's environmental scan report:

- Off-reserve sites, there are 25 wholly privately owned, 7 fully or partially on federal Crown land, 5 fully or partially owned by Indigenous entities, 17 on provincial or territorial land, 7 on municipal land, 40 where there is mixed ownership (by multiple jurisdictions), and 10 partially or fully church owned.
- The privately owned sites may contain instances where a First Nation has purchased land in anticipation of adding it to reserve land or for economic development purposes. These details will require title searches to determine specific ownership of the sites. As well, the private land category may have multiple private landowners for one site.
- There are currently 7 sites that are associated with federal Crown lands. The residential schools (and their alternative names) and the custodial departments are:
    - Coqualeetza (Chilliwack), British Columbia (CIRNAC);
    - St. George's (Lytton), British Columbia (CIRNAC);
    - Brandon, Manitoba (site partially owned by Agriculture and Agri-Food Canada);
    - Churchill Vocational Centre, Manitoba (Transport Canada);
    - Cecilia Jeffrey (Kenora), Ontario (Indigenous Services Canada);
    - McIntosh (Kenora), Ontario (Indigenous Services Canada); and
    - Pelican Lake (Pelican Falls), Ontario (Indigenous Services Canada).

  Some of these Crown owned sites may eventually transition to reserve land (subject to an approved request via the *Addition of Lands to Reserve and Reserve Creation Act*).[240] There are sites that are not entirely owned by the federal government, but there may be a designation on or near the site (i.e. waterways, roadways, and utilities), or there may have been a railway that crossed near the [Indian Residential] [S]chool. These

specifics are not currently captured in the Indian Residential School environmental scan. There are 10 sites that are owned or partially owned by a church entity. They are:

- Fort Vermilion (St. Henri), Alberta (Roman Catholic);
- Grouard (St. Bernard's), Alberta (Roman Catholic);
- Lac La Biche (Notre Dames des Victoires), Alberta (Roman Catholic);
- Lesser Slave Lake (St. Peter's), Alberta (Anglican);
- Sacred Heart (Peigan), Alberta (Hutterite; not the church denomination who operated the residential school);
- St. Paul's (Squamish), British Columbia (Roman Catholic);
- Hay River (All Saints, St. Peter's), Northwest Territories (Anglican);
- McKay (Dauphin), Manitoba (Church of Christ; not the church denomination who operated the residential school);
- Shingwauk (Wawanosh), Ontario (Anglican); and
- Thunderchild (St. Henri), Saskatchewan (Roman Catholic).

There are four sites that have mixed ownership—that is, they are not fully church owned. One of these is Fort Vermilion (St. Henri), where the Roman Catholic church owns a church parcel, while the courthouse is on lands administered by the province of Alberta. The other three sites are Grouard (St. Bernard's), which is Roman Catholic; Hay River (All Saints, St. Peter's), which is Anglican; and Shingwauk (Wawanosh), which is Anglican. Two sites (McKay and Sacred Heart) are owned in full or in part by a denomination that did not operate the residential school but were purchased later by church groups not affiliated with the original residential schools. Only seven of the 140 Indian [R]esidential [S]chools are partially owned by the church that ran the residential school.[241]

While the environmental scan provides an initial overview of the land ownership of former Indian Residential School sites, untangling these complex histories is in the early stages. Survivors, Indigenous communities, and leadership must navigate this maze that has significant

impacts on their ability to conduct search and recovery work. For example, the Indigenous Services Canada environmental scan report shows that the former site of the Brandon Indian Industrial School in Manitoba is partially owned by Agriculture and Agri-Food Canada. At the same time, as chapter 7 of this Final Report notes, the site was not recognized as a cemetery or heritage site under provincial law. No restrictions were placed on the land title to indicate that the property included the cemetery site and burials of children. In 2001, the City of Brandon sold the property to private landowners, with the result that gaining access to the site has been difficult, and efforts to date, by Indigenous communities and leadership, to have the land returned have been unsuccessful.

EMERGING PRACTICES OF LAND REMATRIATION

Despite the complexities of the land tenure of former Indian Residential School sites, many Indigenous communities and Nations across the country have already been pursuing the return of these lands. These emerging practices encompass various strategies, demonstrating the breadth and scope of the work that Indigenous communities and Nations are doing to regain jurisdictional control and land tenure of the former sites. For example, in 2019, the federal government transferred the cemetery site at the former Regina Industrial School in Saskatchewan to the Regina Indian Industrial School Commemorative Association, a non-profit organization with a mandate to honour the memory of the children buried there and educate the public.[242] In other cases, church entities are actively engaging with Indigenous communities to return land where cemeteries and unmarked burials are located.

Churches can also have a significant role in rematriating former sites. At the National Gathering in Edmonton, the Right Reverend Dr. Carmen Lansdowne (Kwisa'lakw), moderator of the United Church of Canada, made a call to settlers and colonial institutions to develop an understanding of, and support for, the Land Back movement. She spoke about the work that the United Church is doing to return the land where former United Church Indian Residential Schools were located back to Indigenous communities. She said that this is especially important in cases where land is still held by the church on reserve lands.[243] Finally, as the Indigenous Services Canada environmental scan report notes, some former sites have been designated as national or provincial heritage sites; these institutions are discussed in more detail in chapter 15 of this Final Report.

Two Examples of Land Return

The following representative examples provide a more in-depth examinations of two former sites—Portage La Prairie and St. Joseph's Mission—that have been returned to Indigenous communities and Nations using different legal mechanisms. The federal government's Indian Residential "School Narratives," which were produced for the purposes of litigation, and the Independent Assessment Process of the IRSSA are referenced. Despite their limitations, these documents provide a thumbnail sketch of the history of land ownership of the 140 Indian Residential Schools recognized under the IRSSA. Until Indigenous Services Canada conducted its environmental scan in 2023, the School Narratives represented Canada's most systematic effort to document the land tenure of these institutions that has been publicly disclosed.

Portage la Prairie Indian Residential School, Manitoba, ca. 1914–1915 (Canada. Dept. of Interior / Library and Archives Canada / PA-047850).

Portage La Prairie Indian Residential School, Manitoba

According to the federal government's School Narrative, the land where the Portage La Prairie Indian Residential School (1891–1975) in Manitoba was built was owned by the Presbyterian church in Canada prior to 1914 when the Department of Indian and Northern Affairs purchased it. A portion of the

land was subsequently transferred to the Department of Public Works before the land tenure was transferred to Long Plain Reserve No. 6.[244] In documenting their own history, Long Plain First Nation noted that, in May 1981, six years after the Portage La Prairie Indian Residential School closed, the Long Plain First Nation (then Short Bear Tribal Council) requested the transfer of these 45 acres of federal Crown land and remaining buildings as part of an outstanding Treaty Land Entitlement owed to Long Plain Reserve.[245]

What Is the Treaty Land Entitlement Process?

The Treaty Land Entitlement process is part of Indigenous Services Canada's land management program. According to Indigenous Services Canada:

> First Nations who did not receive all the land they were entitled to under [T]reaties signed by the Crown and First Nations, can file a Treaty Land Entitlement (TLE) claim with the Government of Canada. TLE settlement agreements are negotiated between First Nations and the Government of Canada, typically with the participation of provincial/territorial governments.... The federal government must adhere to treaty obligations to provide the promised amount of reserve land to treaty First Nations. Generally, a TLE settlement agreement specifies an amount of land that a First Nation may either purchase on a willing buyer-willing seller basis, or select from unoccupied Crown land, or both in some cases, within an agreed to acquisition or selection area. Once purchased or selected, the First Nation may submit a proposal to the Government of Canada for the land to be added to the First Nation's reserve under the Additions to Reserve process.[246]

What Is the Additions to Reserve Process?

According to Indigenous Services Canada:

> A reserve is a parcel of land where legal title is held by the Crown (Government of Canada), for the use and benefit of a particular First Nation. An addition to reserve is a parcel of land added to the existing reserve land of a First Nation or that creates a new reserve.

Land can be added adjacent to the existing reserve land (contiguous) or separated from the existing reserve land (non-contiguous). An addition to reserve can be added in rural or urban settings.

There are 4 phases to the addition to reserve process:

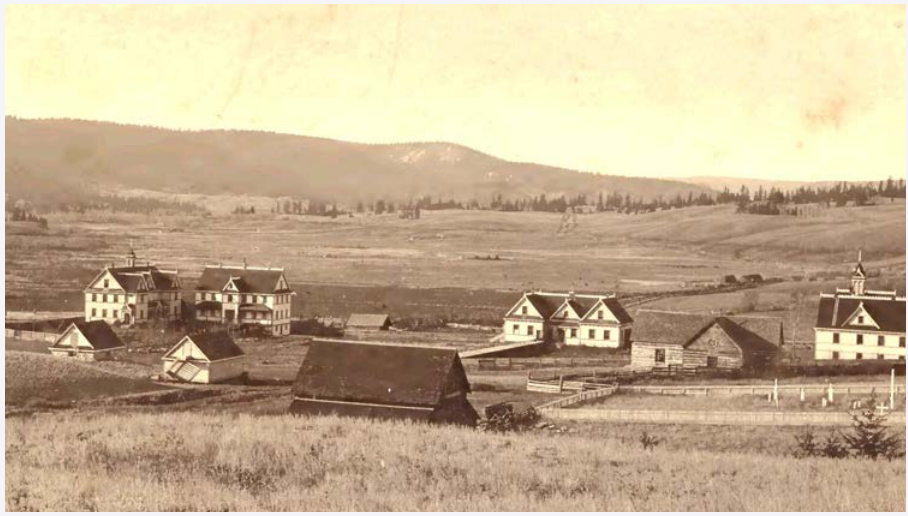
1. Initiation: the First Nation submits a Band Council Resolution and an addition to reserve proposal to the Indigenous Services Canada regional office;
2. Assessment and review: Indigenous Services Canada reviews the proposal and advises the First Nation in writing of the results, issuing a letter of support to First Nations for successful proposals;
3. Proposal completion: Indigenous Services Canada and the First Nation create and execute a work plan to complete all technical components (i.e., surveys, addressing third party interests, Duty to Consult, Municipal Service Agreements, Environmental Site Assessments, etc.); and
4. Approval: the Minister of Crown-Indigenous Relations and Northern Affairs approves proposals by Ministerial Order.[247]

On August 14, 1981, the land parcel where the Portage La Prairie institution had been located was transferred to Long Plain Reserve No. 6, which became the Keeshkeemaquah Reserve.[248] In 2022, reflecting back on the Treaty Land Entitlement process and his involvement in it, Tim Daniels (Anishinabe) from Long Plain First Nation, said that, while the process falls short of the ideals of Land Back, it is for many First Nations the only currently available option for reclaiming their lands. They receive federal monies through the Treaty Land Entitlement process to buy back the land. He said that, "Canada recognized, 'We owe you land, but hey, we can't just give you this land and take it away from someone. You have to go buy land … you have to go buy the land with your treaty entitlement dollars.'"[249]

While the Long Plain First Nation has taken responsibility for the building and site, there is a clear understanding and respect for the other Indigenous communities that have a historic relationship with the former institution's lands. When asked about plans to conduct ground searches at the site, Adam

Myran, the Long Plain First Nation's land director replied, "Even though we have it on our land, so to speak, the school belongs to every nation that sent children there, so things will be decided by a committee."[250] Children from the local Ojibway Dakota community of Long Plain First Nation, along with children from over 20 other communities across Manitoba and beyond, were sent there by government officials.[251]

Adding the site to its reserve lands enables Long Plain First Nation to maintain jurisdictional control and stewardship of the site to ensure that search and recovery work is conducted in accordance with the wishes of their own community and other First Nations communities and families impacted by the institution. In July 2021, Long Plain First Nation Chief Dennis Meeches told media that search and recovery efforts had begun at the site, saying that, "there's a lot of land at Keeshkeemaquah with plenty of history.... We definitely have to take a look and do more [GPR] scanning.... We have 94 acres and 45 in another spot. We're working towards getting all of those scanned, and it will hopefully provide some peace of mind for all of us."[252]



"St. Joseph's Mission Industrial School Cariboo, B.C." n.d. (Deschatelets-NDC Archives).

St. Joseph's Mission Indian Residential School, Williams Lake, British Columbia

While it was not possible to conduct a thorough investigation of the history of land tenure of the St. Joseph's site, even a preliminary examination shows

its complexities. Under the *Roman Catholic Land Act, 1861*, Governor James Douglas granted Crown lands to the Roman Catholic church and authorized bishops to administer these lands in British Columbia.[253] The federal government's School Narrative for St. Joseph's (based only on archival records) provides a partial history of the land where the St. Joseph's Mission Indian Residential School (first named the Williams Lake Industrial School and subsequently known as the Cariboo Indian Industrial School, Cariboo Indian Residential School, and St. Joseph's Indian Residential School) was built and opened in 1891. At that time, Bishop Paul Durieu[254] had offered to sell the 12 acres of land then held by the Sisters of Charity to the Department of Indian Affairs.

However, for reasons that are unclear, it was not until 1952 that the Oblates agreed to convey the land to the Department of Indian Affairs. Subsequently, the department was granted authorization to purchase the land in 1953, and the sale was completed in 1954. The department acquired ownership of the 12 acres where the Industrial School was located, while the Oblates retained ownership of the five thousand acres of surrounding lands. In 1982 and again in 1988, the Williams Lake Indian Band passed a Band Council Resolution requesting that the land and buildings on the St. Joseph's site be transferred to them, potentially as an addition to the existing reserve. The School Narrative indicates that, in 1989, the "school appears to be sold" but contains no further details. Subsequent events indicate that the former Indian Residential School site and surrounding lands were sold to private landowners.[255]

Despite the early and consistent efforts of Williams Lake First Nation it would be another 34 years before they regained ownership of the site under provincial property law. On September 5, 2023, Williams Lake First Nation and the province of British Columbia announced that Williams Lake First Nation had recently purchased the former site of St. Joseph's Mission Indian Residential School where 159 potential unmarked graves had been detected. The now 14-acre property, which was privately owned, was bought for $1.2 million, with an $849,000 contribution from the BC government. Negotiations with the province had begun in 2021, while conversations between the leadership of Williams Lake First Nation and the private landowners had been ongoing for decades.

Williams Lake First Nation's Kukpi7 Willie Sellars told the media that, "it has long been the goal of WLFN's [Williams Lake First Nation] current and previous Councils to see this property preserved and protected.... WLFN can now ensure the integrity of the investigation on this portion of the site, and we can start to think longer term about how to honour and acknowledge the children that disappeared from St. Joseph's Mission and the generations of children that were torn from their families and forced to attend there."[256] Murray Rankin, minister of Indigenous relations and reconciliation, said that, "residential school [S]urvivors and their families have told us that the sites of former schools are of great significance and must be protected.... The return of these lands will support the process of truth telling, healing and remembrance as it will ensure future generations know the true history of this site and its impact on the generations of children who were forced to come here."[257] Kukpi7 Sellars said that the land transfer, "gives us peace of mind that we'll be able to do that [investigative] work uncontested moving forward into the future."[258] He pointed out that, "we continue to talk about how we can heal as communities, we continue to talk about how the government needs to step up, and this is stepping up in a big way in our eyes.... This is a big step ... setting a precedent of what reconciliation can be and should be in the province of British Columbia."[259]

While property ownership ensures the long-term stability of historical and forensic investigations on this portion of the site, as Kukpi7 Sellars later explained, Williams Lake First Nation was only able to purchase the site because the private landowners understood the importance of the search and recovery work. However, the ability to access adjacent land for investigative purposes is far less secure and depends on the ongoing cooperation of the current landowners who are not willing to sell.[260]

Applying the House of Commons Recommendations

While the two examples above demonstrate how Indigenous Nations are working creatively within existing legal property regimes and using government policies and programs to reclaim former Indian Residential School sites, they also highlight Canada's failure to establish legislation, policy, and a rematriation process tailored to the unique circumstances of the sites where forensic investigations are active and evidence must be preserved. The House of

Commons Standing Committee on Indigenous and Northern Affairs heard about the shortcomings of existing land return policies and processes from many witnesses. Hayden King, an Anishinaabe scholar and executive director of the Yellowhead Institute, summed up the problem, saying that:

> today, when [I]ndigenous [P]eople call for land back, especially in those areas where no treaties have been made, the federal government can conveniently hide behind federalism. In this atmosphere of fictive legal possession of [I]ndigenous lands, how can we get land back? There are a variety of tools currently deployed, most commonly the specific and comprehensive claims processes, but they rarely transfer land. Instead, they provide compensation as a form of redress to buy land back and, in some cases—and this was the former Crown-[I]ndigenous Relations minister's position on land back—turn it into Indian land via the additions to reserve policy. These tools are inadequate.[261]

The Standing Committee found that Treaty and land claims policies and processes do not align with the *UN Declaration* and made recommendations to remedy this issue.[262] Regarding the Treaty Land Entitlement process (which is a type of specific claim), the Standing Committee noted that, "Witnesses identified concerns with the process for resolving TLE [Treaty Land Entitlement] claims including significant delays and different regional approaches for resolving third party interests"[263] and that some First Nations had successfully, "taken Canada to court related to TLE claims."[264] Regarding the Additions to Reserve process, the report observed that, while some First Nations have benefited from the process—particularly, in terms of creating urban reserves—several witnesses were more critical. Hayden King told the Standing Committee:

> Let's say you have submitted a land claim and you have earned some restitution in the form of financial compensation. You take that money from your stolen land and you purchase land, and then you vest title in that land back to the federal government. The land that's been stolen from you, you've bought back, and then you turn around and give the title back to the federal government, who then transfers it to reserve status. It seems like a very strange philosophy and approach to land back, where you finally have your land back and now you're giving it to the federal government to manage.[265]

The Standing Committee on Indigenous and Northern Affairs also heard from others who also pointed out the flawed logic of the Additions to Reserve process:

> Six Nations of the Grand River also noted that "Six Nations is a Sovereign Nation, so why do we do all the work, spend our own resources, merely to give the land back to Canada to dictate to us how we can use or not use our lands?"
>
> The committee heard that the additions to reserve process is onerous and lengthy, taking often more than a decade to turn land into a reserve. According to the Assembly of First Nations there is a "massive backlog" of proposals for additions to reserve, including over 700 at various stages of completion.... [W]itnesses described the additions to reserve process as costly, bureaucratic, and marred by delays. With limited resources, First Nations are required to put together lengthy applications to participate in the process.[266]

As previously noted, the Standing Committee on Indigenous and Northern Affairs made several recommendations, including that the Addition to Reserve policy and process be aligned with the *UN Declaration*.[267] Suffice it to say that these policies and processes are ill-suited to address the circumstances relating to rematriating sites of former Indian Residential Schools or those associated with other institutions such as Indian Hospitals, sanitoria, and reformatories. Finally, the Standing Committee explored alternative approaches to land restitution based on evidence from witnesses, noting that:

> witnesses suggested broad reforms to return land to Indigenous Nations outside of existing federal policies and processes, including:
>
> - That the Government of Canada move towards recognizing and implementing Aboriginal title over specific parcels of land outside modern treaty processes;
> - The establishment of "a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous [P]eoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous [P]eoples pertaining to their lands, territories and resources, as per Article 27 of the Declaration" [*UN Declaration*];

> - The creation of an Indigenous Rights Commission with a tribunal to make decisions on matters related to Indigenous rights; and
> - The development of a national land restitution centre; a framework to discuss the meaning and implementation of historical and modern treaties; and the creation of a tax-free way to reclaim land and fee simple title.
>
> Ultimately, the committee heard that options for land restitution must be developed with Indigenous Nations. The Assembly of First Nations believed the exploration of additional mechanisms for land restitution could take place as part of the Government of Canada's work to implement [*UN Declaration*].[268]

The Standing Committee made two recommendations that are particularly relevant to this Final Report:

> Recommendation 8: That Crown-Indigenous Relations and Northern Affairs Canada, in partnership with Indigenous Nations, explore approaches to land restitution outside of the Comprehensive Land Claims Policy, the Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia, the Specific Claims Policy and the Addition to Reserve Policy, such as recognizing and implementing Aboriginal title over specific parcels of land outside modern treaty processes and establishing a process to adjudicate the rights of Indigenous Nations pertaining to their lands, territories and resources in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, and that the department provide each House of Parliament with a progress report on these efforts by December 2024.
>
> Recommendation 11: That the Government of Canada work with Indigenous Nations to create a national land restitution centre.[269]

These recommendations if implemented could create new viable options for land restitution and should be incorporated into the *Federal UNDA Action Plan*.

CONCLUSION

Clearly, it is not enough, nor is it acceptable, that Indigenous Nations must navigate through Canada's ad hoc, piecemeal approach to rematriating the sites where the missing and disappeared children are buried. This follows a well-worn pattern that ultimately serves to perpetuate settler amnesty and foster a culture of impunity. Speaking before the Standing Committee on Indigenous and Northern Affairs, witness Lauren Terbasket (Smelqmix, Okanagan Nation) summarized what is needed instead:

> We know there are mechanisms that allow for transfer of lands across governments, such as lands that are transferred from provincial to federal jurisdiction through the parks process or additions to reserve. What is needed are pathways to allow for restoration, not to Indian reserves that are mired in bureaucratic red tape, but to sovereign tribal lands that make room for true reconciliation and legal pluralism within our homelands and this country that we call Canada.[270]

Terbasket and many others have advocated for the rematriation of lands to Indigenous Peoples, which would require a fundamental paradigm shift. As reiterated in numerous international and domestic reports, we can no longer rely on outdated settler colonial mechanisms and approaches based in Western concepts of Crown sovereignty and property rights.

The federal government must meet its international legal obligations to make reparations and provide restitution for the substantive harms it has inflicted on Indigenous Peoples through land dispossession, including lands where Indian Residential Schools were built. Such reparations must include the return of lands where the missing and disappeared children are buried. While Indigenous Nations have been working creatively with current legislations, policies, and processes, these are subject to changing political environments and government priorities. These mechanisms were never designed to address land return in the context of genocide and mass human rights violations. Nor were they created to advance truth, accountability, and justice for egregious wrongs of this magnitude.

As the report from the House of Commons Standing Committee on Indigenous and Northern Affairs emphasized, "as a first step towards reconciliation, all Canadians need to understand the history of the land." This requires a thorough truth-finding, which to date has not happened. Indigenous Services Canada's environmental scan, while an important exercise to identify the current land tenure of the Indian Residential School sites, fails to

disclose the full history and truth about how these lands were assigned or expropriated. It also does not acknowledge the original and subsequent dispossession of Indigenous lands or the questionable and sometimes deceptive tactics used by the Crown to steal land.

The Standing Committee on Indigenous and Northern Affairs recommended that new approaches to land restitution outside existing processes be developed and implemented in accordance with the *UN Declaration*. The search for and recovery of unmarked burials of the missing and disappeared children on former Indian Residential and associated sites requires a unique approach to rematriating these lands. One that is Indigenous-led, human rights-based, and governed by Indigenous laws and protocols. This more holistic approach will return the lands to Survivors, Indigenous families, and communities, allowing them to care for the land and the children in ways that promote healing, accountability, justice, and reconciliation for generations to come.

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17 Eve Tuck and K. Wayne Yang, "Decolonization Is Not a Metaphor," *Decolonization: Indigeneity, Education & Society* 1, no. 1 (2012): 21.

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of Rematriation to Reconciliation Practices in Canada Concerned with Missing and Murdered Indigenous Womxn" (MA thesis, University of Groningen, 2019), 60.

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CHAPTER 12

Repatriating the Children

> Where's my grandmother? Where's my grandfather?... Let us work together to find all our families. We have to put names on these graves or send them home.... Let's bring them home. And if we can't bring them home, let's go to them and have ceremonies.
>
> — Elder Fred Campion (Nêhîyaw/Cree)[1]

Many Indigenous families and communities have been advocating for decades for the repatriation of children who died while at Indian Residential Schools or associated institutions. In some cases, they have spent years searching for their lost loved ones; once their burial sites are found, they have often spent many more years fighting to have them returned home.

What Is Repatriation?

Repatriation refers to the return of a person or belongings to the care, custody, and/or ownership of their originating community.[2] Although in the previous chapter, the term "rematriation" is used in relation to the return of land, in this chapter, the term "repatriation" is used to respect the work that Indigenous Peoples have led both in Canada and internationally to repatriate their stolen ancestors' remains. The

term "repatriation" is also used in this context to ensure clarity when referring to the literature and legislation that have evolved in response to Indigenous repatriation efforts.

Reframing repatriation through a human rights-based reparations lens and drawing on comparative examples from three other settler colonial countries, this chapter begins by reiterating the complexity of making decisions about whether to repatriate a child, emphasizing the unique circumstances surrounding each burial. Next, Canada's obligations to repatriate the children are set in the broader context of international law and principles relating to the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) and the repatriation of human remains of persons who are missing or were disappeared through State-sanctioned violence, genocide, and mass human rights violations.[3] Repatriation is part of the State's legal and moral obligation to make reparations for violating Indigenous Peoples' inherent human and cultural rights as self-determining peoples to bury their dead in accordance with their own spiritual and cultural beliefs, laws, and customary practices. The State must provide redress for the egregious harms suffered by grieving generations of families and communities unable to bring their deceased loved ones home.

Indigenous Peoples within Canada and across the globe have long advocated for the return of their ancestors' remains and Sacred cultural items from museums, universities, and other State institutions and agencies. This important work must continue. However, Canada must now also engage in a different kind of repatriation process—one on a massive national scale—as part of reparations to return the human remains of the missing and disappeared children to their families, communities, and Nations. A comparative analysis of the repatriation environment in other settler colonial countries—Australia, Aotearoa New Zealand, and the United States—reveals that these States face similar circumstances. There are strong parallels between the repatriation efforts in the United States relating to the Indian Boarding School System and the Indian Residential School System in Canada. Therefore, the national *Native American Graves Protection and Repatriation Act* (*NAGPRA*) and repatriation efforts at the Carlisle Indian Industrial School are closely examined through a human rights-based lens.[4] There is an urgent need to expand the conceptual and legal scope of repatriation in Canada beyond the return of holdings in museums and universities to encompass the repatriation of the missing and disappeared children buried on or near former sites of Indian Residential Schools, hospitals, sanitoria, reformatories, and other State-run institutions.

The next section of the chapter considers the lack of a Canadian legal framework compliant with international norms that conceptualize repatriation not just as a statutory responsibility but also as a fundamental human right. While an in-depth review of all legislation is beyond the scope of this chapter, it highlights the shortcomings of the current patchwork of federal, provincial, and territorial legislation and policy that do not align with the *UN Declaration*. Canada's recent efforts to support search and recovery work reveal the limitations of existing settler colonial law and policy and demonstrate how the bureaucratic constraints of programs and funding provided by the federal government can impede the repatriation process, causing further harm to Survivors, Indigenous families, and communities and further damage to Indigenous-Crown relations.

Based on the collective wisdom of Elders, Knowledge Keepers, Survivors, communities, and Indigenous leadership and a substantive body of international literature on *NAGPRA*, the chapter then explores the potential of braiding together Canadian and Indigenous laws to establish *NAGPRA*-style national legislation to support healing, accountability, justice, and reconciliation. Although some principles can be drawn from the work relating to repatriation from museums and similar institutions, the crisis of the missing and disappeared children and unmarked burials requires a tailored approach that reflects the complexity of decision-making relating to exhumation, identification, and repatriation associated with search and recovery efforts. In developing Indigenous-led repatriation processes, Survivors, Indigenous families, and communities are exercising sovereignty and applying Indigenous laws, cultural protocols, and ceremonial practices, adapting them to govern the repatriation of the missing and disappeared children.

THE COMPLEX PROCESS OF MAKING DECISIONS ABOUT REPATRIATION

The 1996 Royal Commission on Aboriginal Peoples recognized that Indigenous custody and control over the burial sites of their ancestors and relatives, including the right to make decisions regarding exhumation or removal, is essential to upholding Indigenous legal principles and protocols governing the care of deceased kin.[5] Call to Action 74 of the Truth and Reconciliation Commission of Canada (TRC) emphasized the government's obligation to respond to families' wishes for appropriate commemoration ceremonies and markers for the missing and disappeared children and reburial in their home communities where requested.

The repatriation of a child and/or the items that were buried with them is part of a larger affirmation of the law, culture, and values of the community and Nation. Repatriations and reburials bring the ancestors close, braiding together the past, present, and future of the community.[6] As the late Frank Weasel Head (Miiksskim, Blood Tribe), a Survivor, Elder, and Knowledge Keeper, said when explaining the importance of museum repatriations of religious bundles:

> [W]henever we bring home something that came from our ancestors, it ignites our will and our self-esteem. We remember that, at one time, we were able to do all these things on our own. If we can bring back a bundle, we can bring back other parts of our culture. To me, it is all part of repatriation. It is not only a repatriation of [S]acred items. It is a repatriation of a way of life that was taken away from us through residential schools and all those other efforts to assimilate us.[7]

To reiterate briefly, the process and outcome of each repatriation of a child or children may be different—and mean different things—for the families, communities, and Nations involved. Families and communities may choose to:

- Test the soil for chemicals that indicate the presence of bodies without exhuming any of the remains;[8]
- Not exhume graves and mark and commemorate the children where they have been buried;
- Not exhume graves but, instead, spiritually repatriate a child or children, using a ceremony to bring the Spirit of the loved one home;
- Excavate to confirm the presence of burials then rebury and leave the children to rest in the same place;
- Approve partial exhumations and reburials where only some of the bodies are exhumed; and/or
- Seek the full exhumation and reburial of all of their loved ones and ancestors.

Repatriation raises complex and emotional questions of law, science, belief, and practice. Not all sites are the same, not all family members and communities have the same needs or beliefs, and not all repatriations, should they take place, are alike. Mourners have divergent viewpoints, opinions, and levels of interest in exhumations and physical repatriation.[9] This is to be expected since these decisions are extremely difficult. Respecting decisions

about repatriation is one element of respecting Indigenous self-determination and the rights of Survivors, Indigenous families, and communities to determine the best course of action moving forward.

The 37-Year Struggle to Have Charlie Hunter Returned Home

Charlie Hunter, a member of Weenusk First Nation in Northern Ontario, was five years old when he was first taken to St. Anne's Indian Residential School in Fort Albany.[10] His parents were told they had a legal obligation to turn their children over to the school or face consequences. He and his family were at their family trapline in Hawley Lake when he was taken by canoe and bush plane almost four hundred kilometres by air from his home to St. Anne's. On October 22, 1974, Charlie, aged 13, was skating with his friends on a frozen lake at the St. Anne's Indian Residential School. While skating, Joseph Koostachin, who was partially blind, fell through the ice into the cold lake. Charlie came to his aid and was able to pull Joseph to safety. In doing so, Charlie slipped under the ice. His friends yelled for help, and Joseph Kataquapat, the groundskeeper, rushed over to pull Charlie from the water. After fifteen minutes of being underwater, the groundskeeper was finally able to retrieve Charlie's lifeless body. The headmaster sent Charlie's body to Timmins, Ontario, for an autopsy.[11]

Charlie was buried in Moosonee, over five hundred kilometres by air away from Weenusk First Nation. Charlie's family was never provided with a reason for why he was buried in Moosonee, and they were never consulted about funeral arrangements. They asked repeatedly for him to be returned to his home community. At the time, the Hunter family had to pay $650 to charter a plane to attend Charlie's funeral, which to them was a small fortune.[12] Charlie's death had a devastating impact on his whole family. Mike Hunter, his father, spent the next 35 years fighting to bring Charlie's body home. After nearly four decades of unsuccessful attempts, he finally asked Charlie's younger sister, Joyce Hunter, to take over the efforts to bring Charlie home.[13]

Joyce contacted lawyers, the coroner, and the Minister of Indian Affairs. The family told the TRC about their struggles to repatriate Charlie to Weenusk. In 2011, the family wrote to then Minister of Indian Affairs John Duncan, who expressed sympathy but did not provide funding. As Charlie's parents aged, it became more

and more urgent to bring Charlie home.[14] Eventually, Joyce met Peter Edwards, a reporter with the *Toronto Star*, who agreed to publish a story highlighting her family's struggle to bring Charlie home.[15] In the article, Edwards reported that, for years, the family had questions:

- Why was there not any adult supervision of the boys when they snuck off to go skating on the lake;
- Why was there not a coroner's inquest to examine the circumstances of Charlie's death;
- Why was he buried so far from his home; and
- Why will the people who took Charlie away from his family not pay to bring him home?[16]

Charlie Hunter fishing with his father (permission provided by Joyce Hunter).

Many people who read the article were impacted. Joyce Hunter recalls that their family was overwhelmed with other stories from families of children who died or went missing from Indian Residential Schools. They realized their story was one of many families who experienced the devastating loss of a child. After reading the article, some members of the public offered to pay for Charlie's casket; another offered to pay for his tombstone. The *Toronto Star*'s readership came together and raised twenty thousand dollars to repatriate Charlie back home. On August 17, 2011, a funeral was held for Charlie Hunter in his home community. Mike Hunter spoke of the funeral as an opportunity for the family to heal. Among the funeral attendees was Joseph Koostachin, the person whose life Charlie saved, and Joseph Kataquapat, the individual who pulled Charlie's body out of the icy lake and tried in vain to revive him.[17]

Reflecting on the long journey to bring Charlie home, Joyce said, "What was done to my family was done on purpose. It was done with malice. It was done to erase what they were as human beings. But in the end all we wanted was to have our brother come home. It took the Canadian people just two weeks to do what the federal government wouldn't do for my parents in a lifetime."[18] After the funeral, Mike Hunter, Charlie's father, said, "He's finally back home, and I can visit him anytime I want."[19]

Repatriation of the missing and disappeared children is now only in the beginning stages. Questions of whether or how to repatriate arise only once the burial of the child has been identified and located. As is clear from the previous chapters, locating a missing or disappeared child may first require searching through multiple archives for information, navigating many legislative regimes to access the land where burials are located, and overcoming all the complexities of site searches. As other jurisdictions that have experienced mass human rights violations demonstrates, the process of locating, exhuming, and identifying bodies can be painstakingly slow. Some exhumations take many years.[20] Exhumations must be conducted carefully, methodically, diligently, and conform with forensic investigative best practices. This takes time, and getting it right is better than rushing only to get it wrong and not provide proper care for the children's remains.

Many forensic human rights practitioners view their work in terms of truth and justice for the families of the children who died at the hands of the State. Forensic anthropologist Erin Kimmerle led the team conducting exhumations and working with families to repatriate some of the boys (most of whom were Black American) who died and were buried at the former Arthur G. Dozier School for Boys, a notorious child reformatory in Florida. She

told the media that, "we aimed to provide a 'small measure of justice' for the dead boys and their families.... The project had been politicized and polarized, and there were unfathomable moments when greed and white supremacy and racial hatred had crept in, but seeing the families gathered at ... [the press conference] reminded me to be resolute. They were why we had been working so hard."[21] Many forensic human rights practitioners also view their work in exhuming human remains as "caring for the dead."[22] In writing about her work to identify the human remains of disappeared persons in Guatemala and Argentina, forensic anthropologist Alexa Hagerty observes that, "Caring for the dead is a primordial human act—a mark of humanness as essential as language or tool use. Families and forensic teams share this human duty."[23] The care that goes into this forensic work requires sufficient time and rigour to ensure that the process is robust and respectful, both to the person whose remains are being examined and to their affected families and communities.

After exhumation, decisions must be made about whether to repatriate and rebury children who are identified and where and how to do so. Some will choose to re-inter and memorialize the remains of the children in the original grave site. Some will wish to return remains of the children to their home community and re-inter them there. Others will choose a partial repatriation or to spiritually repatriate the child or children while leaving their physical remains in place. These decisions will be affected by the success or lack thereof in identifying remains, the location of the burial site, the Indigenous laws that are applicable, the wishes of the family and community, and the practical and financial challenges of transporting and reburying human remains, sometimes across thousands of kilometres and multiple provincial or territorial jurisdictions. The costs of relocation can be extensive, particularly if a child died and was buried far from home, which is a common occurrence. Families and communities who wish to bring their child or children home should not be prevented from doing so by a lack of adequate, sustainable funding. These questions can take on additional complexity when the remains of children cannot be identified. How can the remains of these children best be accorded dignity and respect, and how can they be memorialized? Where should they be placed to rest permanently? Who can make these decisions?

Repatriation processes require extensive resources and years of work and are emotionally costly and exhausting. In the context of searching for and recovering the missing and disappeared children, most families and communities have not yet reached the stage where they are considering the profound questions associated with repatriation. In most cases, this is still many years away. Nevertheless, the questions surrounding repatriation must be addressed now, so that when families and communities have located their loved ones, they have the legal frameworks and the practical supports and resources that they need so that they can pursue whichever course of action is right for them.

CANADA'S INTERNATIONAL OBLIGATIONS TO REPATRIATE THE CHILDREN

As discussed in chapter 3 of this Final Report, which discusses unmarked burials and mass graves, the international community has established legal norms and guidelines to prevent the recurrence of mass atrocities and provide reparations to victims of State violence and mass human rights violations. International law confirms that States have obligations both to the remains of the dead and to their living families and communities. International legal and human rights instruments call on governments to recognize and facilitate the right of repatriation. Some of these instruments have been ratified by Canada and incorporated into domestic law, creating binding legal obligations on Canada. Other instruments that Canada should sign and ratify but has not include important principles and guidelines that must inform Canada's approach to repatriating the missing and disappeared children. It was the policy and practice of the federal government and churches not to fund the repatriation of children who died at Indian Residential Schools or other State-run institutions to their homes, families, and communities. To date, the federal government and church entities have not established clear guidelines and policies or made a formal commitment to supporting the repatriation of children when requested by families and communities.

The *UN Declaration on the Rights of Indigenous Peoples*

Indigenous Peoples' right to repatriation and the State's corresponding obligation to provide reparations for violating this right are clearly and bindingly articulated in Article 12 of the *UN Declaration of the Rights of Indigenous Peoples* (*UN Declaration*):

1. **Indigenous [P]eoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies;** the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and **the right to the repatriation of their human remains**.

2. **States shall seek to enable the access and/or repatriation of** ceremonial objects and **human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with [I]ndigenous [P]eoples concerned.**

Article 12 should be implemented in conjunction with Article 1 protecting Indigenous Peoples' right to the full enjoyment of all fundamental human rights and freedoms; Article 3, recognizing Indigenous Peoples' right to self-determination; and Articles 11 and 31

recognizing Indigenous Peoples' collective right to protect their cultural heritage, including archaeological sites, artifacts, and human and genetic resources, and the right to participate in decision-making processes in accordance with their own laws, traditions, and customs to ensure that decisions have their free, prior and informed consent. Together, these articles establish the norms, principles, and standards that must guide the repatriation of the missing and disappeared children. Just as many State museums and agencies took Indigenous human remains without consent, so too did many officials at Indian Residential Schools bury Indigenous children without the consent of the child's family.

In March 2020, the United Nations (UN) Expert Mechanism on the Rights of Indigenous Peoples (Expert Mechanism) and the University of British Columbia convened a seminar of global experts, including Indigenous and non-Indigenous leaders, academics, and community members, to discuss the ethical, legal, and political challenges relating to repatriation. Several key areas of concern were identified, including (1) the devaluing of Indigenous culture and ways of knowing in repatriation processes; (2) the disconnect between intellectual property rights and Indigenous concepts of collective ownership; (3) the unequal power dynamics in negotiations between institutions holding Indigenous human remains and Indigenous communities seeking to repatriate them; (4) the jurisdiction and governance issues relating to the lack of domestic legislation to implement the *UN Declaration*—in particular, Articles 11 and 12; and (5) the need to ensure that Indigenous perspectives and leadership are fully included in the development of practical repatriation mechanisms such as partnerships and agreements between governments, institutions, and Indigenous Nations.[24]

Subsequently, in July 2020, the Expert Mechanism released a report with recommendations on how States should implement these articles.[25] The Expert Mechanism emphasized the sordid history of States and institutions mishandling, misappropriating, looting, and violating Indigenous human remains and cultural items and noted that the laws and cultural traditions of Indigenous Peoples entail responsibilities regarding the handling of human remains. It broadly recommended that:

- A human rights-based approach be applied to the repatriation of Indigenous Peoples' human remains; and
- Indigenous Peoples' rights to self-determination, culture, spirituality, religion, and knowledge, among other factors, be central to State approaches to repatriation.

The report recommended that, "States should enact or reform legislation on repatriation in accordance with the *Declaration on the Rights of Indigenous Peoples*, in particular articles 11, 12 and 31, with the full and meaningful participation of [I]ndigenous [P]eoples and the safeguard of free, prior and informed consent."[26]

The Expert Mechanism affirmed that Indigenous Peoples, as self-determining peoples with human and cultural rights that have been violated, must have a decision-making role in repatriation processes and that States have a corresponding obligation to uphold these rights and provide appropriate reparations. Recognizing the important role of Indigenous laws relating to repatriation, the Expert Mechanism recommended that, "Indigenous peoples should also consider identifying and, if culturally appropriate, codifying their own laws, customs and traditions on ceremonial items, human remains and intangible cultural heritage in order to assist States and museums to implement article 11 of the Declaration."[27] The report also concluded that Indigenous Peoples should work together in solidarity on repatriation and, "should support each other with capacity-building and sharing of experiences, including the development of repatriation and reburial protocols and the establishment and management of [I]ndigenous [P]eoples' own museums and cultural centres."[28] While the report focuses primarily on repatriation relating to museums and other cultural institutions, its findings and recommendations also have broader applicability in the context of repatriating the missing and disappeared children.

Other international laws and principles relating to the repatriation of missing and disappeared persons are relevant to the situation in Canada. As noted in chapter 2 of this Final Report, Canada has not yet signed or ratified the *International Convention for the Protection of All Persons from Enforced Disappearance* (*Convention on Enforced Disappearance*).[29] This Convention requires States to, "locate, respect and return [victims'] remains."[30] The associated *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* provides that remedies may include, "assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities."[31] The *Bournemouth Protocol on Mass Grave Protection and Investigation*,[32] which is discussed in greater depth in chapter 3 of this Final Report, includes among its protocols the following requirement:

> Upon completion of the investigation, identification and justice processes, human remains ... should be returned to family members, allowing them to dispose of the deceased in line with their beliefs....

> Culturally appropriate ways for dealing with unclaimed personal artifacts and unidentified or unclaimed body parts should be agreed upon with the affected communities. This might include memorialisation, sensitive displays, burials, designated commemoration areas or ossuaries.[33]

The Inter-American Court of Human Rights (to whose authority Canada has not acceded) has affirmed the right of families to repatriate remains in accordance with their cultural and spiritual beliefs as well as the State's obligation to provide appropriate coverage of expenses as an element of reparations. In *Pueblo Bello Massacre v. Colombia*, the court ruled that:

> when the mortal remains are found and identified, the State must return them to their next of kin as soon as possible, after having proved the relationship genetically, so that they can be honored according to their respective creeds. The State must also cover the burial expenses, in agreement with the next of kin.[34]

In *Moiwana Community v. Suriname*,[35] the Inter-American Court of Human Rights found that, concerning the deaths of N'djuka people during an attack on their village, the State had failed to meet its legal obligation under the *American Convention on Human Rights* to ensure humane treatment and to investigate violations of this right.[36] The court stated that, "The State's failure to fulfill this obligation has prevented the Moiwana community members from properly honoring their deceased loved ones and has implicated their forced separation from their traditional lands; both situations compromise the rights enshrined in Article 5 of the Convention."[37] Noting that the N'djuka, as Indigenous Peoples, perceive their inability to bury deceased kin in accordance with their customary laws, cultural traditions, and burial practices as deeply harmful to generations of families and communities, the court further found that:

> As indicated in the proven facts ... the N'djuka people have specific and complex rituals that must be precisely followed upon the death of a community member. Furthermore, it is extremely important to have possession of the physical remains of the deceased, as the corpse must be treated in a particular manner during the N'djuka death ceremonies and must be placed in the burial ground of the appropriate descent group.... If the various death rituals are not performed according to N'djuka tradition, it is considered a profound moral transgression, which will not only anger the spirit of the individual who died, but also

> may offend other ancestors of the community.... This leads to a number of "spiritually-caused illnesses" that become manifest as actual physical maladies and can potentially affect the entire natural lineage.... Thus, one of the greatest sources of suffering for the Moiwana community members is that they do not know what has happened to the remains of their loved ones, and, as a result, they cannot honor and bury them in accordance with fundamental norms of N'djuka culture.[38]

The jurisprudence of the Inter-American Court of Human Rights provides valuable insights into the human rights violations and damaging intergenerational impacts of State actions that deprive Indigenous Peoples of their inherent and cultural right to repatriate deceased loved ones. Faced with a similar situation, Canada, to date, has failed to fulfill its obligations under international law to uphold the rights of Indigenous families and communities to repatriate the remains of the missing and disappeared children. The lack of any coherent legal framework for repatriation is compounded by positive failures to recognize Indigenous sovereignty and jurisdiction and to ensure that repatriation processes recognize, respect, and support Indigenous spiritual beliefs, laws, cultural traditions and protocols, and burial practices.

REPATRIATION IN AUSTRALIA, AOTEAROA NEW ZEALAND, AND THE UNITED STATES

A brief comparative analysis of the repatriation environment in three other settler colonial countries—Australia, Aotearoa New Zealand, and the United States, that have similar histories of forced Indigenous child removals with accompanying high death rates is instructive. Canada lags somewhat behind these countries in that each has legislation and policies for museums and other holding institutions, formal processes for domestic and/or international repatriation, Indigenous advisory committees or requirements that Indigenous Peoples must have a decision-making role in repatriation processes, and dedicated funding for repatriation activities.[39] However, while museum-related legislation and policy can inform Indigenous-led repatriation processes relating to the missing and disappeared children and unmarked burials, the circumstances surrounding these repatriations as part of forensic investigations are distinct. Much like Canada, these other States are now compelled to expand the scope of repatriation beyond museums and universities to begin investigations at other institutions such as boarding, training, and industrial schools, orphanages, reformatories, hospitals, and psychiatric institutions where Indigenous children died and were buried while in State custody.

Repatriation in Australia

Although Australia has no federal legislation that compels Australian museums and other institutions to return ancestral remains to Aboriginal and Torres Strait Islander Australian communities, there is various legislation that supports repatriation and cultural preservation measures. Under section 20(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act, 1984*, any person with reasonable grounds to suspect that they may have found Aboriginal remains must report these particulars and the location to the minister, and, under section 21(1)(a), the minister must, "return the remains to an Aboriginal or Aboriginals entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition."[40] The *Environment Protection and Biodiversity Conservation Act, 1999* enables the Australian government to work with States to protect and manage important cultural sites and to engage Indigenous Peoples in various roles.[41] One example is the national Advisory Committee for Indigenous Repatriation, composed entirely of Aboriginal and Torres Strait Islanders appointed by the minister for the arts. The committee provides strategic advice on policy and program issues to ministries within the Australian government concerning the repatriation of ancestral remains and Sacred objects held in Australian collecting institutions and overseas. They also provide advice on, "repatriation ... where there is limited provenance and no identified community of origin [and] [r]epatriation matters that affect all or many communities (as each community advises on its own cultural protocols for ancestors and objects)."[42]

Many Australian museums and professional associations have codes of ethics, policies, and/or guidelines that support repatriation efforts.[43] For example, the National Museum of Australia has published *A Repatriation Handbook*, a comprehensive guide to assist with pursuing the return of Aboriginal and/or Torres Strait Islander ancestral remains.[44] Australia is also just beginning to confront the historical reality that the human remains of many Indigenous children lie not in museums or other holding institutions but, rather, in unmarked graves at boarding schools, orphanages, and other institutions where they died while in the custody of the State.

Potential Unmarked Burials at the Kinchela Aboriginal Boys Training Home

Recently, there have been growing calls from Survivors and their supporters for search and recovery efforts to occur at Aboriginal Boarding Homes and other institutions where the

Stolen Generations—Aboriginal children who were forcibly taken from their families and communities—may be buried in unmarked graves. On September 12, 2023, a media story noted that:

> One day after a new report from Reconciliation Australia[45] launched last week stating that Australia is ready for truth-telling the nation was confronted and saddened by news of the potential unmarked graves of Aboriginal boys at the notorious Kinchela boarding home. The news prompted Minister for Indigenous Australians, Linda Burney, to call for an investigation into the claims, whilst experts are now suggesting broadening investigations to include the many sites of former Aboriginal boarding homes and missions is needed.[46]

The Kinchela Aboriginal Boys Training Home (Kinchela Home) is regarded as one of the worst institutions associated with the Stolen Generations.[47] Built in 1924 on the stolen land of the Dhungtti people on the mid-north coast of New South Wales (NSW), it was administered under the authority of the NSW Aborigines Protection Board and its successor, the Aborigines Welfare Board. The Kinchela Home housed Aboriginal boys between the ages of five and fifteen who were forcibly removed from their homes.[48] The institution operated until 1970, and, during that time, between four hundred and six hundred children were forced to reside there and were subjected to dehumanizing treatment[49] and cultural, physical, psychological, and sexual abuse.[50] Like the experiences of Indian Residential School Survivors in Canada who were forced to dig graves for children, the children of the Kinchela Home shared a similar horror. Michael "Widdy" Welsh, known as number 36, recalled the impact of witnessing graves being dug at the school. He recalled, "looking out an upstairs window and seeing a boy below digging what appeared to him to be a grave. He was on punishment. He was going to dig that all day ... so that added to the fear."[51]

The Kinchela Home Survivors have long maintained that boys died at the institution and were buried in clandestine graves. At the urging of the Kinchela Boys Home Aboriginal Corporation, an Aboriginal community-controlled organization led by the Kinchela Home Survivors and their families, the NSW government funded ground penetrating radar searches on the former grounds of the institution. An expert report on the GPR survey identified several potential burial sites and indicated that, "Some evidence supports the use of cadaver dogs in finding buried human remains "[52] It also found that there were other areas of the property that required further searches and indicated that, in those other areas, any burials

found would likely be clandestine burials.[53] The report, which was released in March 2023, emphasized the importance of a prompt excavation of the site.[54]

The Kinchela Boys Home Aboriginal Corporation has called for all identified anomalies at the former site of the Kinchela Home to be immediately prioritized for excavation and for further surveys to be conducted.[55] Survivors have expressed frustration at the NSW government's lack of response to their requests for further searches of the site. Survivor Roger Jarrett noted that:

> Until they get excavators out here and actually dig [the anomalies] up and find out exactly what they are, we are still going to keep wondering, and the government's just gonna keep putting things off.... They just have to do the right thing and get it all done. Because we're just guessing until then, and we just want a bit of peace and truth. I'm 76. So I haven't got that long left, and I want to see it before I die.[56]

In January 2024, the NSW government announced that it would provide funding to broaden the scope of investigations beyond the Kinchela Home to include two other institutions—the Cootamundra Girls' Home and the Bomaderry Infants' Home—working collaboratively with Survivors and their organizations through the Keeping Places Project,[57] which have "Aboriginal community managed places for the safekeeping of repatriated cultural material."[58] In July 2024, the media reported that archaeological specialists are now investigating the potential clandestine burials at the Kinchela Aboriginal Boys Training Home by bringing in cadaver dogs to search the area for human remains.[59] It is unclear to what extent, if any, there are similar investigations underway in other regions of Australia to find the Stolen Children who died while in government care and were never returned to their families and communities. However, Australia must now expand the scope of repatriation legislation, policy, programs, and funding beyond museum settings as this search and recovery work continues.

Repatriation in Aotearoa New Zealand

From the 1800s until the 1970s, the remains of Māori in Aotearoa New Zealand were stolen from Sacred grave sites and treated as objects to be bought, sold, and traded. Repatriation efforts have largely focused on returning these ancestors.[60] Legal and governance authority for repatriation lies within whakapapa, or Māori genealogy, that articulates Māori obligations to ancestors across generations, space, time, and continents.[61] Dr. Arapata Hakiwai, a kaihautū, or Māori, co-leader at Te Papa, Aotearoa New Zealand's national museum, explains that,

"The connection to our tūpuna [ancestors] is continuous, despite time and location, and it is our responsibility and obligation to reunite them with their people and whenua [land]."[62]

The *Museum of New Zealand Te Papa Tongarewa Act, 1992* established Te Papa as a Crown entity to protect, preserve, and explore Māori heritage in Aotearoa New Zealand.[63] In 2003, with this mandate, Te Papa established the Karanga Aotearoa Repatriation Programme (KARP) in order to facilitate the repatriation of Māori and Moriori ancestral remains.[64] KARP is dedicated to bringing Māori and Moriori kōiwi tangata (ancestors) home.[65] The program works directly with iwi (tribe or nation) and hapū (subtribe) Elders, Knowledge Keepers, and Te Papa to conduct collaborative in-depth research on the provenance (place of origin) of ancestors who may have been taken from their territories generations before. KARP provides essential logistical support to iwi and hapū seeking the repatriation of their ancestors. Māori/Moriori take the lead in all aspects of the process. The government has only a facilitative role; it asserts no ownership over ancestors or authority over decisions about their potential repatriation.

KARP established a Repatriation Advisory Panel of seven well-respected Māori and Moriori Elders and experts who provide advice and guidance on the repatriation process, negotiations for return, and the research, which is undertaken by the KARP team. Oral and traditional histories are central to this research. Provenance research is divided into three main phases:

1. The first phase identifies all information obtained and relating to the ancestors' time outside of Aotearoa New Zealand;

2. The second phase looks specifically at ancestors' movements within Aotearoa from the time of their theft or collection to the date they left their homeland; and

3. The final phase of the provenance research process is iwi consultation. Face-to-face meetings with communities on their land and on their terms are essential elements of KARP's work. This ensures that communities have the chance to ask questions, engage in discussions, or challenge the information that has been presented. The negotiation and consultation phase can take as long as several years or be completed in a week. Care is taken not to rush the process so that when the ancestors are ready to return home, they will guide the way and ensure that the process runs smoothly.

An interim resting place for ancestral remains has been created in the national museum until they are affiliated with an iwi that will determine their final resting place once identification

is made. This Sacred space, known as a wāhi tapu, was established and is maintained according to Māori protocols. Sacred rituals and prayers by Māori Elders initially sanctified what was previously considered a museum collection room, thereby creating the wāhi tapu. In order to maintain this status, the following protocols are strictly observed.

1. Karakia (prayer or incantation) is given, and the tūpuna are acknowledged upon entry, and prior to leaving the wāhi tapu.
2. Food and drink must never be consumed within the wāhi tapu.
3. Wai (water) is used to personally cleanse the individual immediately after exiting the wāhi tapu.

To date, eight hundred Māori and Moriori ancestors have been repatriated through KARP, and 125 have been returned home to their descendant communities.[66]

KARP may serve as a potential model for repatriation processes as Aotearoa New Zealand begins investigating the history of Māori and non- Māori children buried in unmarked graves at State-run institutions. In July 2021, Matthew Tukak, the National Māori Authority chair, told the media that the government should fund a national, "whakapapa project to connect whanau to those buried in unmarked graves at Tokanui [Hospital] Cemetery" and similar institutions.[67]

Royal Commission of Inquiry into Abuse in Care

The Royal Commission of Inquiry was established in 2018 to investigate what happened to children, young people, and adults in State care and in the care of faith-based institutions in Aotearoa New Zealand between 1950 and 1999.[68] Drawing on the *te Tiriti o Waitangi* (*Treaty of Waitangi*) and international human rights law, the Royal Commission of Inquiry into Abuse in Care issued an Interim Report in December 2021, which contained recommendations to provide a holistic redress scheme or program for Survivors of institutional abuse, many of whom are Māori.[69] The Commissioners observed that, "we also heard from individuals who had been unable to find where members of their whānau who died in care had been buried. We note that there have been calls for a national project to investigate potential unmarked graves and urupā at psychiatric hospital and psychopaedic sites."[70] Pursuant to Recommendation 72, the Royal Commission of Inquiry directed that, "The Government should consider funding a national project to investigate potential unmarked graves and urupā or graves at psychiatric hospitals and psychopaedic sites, and to connect whānau to those who may be buried there. The Government should support tangata whenua who wish to heal or whakawātea the whenua where this has occurred."[71]

In June 2024, the Royal Commission of Inquiry's Final Report found that Recommendation 72 had been partly implemented,[72] and it reiterated its call for an independent investigation, "The government should appoint and fund an independent advisory group to investigate potential unmarked graves and urupā at the sites of former psychiatric and psychopaedic hospitals, social welfare institutions or other relevant sites."[73] While it remains to be seen if, when, and how the recommendation will be implemented, it is highly likely that developing a repatriation process will be integral to the advisory group's work. It should be noted that at the time when the Commission's Final Report was released, the government had yet to decide on a redress scheme or program and the Commission of Inquiry was, "unaware of any work on ... the national project to investigate potential unmarked graves and urupā."[74]

Repatriation in the United States

The *Native American Graves Protection and Repatriation Act* (*NAGPRA*), which was enacted in 1990, provides federally recognized Native American and Alaskan Tribes, and Native Hawaiian Peoples, with an enforceable legal mechanism for establishing repatriation processes for the return of ancestral human remains, funerary objects, Sacred cultural items, and objects of cultural patrimony as well as the protection of burial sites.[75] *NAGPRA* applies to museums, universities, national parks, and all other government-funded federal agencies.

Key *NAGPRA* Terms

Cultural Affiliation: means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

Cultural Items: means human remains.

Associated Funerary Objects: objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum.

> **Unassociated Funerary Objects:** objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified … as related to specific individuals or families or to known human remains or … as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian Tribe.
>
> **Sacred Objects:** specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
>
> **Cultural Patrimony:** means an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American.[76]

At the Protecting Our Ancestors Conference in Winnipeg, Manitoba, in February 2024, Shannon O'Loughlin (Choctaw), chief executive of the Association on American Indian Affairs, explained that *NAGPRA* has three purposes:

1. The protection of burial sites;
2. The repatriation of Indigenous ancestors and cultural possessions; and
3. The prevention of illegal trafficking.[77]

She explained that the foundational basis of *NAGPRA* is the right of possession—namely, an institution must be able to prove that it obtained voluntary consent from the governing authority within a Tribal Nation before taking possession of human remains or cultural items, or they must repatriate them. However, museums and other institutions often ignore this right, claiming that they hold legal possession.[78]

NAGPRA applies to Indigenous human remains found on federal or Tribal lands unless they are the subject of an active criminal or coronial investigation.[79] The Act requires both federal and tribal governments who have jurisdiction over these lands to ensure that, "any

permit, license, lease, right-of-way, or other authorization ... include a requirement to report any discovery of human remains or cultural items," and authorization under *NAGPRA* is required for their excavation or removal.[80] However, Tribes have jurisdictional control over any human remains that are found on Tribal lands, and their consent is required for any excavations.[81] Any findings of human remains or excavations on federal lands must initiate a "plan of action" that includes consultation with lineal descendants and any Tribe with potential cultural affiliation before any activity is conducted.[82] The *NAGPRA* regulations also specify that consultation must be done in good faith to, "seek, discuss and consider all views, strive for consensus, agreement and mutually acceptable alternatives, and enable meaningful consideration of Native traditional knowledge."[83] However, O'Loughlin noted that, while this represents the best articulation of consultation in US law, this vague definition ignored the fact that Tribal Nations have the right to control their own cultural heritage. Overall, *NAGPRA* still did not establish true equity in decision-making based on recognition of Tribal sovereign jurisdiction, cultural knowledge, and free, prior and informed consent.[84]

While *NAGPRA* has numerous strengths, Native American leadership, legal practitioners, policy-makers, and scholars have advocated for years to address several challenges and gaps, including:

- **The length of time it takes to complete the return of ancestral remains and cultural items.** In 2023, the US Government Accountability Office noted that, although 30 years had passed since *NAGPRA*'s enactment, "hundreds of thousands of Native American human remains and other cultural items have yet to be repatriated."[85] Recent figures estimated that 213,455 ancestors and 2.8 million burial belongings have been reported by holding institutions since *NAGPRA* came into force in 1990, with 96,488 ancestors and 638,936 burial belongings still waiting to be repatriated.[86]
- ***NAGPRA* only applies to federally recognized Tribes.** There are 574 federally recognized Tribes in the United States,[87] and over four hundred other Tribes without federal recognition.[88] While non-recognized Tribes can work with federally recognized Tribes on repatriation efforts, federally funded agencies and institutions such as museums and universities are not legally compelled to return their ancestors or possessions. This restriction also impacts the repatriation of children buried at Indian Boarding School sites.[89]

- ***NAGPRA* regulations for determining jurisdiction over "culturally unidentifiable remains" do not adequately recognize or protect the rights and interests of Indigenous Peoples over those of State agencies and institutions.** Archaeologists and scientists at many institutions have resisted complying with *NAGPRA*, dismissing Tribal knowledge and evidence and categorizing Indigenous human remains and cultural items as "culturally unidentifiable" to retain ownership and control to advance Western scientific interests.[90]

- ***NAGPRA* does not effectively compel State agencies to recognize Indigenous sovereignty, cultural rights, and decision-making authority to determine the lineal descent of Native American, Native Alaskan, and Native Hawaiian human remains to identify them.** There has been a lack of deference to Tribal knowledge, including that of family lines and cultural identity.[91] This also hinders Tribes from fulfilling their collective responsibilities to protect and care for their ancestors in accordance with their own cultural practices.[92] In many cases, State agencies or institutions have refused to comply with *NAGPRA* regulations, using their own repatriation regulations instead to make decisions about disinterment and repatriation. A compelling example of this can be seen in decades-long Tribal efforts to repatriate their children buried in the Carlisle Indian Industrial School Cemetery.

Repatriation Efforts at the Carlisle Indian Industrial School

The Carlisle Indian Industrial School in Pennsylvania, which operated from 1879 to 1918, was one of the earliest and largest off-reservation institutions in the United States. Approximately eight thousand children from between 50 and 100 Tribes were taken there. The site is now owned and operated by the US Army as a military college.[93] At least 180 Native American and Native Alaskan children were buried at the Old Carlisle Cemetery on the grounds of the institution in both marked and unmarked plots.[94] As with Indian Residential Schools in Canada, many families whose children died at Carlisle were not informed of their deaths or burials. In at least two instances, families' requests for their children's bodies to be returned

home were denied.[95] In 1927, the graves were moved and reinterred in a nearby location, the Carlisle Barracks Post Cemetery (Carlisle Cemetery).

Almost a century after the Carlisle Indian Industrial School closed, the Northern Arapaho Tribe, based in what is now Wyoming, became the first Tribal Nation to successfully repatriate their children from Carlisle.[96] Efforts to return three boys began in the 1970s, but the US Army recognized no legal obligation to return the children and, for many years, maintained that their remains were well cared for at the "historical site."[97] Tribal member Yufsa Soldier Wolf, a relative of two of the children, petitioned the Army for over a decade to agree to the repatriation.[98] Finally, in 2017, more than 130 years after their deaths, the Tribe was able to prepare a delegation of Elders and Youth to bring the three children home.[99] In response to the Northern Arapaho's efforts, the US Army formalized the Carlisle Barracks Disinterment Project. A total of six repatriation processes, involving over 30 children, were conducted between 2017 and 2023.[100]

"Carlisle Indian Industrial School—group photo" ca. 189- (David Ewens / Library and Archives Canada / PA-182257).

In September 2023, Beau Neal (Northern Arapaho) and Launy Shorty (Blackfeet) as well as Amos LaFromboise (Sisseton Wahpeton Oyate Tribe) and Edward Upright (Spirit Lake Tribe) were disinterred from the Carlisle Cemetery and repatriated to

their home communities.[101] While these repatriation efforts were ultimately successful, they would not have happened without the perseverance and advocacy of the Tribal Nations, families, and communities involved and their supporters. At issue was the US Army's failure to comply with *NAGPRA*. In 2021, O'Loughlin summed up the problem:

> Currently, the U.S. Army has refused to use *NAGPRA* to repatriate children from the Carlisle Indian Industrial Boarding School property, stating that it has its own process and that *NAGPRA* does not apply. As an agency of the United States, the Army explicitly bears the federal *NAGPRA* responsibility. Rather than following *NAGPRA*, the U.S. Army has chosen to use its own internal procedures, applicable to the repatriation of soldiers from around the world. Those regulations, adopted without regard to the fiduciary obligations central to *NAGPRA* and without Tribal consultation, only allow for a lineal descendant to repatriate their Ancestor, and further burdens the process by requiring affidavits and other information to "prove" descendancy. The Army's processes do not allow a community, band, Tribe or Nation who is related but unable to show direct descendancy to repatriate their children. This is extremely problematic, and has caused ongoing harm, trauma, and hurt.[102]

Asserting Tribal Sovereignty: Upholding Collective Rights to Determine Lineal Descent and Repatriate

At the National Gathering held in Edmonton, Alberta, in September 2022, Tamara St. John, a Sisseton Wahpeton Oyate Tribe member and South Dakota state representative, spoke to participants about the legal and logistical barriers they have encountered in the process of repatriating Amos LaFromboise and Edward Upright and other children from the Carlisle Indian Boarding School cemetery. She explained that, rather than following *NAGPRA* regulations, the US Army has categorized the two boys as "service men" in line with its own regulations and funding requirements to repatriate human remains. Army officials required repatriation requests to follow these regulations, which are designed for the return of military service members from Army cemeteries, not Indigenous children who were taken from their communities.[103] The regulations require requests to be made by a lineal descendant and must include the notarized consent of "all close living relatives."[104]

South Dakota state representative, Tamara St. John presenting at the National Gathering held in Edmonton, Alberta, in September 2022 (Office of the Independent Special Interlocutor).

As a result, even though there is considerable documentation for the Carlisle Indian Industrial School,[105] and the cemetery is mostly marked,[106] repatriation has been extremely challenging.

Led by St. John and supported by the Native American Rights Fund, the Tribal Nations have argued that the responsible federal agencies, "are required to consult with Sisseton Wahpeton Oyate" pursuant to *NAGPRA* rather than through the US Army's own "fractured and inconsistent" internal policies.[107] In March 2023, on behalf of the Sisseton Wahpeton Oyate, lawyers from the Native American Rights Fund submitted a formal request to the Office of Army Cemeteries requesting the repatriation of Amos Lafromboise consistent with *NAGPRA* regulations.[108] However, they received no response. Instead, in May 2023, the Army issued a notice of disinterment of the children, claiming that this was done at the request of the families and in accordance with Army regulations and *NAGPRA*.[109] However, the families and the Tribal Nations argued that this was being done without adequate notice and did not adhere to the repatriation process outlined in the *NAGPRA* regulations.

In June 2023, the Sisseton Wahpeton Oyate and the LaFromboise family issued a statement asserting their sovereign right to design and lead the repatriation process for Amos Lafromboise in accordance with *NAGPRA*. The statement noted that the US Army had buried Amos in 1879 without the knowledge of his family or the Sisseton Wahpeton Oyate, and, in deciding to disinter Amos, "yet again, the Army is unilaterally making decisions for our child, with no regard for his tribal family's rights and wishes [and thereby] reopened wounds of historical trauma and inflicted ones anew."[110] The statement also emphasized the broader implications of the US Army's actions:

> Repatriating Amos pursuant to *NAGPRA* is important for many reasons beyond the Army's past failures. *NAGPRA* is a hard-fought law designed to ensure Tribal Nations' rights to secure expeditious and appropriate repatriation of their relatives. *NAGPRA* recognizes the sovereign right of Tribal Nations to request that federal agencies—such as the Army—repatriate tribal relatives directly to Tribal Nations. A *NAGPRA* repatriation request activates other rights of the requesting Tribal Nation and specific duties of the agency. For example, an agency must engage with the Tribal Nation in government-to-government consultation and the parties are authorized to negotiate culturally appropriate repatriation agreements. This latter provision ensures that repatriation is performed in accordance with the Tribal Nation's cultural traditions and practices, while being sensitive to the Nation's and agency's resource capacities
>
> Sisseton Wahpeton Oyate has not rescinded its *NAGPRA* request for Amos Lafromboise's return, and that request must be honored. The Tribe has repeatedly communicated to the Army that it will no longer engage in the Army's process. That process has delayed Amos's return and prevented the facilitation of a culturally appropriate repatriation. The Tribe does not regard it as an adequate outcome for Amos to be returned on whatever terms the Army imposes and without regard for the Tribe's traditional and cultural practices and resource capacities. The Tribe has responsibilities to its members and next generations; this is why repatriation pursuant to *NAGPRA* is necessary. The Tribe's exercise of its *NAGPRA* rights is an exercise of its sovereignty to which the Army owes the utmost respect.

> However, instead of affording that due respect, the Army has told the public that it plans to disinter Amos without providing adequate notice to the Tribe, let alone details about the Army's plans for Amos before, during, and after disinterment.... **The Army's conduct is unacceptable, and the Tribe will continue to fight to ensure that Amos is repatriated in accordance with law and with the honor and respect long overdue to him and his tribal family**.[111]

Subsequently, on September 12, 2023, while, "the Army did not concede the applicability of *NAGPRA*," Sisseton-Wahpeton Oyate and the Spirit Lake Tribe signed a Plan of Action with the US Army that, "enabled the Tribes to take a clear and active role in determining how the disinterment and return of Amos and Edward would unfold ... without waiving their *NAGPRA* rights."[112] In its 2023 annual report to the US Congress, the *NAGPRA* Review Committee, which provides compliance oversight, noted that the issue of non-compliance was widespread, "The committee has also heard that some states insist on relying solely on state burial law regarding the disposition of Native American human remains and associated funerary objects under state control and ignore *NAGPRA*'s repatriation requirements that also apply, as well as allegations that the US Army ignores *NAGPRA*'s requirements regarding the planned excavation of Native American human remains at the site of the US Army War College in Carlisle, Pennsylvania."[113]

Amending *NAGPRA*: Federal Indian Boarding School Initiative Investigative Report

In May 2022, the US Department of the Interior released its *Federal Indian Boarding School Initiative Investigative Report*.[114] This year-long investigation examined, "the loss of human life and lasting consequences of the Federal Indian Boarding School system."[115] Its findings regarding repatriation reflect Tribal Nations' diverse approaches to this sensitive matter:

> Tribal preferences for the possible disinterment or repatriation of remains of children discovered in marked or unmarked burial sites across the Federal Indian boarding school system vary widely. Depending on the religious and cultural practices of an Indian Tribe, Alaska Native Village, or the Native Hawaiian Community, it may prefer to disinter or repatriate any remains of a child discovered across the Federal Indian boarding school system for return to the child's home

> territory or to leave the child's remains undisturbed in its current burial site. Moreover, some burial sites contain human remains or parts of remains of multiple individuals or human remains that were relocated from other burial sites, thereby preventing Tribal and individual identification.[116]

The report recommended that the US government take action to, "locate marked and unmarked burial sites associated with a particular Indian boarding school facility or site, which may later be used to assist in locating unidentified remains of Indian children."[117] It also made specific recommendations to amend *NAGPRA* to better protect Indigenous burial sites and facilitate repatriations:

- Exempt *Freedom of Information Act* requests from disclosing information on burial locations to prevent against, "well-documented grave-robbing, vandalism, and other disturbances";
- Direct federal agencies in control of cemeteries to allow the reburial of children, "consistent with specific Tribal practices"; and
- Authorize, "appropriate agencies to disinter or repatriate under the direction of an Indian Tribe, Alaska Native Village, or the Native Hawaiian Community, or family with an identified interest, and consistent with specific Tribal practices, any remains of Indian children discovered in marked or unmarked burial sites associated with the Federal Indian boarding school system."[118]

Reframing *NAGPRA* through a Human Rights Lens

Yacqui legal scholar Rebecca Tsosie has observed that US legislators who drafted *NAGPRA* indicated that the bill was, "not about the validity of museums or the value of scientific inquiry. Rather, it is about human rights."[119] She examined whether US law on repatriation is consistent with the principles, norms, and standards of international law in Articles 11 and 12 of the *UN Declaration*. She concluded that, given the unequal power relations that exist between State agencies and Tribal Nations, framing jurisdictional conflicts over culturally unidentifiable remains in terms of the need to balance competing interests is highly problematic. She argues that, "the interest-balancing approach is inappropriate to a resolution of the issue of 'culturally unidentifiable' Native American human remains because it perpetuates the human rights abuses that created this problem in the first place.... [A] human rights-based framework has far more capacity to advance the quest for justice."[120]

NAGPRA regulations were amended, effective January 12, 2024, making the law more consistent with the *UN Declaration* by requiring the free, prior and informed consent of Native American and Alaskan Tribes and Native Hawaiian Peoples in repatriation decision-making processes. Shannon O'Loughlin told media that, by including this provision in the revised regulations, the federal government, "helps support the concept that *NAGPRA* is a human rights law."[121] Assistant Secretary for Indian Affairs Bryan Newland said that, "*NAGPRA* is an important law that helps us heal from some of the more painful times in our past by empowering [T]ribes to protect what is sacred to them.... These changes to the department's *NAGPRA* regulations are long overdue and will strengthen our ability to enforce the law and help Tribes in the return of ancestors and sacred cultural objects."[122] US Senator Brian Schatz, chair of the Senate Committee on Indian Affairs, said that:

> The US government literally stole people's bones.... Soldiers and agents overturned graves and took whatever they could find. The theft of hundreds of thousands of remains and items over generations was unconscionable in and of itself.... But the legacy of that cruelty continues to this day because these museums and universities continue to hold onto these sacred items in violation of everything that is right and moral—and importantly, in violation of federal law.[123]

The new regulations strengthen the authority and role of Indigenous Peoples in the repatriation process by requiring deference to Indigenous knowledge, including that of lineal descent. They also eliminate the category of "culturally unidentifiable human remains." Museums and other holding institutions must follow a step-by-step process for determining cultural affiliation of human remains or cultural objects.[124] US Department of Interior Secretary Deb Haaland (Pueblo of Laguna) said that, "the changes strengthen the authority and role of Indigenous communities in the repatriation process."[125]

Nevertheless, the US Army continues to resist Tribal requests for repatriation under *NAGPRA*. On January 17, 2024, after its request in November 2023 to repatriate two of its children—Samuel Gilbert and Edward Hensley—from Carlisle Cemetery was denied, the Winnebago Tribe of Nebraska filed a lawsuit against the US Army.[126] The Native American Rights Fund pointed out that, although *NAGPRA* was a robust tool for repatriating the children:

> the Army continues to disclaim *NAGPRA*'s applicability at Carlisle and does so by an intentional misreading of the law. The Army does this to distance itself from its historical role in the federal Indian boarding school era and its long history of abusing and mishandling Native

> American human remains. By retaining absolute and arbitrary control over the collection of remains at Carlisle Cemetery, the Army presents a grossly diluted narrative of what happened at the Carlisle Indian Industrial School.[127]

In July 2024, the second volume of the *Federal Indian Boarding School Initiative Investigative Report* was released. Regarding repatriation, it noted that:

> the Department [of the Interior] is working with Indian Tribes that wish to repatriate or protect in place any human remains or funerary objects from historical Indian boarding school sites that are currently located on US Government lands consistent with specific Tribal practices, as applicable, and under the Native American Graves Protection and Repatriation Act (NAGPRA) and Archaeological Resources Protection Act (ARPA) processes. This may include the decision to keep the human remains or funerary objects in the current location but to maintain or change the headstone or to enhance protection of the burial site.[128]

A key finding was that:

> Tribal preferences for the possible disinterment or repatriation of remains of children discovered in marked or unmarked burial sites across the Federal Indian boarding school system vary widely. Depending on the religious and cultural practices of an Indian Tribe, Alaska Native Village, or Native Hawaiian Community, it may prefer to disinter or repatriate any remains of a child discovered across the Federal Indian boarding school system for return to the child's home territory or to leave the child's remains undisturbed in its current burial site. Moreover, some burial sites contain human remains or parts of remains of multiple individuals or human remains that were relocated from other burial sites, thereby preventing Tribal and individual identification.[129]

Among the report's eight recommendations was that:

> The US Government should assist individuals in locating the records of their family members who attended Federal Indian boarding schools. Where children are known to have died and been buried at burial sites, the US Government should assist individuals in locating the burial sites

> of their family members and supporting them, and Tribes, in any efforts to either protect those burial sites or repatriate their remains to their homelands.[130]

At the Protecting Our Ancestors Conference, O'Loughlin told participants that, because *NAGPRA* applies only to federal agencies, it has limited capacity to assist Indigenous families and communities to find, protect, and/or repatriate the children buried on former Indian Boarding School sites.[131]

The Proposed US Truth and Healing Commission

Despite the amendments to *NAGPRA*, it still places a heavy burden on Tribal Nations, and it does not apply to private entities or churches. This makes passing legislation to establish a Truth and Healing Commission in the United States even more critical. In 2022, writing to US legislators in support of the Truth and Healing Commission on behalf of the Native American Rights Fund in 2022, O'Loughlin emphasized the importance of having a human rights mechanism with a mandate to address these gaps, noting that:

> even as some repatriations of children from boarding school burial grounds are occurring, the horrible burden that some federal agencies have placed on those children's families and Tribes is objectionable. The outright denial from private entities and churches refusing any opportunity to support truth, healing and reconciliation is horribly problematic. These actions are re-traumatizing many survivors, descendants, families, and Native Nations, creating an ongoing and continuing harm.... We see this bill as a foundation to begin the accountability process and nation-to-nation discussion that honors Native Nation sovereignty, families and culture. It will be a process that will require healing of wounds that go so deep—they travel through generations in the hearts and minds of descendants and families. It will also require the same amount of soul searching and healing from those today within the US government and churches who have inherited the legacy of the harm that their predecessors have caused.[132]

The Native American Rights Fund supported the bill to establish a Truth and Healing Commission because, among other things, it would have the power to, "subpoena and investigate private entities" and ensure that, "any repatriation solutions must apply to our children's graves regardless of the status of land where they are located."[133]

In May 2023, the *Truth and Healing Commission on Indian Boarding School Policies Act* was introduced in the US Senate.[134] If passed, this bill would establish a commission with investigative and subpoena powers to conduct a full inquiry into Indian Boarding Schools in the United States. This commission's duties would include:

- Making recommendations to protect unmarked graves and accompanying land protections; and
- Supporting repatriation and identifying the Tribal nations from which children were taken.[135]

On June 13, 2024, the Act progressed to the next steps in the American legislative process after Bill HR 7227 was passed by the House of Representatives Committee on Education and Workforce by a vote of 34 to 4.[136] On July 8, 2024, the report from the Senate Indian Affairs Committee recommended that Bill HR 1723 (the companion bill to Bill HR 7227) be passed, with amendments.[137]

THE LACK OF A CANADIAN LEGAL FRAMEWORK TO REPATRIATE THE CHILDREN

Canada, much like its settler colonial counterparts, not only forcibly removed Indigenous children from their families, communities, and Nations but also purposefully attempted to erase their identities. The federal government and church entities sought to maintain control and custody of the children both in life and following their deaths, depriving them of their right to human dignity. No legal and policy framework was ever put into place to ensure that the human remains of the children would be returned to the care of their families or to enable Indigenous families and communities to make decisions about their final resting places. There continues to be no coherent legal framework in Canada to facilitate Indigenous laws and leadership to bring home the children who went missing or were disappeared by the State and churches in the Indian Residential School System. Current laws, policies, and regulations relating to the repatriation of Indigenous human remains focus on burials that have been desecrated and human remains that were taken to museums or other State agencies and institutions.[138] Not surprisingly, the Canadian legal framework does not adequately support the resolution of the complexities and barriers associated with repatriation and often exacerbates them.

Lack of Federal Legislation and Policy on Repatriation

At the federal level, there is no law at all addressing the repatriation of Indigenous human remains or Sacred cultural objects, either from institutions or directly from burial sites. The *Cultural Property Export and Import Act*, the only federal statute that directly mentions Indigenous human remains, simply restricts the export from Canada of human remains and other "archaeological objects" that have been buried for more than 75 years.[139] Currently, the only federal-level repatriation policy relates to museums—the Canadian Museum of History (formerly the Canadian Museum of Civilization) and the Canadian War Museum—which share the same repatriation policy that, "applies to human remains and associated burial objects, archaeological objects and related materials, ethnographic objects, and records associated with these held in the collections of the Canadian Museum of Civilization and the Canadian War Museum."[140]

Bill C-391: A Failed Attempt at Federal Repatriation Legislation

In 2019, Bill C-391, *Indigenous Human Remains and Cultural Property Repatriation Act*, received unanimous support in the House of Commons but failed to make it through Senate processes before the completion of parliamentary proceedings for the year. The proposed bill secured the development of a "national strategy for the repatriation of Indigenous human remains and cultural property" in cooperation with Indigenous Peoples across Canada. Some concerns with C-391 included the lack of funding attached to the process, although the hope was that these details, including funding processes, binding legal implications, and nationally-recognized jurisdiction for Indigenous communities in these matters, would be put forth as part of the resulting national strategy. Although repatriation itself as it relates to cultural heritage, falls under provincial jurisdiction, we heard in our consultations that the desire was to see federally-funded programs for repatriation with strict and binding guidelines to bolster the capacity and authority of Indigenous communities in these initiatives.

— Canadian Museum Association[141]

Despite its perceived flaws, Bill C-391, had it become law, would have begun a much-needed national dialogue and created a national strategy for repatriation consistent with the legal norms and policy principles set out in the *UN Declaration*'s articles relating to repatriation. The text reads in part:

> The Minister, in cooperation with representatives of First Nations, Inuit and Métis peoples of Canada, and of the provinces and territories, in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*, including Article 31 of that text, must develop and implement a comprehensive national strategy to promote and support the return of Indigenous human remains and cultural property, wherever situated, to the Indigenous peoples of Canada. The strategy must include measures that seek to:
>
> - implement a mechanism by which any First Nation, Inuit or Métis community or organization may acquire or reacquire Indigenous human remains or cultural property;
> - encourage owners, custodians or trustees of Indigenous human remains or cultural property to return such material to Indigenous peoples and support them in the process;
> - support the recognition that preservation of Indigenous human remains and cultural property and of access to that material for educational and ceremonial purposes are principles of equal importance;
> - encourage consideration of traditional ways of knowing rather than relying on strict documentary evidence in relation to the repatriation of Indigenous human remains and cultural property; and
> - resolve any conflicting claims to Indigenous human remains or cultural property, whether within or between Indigenous communities or organizations, in a manner that is respectful of Indigenous traditional processes and forms of ownership and that allows claimants to be self-represented.[142]

The proposed legislation included an accountability mechanism requiring regular progress reports to Parliament. The Act emphasized the central importance of recognizing and upholding Indigenous concepts and cultural traditions of

repatriation and applying Indigenous concepts of ownership and dispute resolution methods in developing binding legislation and nationally recognized Indigenous jurisdiction over repatriation.

With the failure of Bill C-391, Canada remains in the early stages of establishing repatriation legislation and policy. As part of the federal government's 2023 UN *Declaration on the Rights of Indigenous Peoples Act Action Plan* (*Federal UNDA Action Plan*), Action Priority 98, led by Canadian Heritage, commits to, "co-develop with First Nations, Inuit Treaty Organizations or their designates, and the Métis a distinction-based comprehensive approach, which will include legislative, programming and/or service measures, to enable the repatriation/rematriation of Indigenous cultural belongings and ancestral remains."[143] However, the federal government's June 2024 progress report on implementing the *Federal UNDA Action Plan* notes that work has not yet begun on this priority.[144] This is consistent with what Natan Obed, president of the Inuit Tapiriit Kanatami, told participants at the Protecting Our Ancestors Conference. He said that, in their discussions with the Department of Canadian Heritage, Inuit Tapiriit Kanatami proposed co-developing national legislation on the protection and repatriation of Indigenous human remains and Sacred cultural objects to close legislative gaps and implement Indigenous human rights in accordance with the *UN Declaration*. However, they quickly learned that the federal government is reluctant to advance work on repatriation and instead made a vague commitment in Action Priority 98 to, "legislative, programming, and/or service measures."[145] Meanwhile, following Indigenous communities' public confirmations of potential burials and unmarked graves of Indigenous children at former Indian Residential School sites, the federal government introduced new program funding to support search and recovery work, which is discussed later in this chapter.

Provincial and Territorial Laws and Policy on Repatriation

A jurisdictional scan revealed that most decisions regarding the custody, care, and repatriation of human remains found at former Indian Residential Schools and associated sites are currently governed by provincial or territorial laws. Laws regarding the treatment and disposition of human remains fall under multiple statutes, including those governing public health, cemeteries, cremation, and other forms of interment, heritage sites, coroner's investigations, archaeological remains, and vital statistics. Which laws are applicable in a particular situation may depend on where the remains are located or the age of the remains. Some provinces do have laws, policies, or processes that specifically mention Indigenous human

remains. However, as they were developed in the context of archaeological activity, they do not directly address or consider the particular circumstances related to the repatriation of the missing and disappeared children. While provincial and territorial legal frameworks differ between jurisdictions, they generally assert the authority of governments to set the parameters of Indigenous involvement in decisions concerning the care and repatriation of ancestral remains.

Yukon's *Umbrella Final Agreement*, which provides an overarching framework for self-government agreements between Yukon First Nations, the Yukon Territory, and Canada, obliges the territory to support First Nations' efforts to repatriate, "Moveable Heritage Resources," including ancestral remains, that have been removed from their lands.[146] If human remains are of "historic significance," they are protected under Yukon's *Historic Resources Act*, with their ownership and custody depending on if the remains are found within or outside Yukon First Nation settlement lands.[147] Within settlement lands, the First Nation, "may control the exhumation, examination and reburial" of Indigenous human remains found in those sites.[148] If an Indigenous burial site is on non-settlement public land, it is managed jointly by the territorial government and the First Nation on whose traditional territory the site is located.[149]

While Manitoba's laws do not ensure Indigenous authority over ancestral protection and repatriation decisions, they have been applied to support Indigenous-led efforts. In 1976, the Churchill River Diversion Project flooded many Cree territories. The resulting *Northern Flood Agreement of 1977* included provisions to preserve "cemeteries" and "objects of cultural significance."[150] In 1990, ancestral remains were found along the eroding shoreline of Sandy's Island on South Indian Lake, and archaeologists who had been involved in pre-flood survey work were called upon to excavate this site and others that were at risk of erosion. This led to the creation of the Human Remains and Associated Artifacts Repatriation Program, which was developed by the Historic Resources Branch of the Manitoba Department of Culture, Heritage and Citizenship in collaboration with Manitoba Hydro, the University of Winnipeg, the Manitoba Museum of Man and Nature, and several Cree communities in Northern Manitoba.[151]

The Wuskwatim Agreement

In 2006, Nisichawayasihk Cree Nation, the Province of Manitoba, and the Wuskwatim Power Limited Partnership entered into a formal agreement, known as the *Wuskwatim Agreement*, to ensure that ancestors and cultural items found

or disturbed in a dam development project on the Nisichawayasihk Cree Nation's traditional territory would be cared for by Nisichawayasihk Nehethowuk (the People from Where the Three Rivers Meet and Who Speak the Language of the Four Winds or the Nisichawayasihk Cree Nation people).[152] While it operated in a different context, the *Wuskwatim Agreement* addresses many of the issues that communities leading search and recovery work in their territories may be facing: applying Indigenous laws, working with non-Indigenous authorities and frameworks, and ensuring principles are put into practice.

Applying Indigenous Laws

The *Wuskwatim Agreement* sets out 12 Cree legal principles to govern how ancestors and cultural items found on Nisichawayasihk Cree Nation territory must be cared for:

- **Kwayaskonikiwin**, which means that the conduct of a person must be reconciled with Kihche'othasowewin (the Great Law of the Creator)[.]
- **Kistethichikewin**, which means that the conduct of a person must be based on the Sacred responsibility to treat all things with respect and honour. In the context of access management, Kistethichikewin means that a person must show respect by requesting access.
- **Tawinamakewin**, which means that a person is welcome. In the context of access management, Tawinamakewin means that a person granting access has a duty to consider a request for access, including consideration of the well-being of the person requesting access.
- **Aski Kanache Pumenikewin**, which means that the conduct of a person must be in accordance with the Sacred duty to protect N'tuskenan (the land, life, home, and spiritual shelter entrusted to us by Kihche'manitou [the Creator] for our children michimahch'ohchi [since time immemorial]).
- **Ethinesewin**, which means traditional knowledge, including the influence of moons and seasons on climate, weather, animals, plants, and Ethiniwuk (individuals) as well as seasonal harvesting cycles and practices. There is a duty to respect and seek Ethinesewin.
- **N'totumakewin**, which means that a person must seek not to be understood but to first understand. N'totumakewin establishes a duty to teach as well as to understand and to share as well as to seek Ethinesewin[.]

- **Ayakwamisiwin**, which means that a person must be cautious of their actions where there is uncertainty[.]
- **O'chinewin**, which means that what a person does to nature will come back to that person[.]
- **Aniskowatesewe Kanache Pumenikewin**, which means that a person must act in accordance with the Sacred responsibility to protect heritage resources[.]
- **Kanatethechikewin**, which means that the conduct of a person must be in accordance with the Sacred responsibility to ensure that Ethinewikuna (human remains) and Aniskowe Apuchetawina (cultural items; the things we use while here on Earth) must not be disturbed[.]
- **Asehewewin**, which means that what a person does to Ethinewikuna (human remains) and Aniskowe Apuchetawina (cultural items; the things we use while here on Earth) will affect that person's whole being.
- **Nehetho Tipethimisowin**, which means the exercise of sovereignty. The conduct of all persons must be consistent with Kihche'othasowewin (the Great Law of the Creator) and must reflect decision-making roles in accord with Nehetho Tipethimisowin.[153]

Working within Provincial Legal Frameworks

The *Wuskwatim Agreement* does not exempt Nisichawayasihk Cree Nation lands and laws regarding the care of ancestors and cultural items from provincial laws such as the *Heritage Resources Act* and Manitoba's Exhumation and Reburial Policy, but it provides guidelines for how these laws should be interpreted and applied to uphold Nisichawayasihk Cree Nation's "custody, control and ownership" over all, "Aboriginal human remains that are not required for forensic purposes."[154] The Agreement also confirms that section 45 of the *Heritage Resources Act* **does not apply** to Nisichawayasihk Cree Nation ancestors found during the development project. Section 45 states, "The property in, and the title and right of possession to, any human remains found by any person after May 3, 1967, is and vests in the Crown."[155]

Many provinces' heritage laws have similar provisions regarding presumptive Crown ownership over human remains or other "archeological objects"[156] and grant provincial governments discretion to determine how human remains and cultural

items are dealt with.[157] The *Wuskwatim Agreement* explicitly obliges Manitoba to use its "discretion" to recognize Nisichawayasihk Cree Nation laws and jurisdiction. It is one example of how Indigenous Peoples have acted within existing legislative frameworks to uphold their right and responsibility to care for ancestors buried in their territory.

Putting Principles into Practice

The *Wuskwatim Agreement* recognizes and reflects the equal importance of Ethinesewin (traditional knowledge, including the collective wisdom of Nisichawayasihk Nehethowuk) and Western scientific knowledge. Decisions relating to finding, caring for, and the potential exhumation or movement of human remains are made by or with Aski Kihche O'nanakachechikewuk (trained and designated Nisichawayasihk Cree Nation inspectors), along with Nisichawayasihk Cree Nation experts and leadership. The Agreement provides for two archaeologist roles:

- A Project Archaeologist, who provides management, training, and advice to project supervisors, and an Aski Kihche O'nanakachechikewuk regarding heritage resources, who is responsible for obtaining any permits that may be required under Manitoba's *Heritage Resources Act*; and
- An "Nisichawayasihk Cree Nation Archaeologist," who works with the Aski Kihche O'nanakachechikewuk and provides advice to the Project Archaeologist and project managers about the application of Ethinesiwin.

Specific steps must be taken when potential human remains are found. These include:

- Immediately stopping, under an Aski Kihche O'nanakachechikewuk's authority, all work at the site and establishing a buffer;
- Making an offering of tobacco by the Aski Kihche O'nanakachechikewuk;
- Notifying project archaeologists, Nisichawayasihk Cree Nation experts, and leadership;
- Determining if the remains are human;
- Conducting any investigations as much as possible out of public view; and

- Notifying the Royal Canadian Mounted Police (RCMP) and Manitoba Historic Resources Branch.

If the remains are "forensic," the RCMP and the provincial Chief Medical Examiner assume jurisdiction. If "non-forensic" and the archaeologists determine they are Indigenous, Nisichawayasihk Cree Nation assumes jurisdiction. Arrangements at this stage include:

- Conducting cultural and spiritual ceremonies;
- Ensuring that no further project work is done during this time or in areas that would directly or indirectly impact the remains; and
- Protecting the burial site or, if necessary, appropriately exhuming and removing the remains.

The Agreement provides that no reports will be published without Nisichawayasihk Cree Nation's consent but that the archaeologists will maintain written records and ensure a chain of custody in respect of all "heritage resources" that are found, discovered, exhumed, or removed. This information will be treated as confidential and will be controlled by Nisichawayasihk Cree Nation.

In some cases, provincial laws explicitly assert Crown ownership over human remains, including Indigenous human remains. For example, in Saskatchewan, the *Heritage Property Act* privileges scientific use: human remains that predate 1700 AD are, "to be forwarded to the minister for reinterment following scientific examination or any use for research or educational purposes that the minister shall decide,"[158] and more recently buried remains are within the government's control, such that Indian Band Councils may receive the remains of their ancestors for disposal only, "*following* scientific examination or any use for research or educational purposes that the minister shall decide."[159]

The province of Alberta has the only repatriation legislation in Canada. The *First Nations Sacred Ceremonial Objects Repatriation Act, 2000* allowed the government to repatriate Sacred ceremonial objects, not including human remains, in the care of the Glenbow Museum in Calgary to the Blackfoot Peoples in Alberta.[160] In British Columbia, the *Declaration on the Rights of Indigenous Peoples Act*, may provide a legal mechanism for the repatriation of the human remains of the missing and disappeared children under Article 12.[161] The 2023–2027 *Declaration on the Rights of Indigenous Peoples Act Action Plan* includes a commitment to, "co-develop a policy framework to support repatriation initiatives."[162] The 2023–2024 annual report under the Declaration notes that the First Peoples'

Cultural Council, "supported repatriation pilot projects with funding so First Nations can plan, develop policies, conduct research and repatriate their cultural belongings from museums and other holdings."[163]

In June 2021, the government of Quebec passed Bill 79, *An Act to Authorize the Communication of Personal Information to the Families of Indigenous Children Who Went Missing or Died after Being Admitted to an Institution* (Bill 79).[164] Bill 79 supports Indigenous families' searches for their children who were taken to a, "health or social service institution," including Indian Residential Schools, in the province before December 31, 1992.[165] Under the Act, Special Advisor Anne Panasuk was appointed from 2021 to 2023 to oversee the process. She had the powers to share information with Indigenous families about children who went missing between the 1950s and 1990s after being taken to receive health or social services.[166] Up until September 1, 2031, families can make requests to access hospital records, sanatoria records, foster records, child and youth records, cemetery and church records, and other relevant records.[167] Some families have expressed their desire to exhume burial sites to identify their children and/or repatriate them to their home communities.[168]

Section 18 of Bill 79 provides that families may be assisted through this difficult process.[169] This assistance encompasses financial, legal, practical, technical, emotional, and spiritual support, much of it flowing through an Indigenous-led organization, the Association des familles Awacak.[170] It also involves collaborations with the Quebec Coroner's Office, the provincial Direction de soutien aux familles, and the Laboratoire de sciences judiciaires et de médecine légale (LSJML) for DNA or other methods of identifying children.[171] While the Act itself contains no specific provisions for repatriation, the 2023–2024 annual report on implementing the Act noted that, "over the past two years, the Direction de soutien aux familles has identified two recurring exhumation needs by the families it assists: exhumation to identify children and exhumation to repatriate children. The two needs are often expressed in related ways by the families."[172]

The implementation of the Act, which is closely aligned with search and recovery processes, including repatriation, is an important first step in the repatriation process; it has both strengths and limitations. While the scope of the Act is limited to facilitating access to personal information held in institutional records, it does authorize the minister to conduct an investigation within an institution where warranted.[173] This legislative initiative provides valuable insights into how a provincial government can support individual families through an Indigenous organization such as the Association des familles Awacak, which is very effectively supporting families searching for their children. However, the Act is not based on the *UN Declaration*, which recognizes the collective sovereign and cultural rights of

Indigenous Peoples to access institutional records and information. Finally, the initiative is not Indigenous-led and lacks independence from the government.

Overall, the jurisdictional scan confirmed once again that existing legislation is inadequate to support the repatriation of the missing and disappeared children. Without a coherent legal framework designed to support repatriation and affirm Indigenous leadership and control over search and recovery work, Indigenous families and communities attempting to bring their children home must navigate a, "patchwork of conflicting laws, legislation and policies enacted by various levels of government."[174] The same maze of ad hoc, piecemeal approaches and conflicting requirements that exist in the search for records and in the efforts to access, search, and protect burial sites is also a barrier to repatriation. Legal scholar Catherine Bell, who has written extensively about cultural heritage law in relation to Indigenous Peoples' rights, argues that, when viewed through a human rights lens, provincial and territorial laws:

> Can also be criticized on many levels when viewed through the lens of *UNDRIP* [*UN Declaration*] including the narrow scope of its application to peoples, institutions and items and ministerial control. Also important is to give equal consideration of Indigenous laws, effective mechanisms for shared decision-making and dispute resolution, addressing the burden placed on Indigenous peoples to seek out and identify their belongings, [and] access to information about collections, funding and other concerns raised by Indigenous peoples in relation to provincial and institutional repatriation laws and policies.[175]

Pursuant to the *UN Declaration on the Rights of Indigenous Peoples Act*, British Columbia has the potential to expand the scope of repatriation beyond museums and universities in its *UN Declaration on the Rights of Indigenous Peoples Act Action Plan* through the First Peoples' Cultural Council.[176] Quebec's legislation is most closely aligned with the type of legislative and policy framework needed to support search and recovery work, including repatriation where desired. Anne Panasuk, the Special Advisor to Support Families of Missing and Deceased Indigenous Children in Québec, from 2021 to 2023, explained that the Act provides,"the necessary tools for families to get concrete answers about children who remain unaccounted for after they entered state or religious institutions."[177]

In the absence of a national strategy to develop federal legislation governing the repatriation of the missing and disappeared children and given their constitutional jurisdiction over many

of the sites that are subject to repatriation decisions, provinces and territories must therefore amend their laws pertaining to death investigations, property and heritage designations, and cemeteries to facilitate repatriation processes, with the following interim measures:

- Laws that assert Crown ownership over human remains must be repealed or amended to ensure they do not apply to Indigenous ancestral remains and the missing and disappeared children. Ancestors and Sacred objects must not be considered "property" under any federal, provincial, or territorial legislation.
- Laws that privilege the scientific study or use of ancestral remains over Indigenous Peoples' human rights and cultural obligations to their deceased ancestors should be repealed and replaced with provisions that clearly uphold Indigenous laws and Indigenous-led repatriation processes for determining if, when, and how ancestral remains, including the missing and disappeared children, will be exhumed, tested, studied, stored, and reburied.
- Laws that require permits, approvals, or court orders for disinterment and reburial should be amended or clarified to prioritize accessible processes for the repatriation of missing and disappeared children.
- Regulations that require human remains to be transported in sealed containers by licensed funeral operators should be amended or clarified to ensure that Indigenous laws and protocols regarding the respectful treatment of the bodies and Spirits of the missing and disappeared children will be upheld and facilitated.

The continuing absence or inadequacy of federal, provincial, and territorial laws and policies to repatriate children buried at former Indian Residential Schools and associated sites is unacceptable. These laws and policies must comply with international law and uphold the principles, norms, and standards of the *UN Declaration* outlined above. To do otherwise, as Yacqui legal scholar Rebecca Tsosie cautioned, would perpetuate the human rights violations that enabled settler colonial governments, including Canada, to disrespect the human remains of Indigenous Peoples in the first place. In addition, decisions about if, when, and how to repatriate the remains of the missing and disappeared children would remain vulnerable to disruption, and their families, communities, and Nations would continue to bear unnecessary burdens and barriers as they endeavour to bring them home.

Bureaucratic Constraints on Funding Repatriation

Repatriation is costly. Expenses can include researching the location of human remains, obtaining permits for reburial, covering travel costs for those who accompany the human remains, paying for funeral costs, and more.[178] As the 37-year struggle of the family of Charlie Hunter so plainly and painfully demonstrates, bringing home a child who was taken by the Indian Residential School System requires resources that few families have and that no family, community, or Nation should have to bear.

Crown-Indigenous Relations and Northern Affairs Canada's Residential Schools Missing Children Community Support Fund

My Interim Report, issued in June 2023, identified the need for long-term sufficient and sustainable funding for search and recovery work and emphasized the substantive barriers created by the overly restrictive funding eligibility criteria of the federal government's funding program.[179] After initially restricting the use of funds available to exclude exhumation and DNA identification that must be carried out before any decisions on repatriation can be made, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) indicated in August 2023 that funding could be used for, "bringing children home," including for:

- Identifying potential burial locations by conducting field surveys and/or archaeological investigations;
- Engaging with other affected communities to develop an inclusive approach for the identification of individual remains and their potential relocation; and
- Holding on-site ceremonies and other activities before/during/after field work is conducted according to cultural protocols (such as community feasts, healing circles).[180]

However, this funding was and is subject to numerous limitations:

- **The funds cover a restricted range of expenses:** costs of exhumation, DNA testing, and relocation are not included in this list. Applicants must contact the program administrator to confirm whether, "activities supporting the physical identification and repatriation of human remains" are eligible for funding on a case-by-case basis.[181]

- **The funds impose rules and requirements that undermine community capacity to undertake search and recovery work:** for example, to receive funding from CIRNAC for DNA, excavation, or exhumation activities communities must obtain the consent of both communities and families. As 'Namgis First Nation points out, these consent requirements, which are simple on the surface, can create multiple hurdles for the search process:

  > The Government of Canada has placed lead communities at an impasse of consent: for instance, if a family consents, and a community does not, has the benchmark been met? What about children with no surviving members of family, but whose community consents? Or, in the instance where a death is known, but no name or community is known, does that preclude the activities?[182]

  Where communities see that they may not be able to meet these benchmarks, they may be discouraged or prevented from pursuing these efforts, even where Survivors, families, and communities are seeking to proceed.

- **The funds do not support repatriation for all missing and disappeared children:** funding is only available in relation to institutions recognized under the *Indian Residential Schools Settlement Agreement* (*IRSSA*) and the *Newfoundland and Labrador Residential Schools Settlement Agreement*.[183] As is discussed elsewhere in this Final Report, this excludes a number of institutions. For example, Métis children were taken to both recognized and unrecognized Indian Residential Schools, such as the Île-à-la-Crosse Indian Residential Boarding School, which operated between the 1820s and the mid-1970s,[184] and the Timber Bay Children's School, which operated between 1952 and 1994 in Saskatchewan.

  Because the *IRSSA* was designed to support living Survivors who may have experienced abuse at the Indian Residential Schools, restricting repatriation funds to institutions named therein also excludes institutions that closed in the late 1800s or early 1900s. It also does not include Indian Hospitals or other institutions to which children were transferred.[185] The story detailed below of Percy Onabigon, whose family was excluded from repatriation funding because he had been transferred to various institutions in the years

before he died—without his family's knowledge or consent—illustrates the injustice of these exclusions.

- **The funds are time-limited:** The Community Support Fund is time-limited, with funding expiring in 2025. However, not all human remains of children who died or went missing or were disappeared from Indian Residential Schools have been identified, and searches are still ongoing.[186] This type of time-limited funding does not recognize the complexity and difficulty of the processes that must be navigated to find and repatriate the children. Just as repatriation processes require considerable effort, sensitivity, and resources, they also require time to do this difficult work in a culturally appropriate and trauma-informed way. The time that this takes depends on many factors, some of which apply to all community-led processes and others that may be unique to particular families or Nations. In the words of representatives of Rainy River First Nation's Bii-azhe iiwé Ginà daanig (Let's Bring Them Home) Ancestral Repatriation Project:

> Traditional [Anishinaabeg] protocols concerning the reburial of Ancestors did not exist, as traditionally, interred Ancestors were not removed from where they were buried. The lack of established protocols surrounding reburial adds pressure to the community, because they must first try to decide the best practices to conduct reburial.... Appropriate steps will be determined by ceremony, and ceremony cannot be rushed.[187]

As 'Namgis First Nation points out, "the complex work necessary to uncover the truth of what happened to thousands of children is just beginning. This work will take decades, not two or three years. Survivors, families, and communities require long-term, ongoing, and sustainable funding to find their loved ones."[188] In their view, by controlling the search and recovery efforts of Survivors, Indigenous families, and communities through funding, the federal government is, "essentially gatekeeping the process of truth finding."[189] The Assembly of First Nations has called on the federal government to provide, "continued, predictable, sustainable, and adequate funding for all current and future work related to the search and recovery of remains, identification, investigation, repatriation, and commemoration for the children who died or became missing persons while being forced to attend Indian Residential Schools."[190]

These funding limitations diminish the ability of Indigenous Peoples to exercise their inherent rights and responsibilities to the children under Indigenous laws and as recognized by Article 12 of the *UN Declaration*. Just as Canada requires legislation to ensure that Indigenous-led repatriation is available to all the children who went missing or were disappeared by the Indian Residential School System, so must funding support be available to all the Indigenous families, communities, and Nations who are making these difficult decisions. As of April 2024, progress updates on implementing the Truth and Reconciliation Commission of Canada's (TRC) Calls to Action 74–76, report that:

> Between July and September 2020, Crown-Indigenous Relations and Northern Affairs Canada hosted a series of 16 virtual national engagement sessions to inform its strategy for the implementation of Calls to Action 74 to 76.... These engagement sessions significantly informed the development and delivery of the Residential Schools Missing Children Community Support Fund [established to] support Survivor-centric, community-led, and culturally appropriate efforts to locate, document, and memorialize burial sites associated with former Indian residential schools, and honour families' wishes to repatriate children's remains.... The Residential Schools Missing Children Community Support Fund currently has 146 agreements in place with Indigenous communities and partners for a total of $216.6 million as of April 26, 2024.[191]

From 2021 to 2023, the government allocated $232.1 million to support implementing Calls to Action 74–76, and an additional $91 million was allocated for the fiscal years 2024 and 2025.[192]

CIRNAC Reverses the Funding Policy and Deprioritizes Repatriation

In July 2024, Indigenous communities who have begun search and recovery work were abruptly informed that their funding for 2024–2026 would be significantly reduced. Both the arbitrary funding cap and the disrespectful way in which Indigenous communities were informed of this unilateral government decision were unacceptable. Several Indigenous leaders whose communities were impacted sent letters to Crown-Indigenous Relations Minister Gary Anandasangaree and spoke to media. For example, Chief David Monias (Pimicikamak Cree Nation) in Manitoba said:

> I am profoundly dismayed by the Canadian government's decision to impose a cap of $500,000 per year on funds allocated for unmarked

> residential school burials.... This reduction is not only inadequate but reflects a troubling denialism regarding the true scale and significance of this issue. It is essential to recognize that these burial sites are crime scenes, and as such, they must be protected, preserved, and properly investigated."[193]

Deputy Grand Chief Betsy Kennedy (Assembly of Manitoba Chiefs) said:

> The decision to cut back substantial funding for this critical initiative is not only disheartening but also disrespectful to the [S]urvivors and families affected by the residential school system.... The search for truth and justice must go forward without further delays or federal roadblocks, especially when it concerns the lost lives of our children.... Finding and recovering those who have died while attending residential schools is critical in healing our nations. It is also an important step in acknowledging the full extent of the atrocities committed within the residential school system.[194]

Many supporters also spoke out. Anthropologist Scott Hamilton, who works with many communities conducting ground searches, said:

> It's either naivete on the part of the feds thinking how it's not going to cost that much ... or cynicism to try and drive communities into despair so they give up.... I'm hoping it's the former because you can work with that.... For the feds to cut the legs out from under the communities that have taken on this monumental task is just heartbreaking and frankly, enormously insulting.[195]

Stephanie Scott, executive director of the National Centre for Truth and Reconciliation said that the funding cap, "is a step in exactly the wrong direction for reconciliation. Funding must be determined by need, not by arbitrary formulas. That's the only way to meet Parliament's promise that every Indigenous community would have the means necessary to locate and commemorate the children who never came home."[196]

In an open letter to the media published on August 14, 2024, Mary Jane Logan McCallum (Munsee-Delaware Nation), an Indigenous historian and intergenerational Survivor, noted that communities conducting search and recovery efforts were not consulted prior to the funding changes and were given no opportunity at the hastily convened meeting to ask questions of the CIRNAC officials. She pointed out that both the unilateral decision to cut funding and decide what aspects of search and recovery work to prioritize and the way in

which the cut was announced contravene both the *UN Declaration* and the TRC's Calls to Action and demonstrate a profound lack of respect that runs counter to reconciliation:

> The announcement on July 18 of an 85 per cent cut in funding commitments made in 2021 for searches of missing children and unmarked burials related to residential schools is devastating, disrespectful and reflects a troubling denialism regarding the true scale and significance of this issue.... With their microphones muted, researchers learned of imposed caps of $200,000 for burials research and $300,000 for field work for community-led investigation and received no clarity on funding for repatriation or commemoration.[197]

The public outcry denouncing the funding cuts was swift and widespread. On August 16, 2024, Minister of Crown-Indigenous Relations Gary Anandasangaree issued a statement acknowledging that:

> Canada's recent changes to the Residential Schools Missing Children Community Support Fund fell short of our solemn commitment to finding the children. After engaging with Indigenous leaders and communities, we have heard your concerns loud and clear. Our intention was to fund as many initiatives as possible, but we recognize that the lack of flexibility of these changes was a mistake. Communities know best what is needed to undertake this important work, on their own terms. We committed to being there alongside communities every step of the way. That commitment remains and I apologize for any hurt or re-traumatization these changes may have caused. In response to what we heard we are ensuring greater flexibility in the Residential Schools Missing Children Community Support Fund, including lifting the $500,000 limit on funding levels that communities can seek under the program and are removing the recently announced restrictions on funding.[198]

CIRNAC did not identify repatriation as a funding priority in its updated eligibility criteria,[199] making it even more difficult for Indigenous families and communities to exercise their right of repatriation. Furthermore, the funding cut represented a significant step backwards in terms of trust and relationship building as the burden of finding the necessary resources to support ongoing search and recovery efforts, including repatriation, was once again unfairly placed on Survivors, Indigenous families, and communities. The extent to which the damage caused by the funding cut decision can be repaired remains to be seen.

This well-established historical pattern of asserting bureaucratic control over Indigenous programs and policies is documented throughout this Final Report. Currently, search and recovery processes are vulnerable to seemingly arbitrary changes to policies, programs, and funding. Despite statements committing to support Survivors, Indigenous families, and communities engaged in this difficult work, this recurring pattern is already evident. It is of paramount importance that when Indigenous families and/or communities wish to repatriate the remains of a child, sufficient funding and other supports must be provided without inter-jurisdictional squabbling amongst various levels of government over who is responsible for providing it.

Still Waiting after 79 Years: The Ongoing Struggle to Have Percy Onabigon Returned Home

For over 25 years, Claire Onabigon has been working to have her Uncle Percy returned home for reburial.[200] Percy had epilepsy and was paralyzed on one side of his body. His parents took great care of him just as they had for all their children. In September 1944, Percy was taken from his home community of Long Lake #58 First Nation when he was six years old.[201] He was taken to the St. Joseph's Indian Residential School,[202] transferred to the McKellar Hospital in Fort Williams, and then transferred again to the Ontario Hospital School in Orillia, and then again to the Hospital for Epileptics in Woodstock, Ontario,[203] where he died at the age of 27.[204] During the years that Percy was out of his parent's care, the federal Indian Agent directed that Percy not be returned home and authorized these transfers without notice to, or consent from, Percy or his family.[205] Federal funding was provided to all of these institutions for Percy's care.

When Percy was first taken to St. Joseph's Indian Residential School, he was taken with three of his six siblings. Three of his siblings were not taken at this time, and one additional child was born to the family when Percy was in the institutions whom he never met. Although Percy's older siblings had few memories of him, and those younger siblings had none, their parents kept Percy's memory alive and made sure they and their grandchildren all knew about Percy. Claire's mother, Bertha, said that she knew that her brother Percy was buried at a cemetery in Woodstock, Ontario. In 1997, Claire made a promise to her mother and her four Aunties that, in accordance with their wishes, she would work to bring Percy home for reburial. Claire then called all the cemeteries in and around Woodstock and

asked if they had a Percy Onabigon buried there. Claire said, "When I called the St. Mary's Roman Catholic Church Cemetery, a woman said: 'Yes, Percy is here.'" Percy is buried over 1,200 kilometres from his home community.

In 2008, when Claire was completing her principal's qualification in Six Nations of the Grand River, she mentioned to some colleagues that her Uncle Percy was buried in a cemetery not too far away in Woodstock. A fellow principal offered to drive Claire to the cemetery so she could visit her Uncle Percy's burial site. When they arrived at the cemetery, Claire, and two others, each walked a section of the cemetery until they were able to locate Percy's gravesite. A ceremony was then held, and Claire placed a photo of her mother and four sisters on Percy's grave. Claire said, "I left the photo there to let Percy know that he was never forgotten and that he has been found. We have been trying ever since to have him returned home." Before leaving the cemetery, Claire took a picture of Percy's headstone with the photo of his sisters placed next to it. She framed the picture and presented it to her three Aunties who were still alive at that time, "They had no words. They were in complete shock when I handed them that photo."

Percy Onabigon's grave marker with a picture of his sisters in Woodstock, Ontario. Note that Percy's last name was misspelt across government documents and on his gravemarker (provided by Claire Onabigon).

When federal funding became available for communities to search for the missing children and unmarked burials at former Indian Residential Schools, Claire contacted the Anishinabek Nation[206] to seek help in accessing funds from Canada to have Percy brought home. The Anishinabek Nation's Reconciliation

Team assisted with finding and obtaining records relating to Percy, including a record of his death from the Province of Ontario and admission records to the institution in Woodstock—documents that the family had never seen. Although these records provided some information that was not previously known, they did leave the family with further questions. The Reconciliation Team also brought the systemic issues that Claire and her family were facing to my attention as the Independent Special Interlocutor. In particular, when the family approached the federal government for funding to repatriate Percy home, they were informed that:

> Eligible activities outside of the *Indian Residential Schools Settlement Agreement* listed institutions are limited to other federally-operated institutions and their burial sites. In this specific case, the repatriation falls outside of the program authorities. Although the child was initially sent to an *Indian Residential School Settlement Agreement* listed institution, the individual had been in the custodial care of a provincially-run and funded institution for 22 years, prior to their passing.[207]

This decision was made even though the records clearly show that it was the federal government that sent Percy, as a young child, to multiple institutions before he finally ended up in Woodstock, Ontario, without the family's consent. The records also indicate that it was on the Indian Agent's recommendation and authority that Percy was not to be sent home after reaching the age of 18, a fact that the federal government is now relying on to deny funding to bring Percy home.[208] After further advocacy efforts from the family and Anishinabek Nation, the federal government later indicated that it might consider the repatriation request only if it was part of a larger funding proposal from a First Nation or an Indigenous organization but that it would not provide funding directly to the family for the exhumation and reburial.

When Claire and her family approached the Province of Ontario for funding to have Percy brought home, they were informed that the province had no funding available to support such a request. The province later established a one-time funding program that could cover the costs of exhumations and repatriations; however, that funding was only available to First Nations' governments and not individual families.

Claire contacted a lawyer to help with the application for funding, but the lawyer failed to respond prior to the application deadline and then provided her with incorrect information. As a result, the family has not been able to access any provincial funding.

Percy was taken from his family and community 79 years ago. Sadly, Claire was not able to keep the promise she made to her mother and Aunties to bring Percy home as they have now passed to the Spirit world. Claire continues her fight to have those responsible for transferring Percy to multiple institutions, where he died alone without his family, to do the right thing. In her request to the federal government to have Percy returned home, Claire wrote:

"Percy and Kenny" n.d. (provided by Claire Onabigon).

> Percy was a child when he was taken from his parents. It was not their choice neither was it their choice that he never return home. It was Canada that decided he would not ever return home. So it is now Canada's responsibility to bring him home to be buried beside his family at the Longlac Cemetery. What can you do to help with this injustice and bring closure for the family that remains?[209]

Gathering Wisdom on the Potential for *NAGPRA* Plus Legislation in Canada

The history of *NAGPRA* and its strengths and weaknesses were outlined earlier in this chapter. Over the past two years, Indigenous leadership has indicated strong interest in establishing national legislation modelled on *NAGPRA*. Several recommendations were made in written submissions to the Office of the Independent Special Interlocutor (OSI). For example, the Southern Chiefs Organization recommended, "pursuing federal and provincial legislation similar to the *Native American Graves Protection and Repatriation Act*, to ensure the protection, control, and potential repatriation of the remains of our children and all First Nations remains."[210] The Assembly of First Nations (AFN) highlighted their long history of advocacy for the repatriation of human remains, Sacred objects, sites, and lands through various resolutions supported by several *UN Declaration* articles, noting that:

> It is vital that independent organizations like the AFN engage with First Nations to develop a repatriation strategy to identify First Nations children who are domestically and internationally displaced and have not reconnected with their families and/or nations and determine the impacts of First Nations children who were removed from their families and nations. The federal government must work with the churches and First Nation community leaders to inform the families of children who died at residential schools of the child's burial location. The federal government also needs to respond to families' wishes for appropriate commemoration ceremonies and or reburial in home communities where requested.[211]

The submission highlighted the need to investigate not only domestic but also international jurisdictions where many Indigenous children were forcibly sent to from State-run institutions in Canada.

At the National Gathering in Iqaluit in January 2024, presenters from the Manitoba Keewatinowi Okimakanak's Path Forward Project shared their research on *NAGPRA*.[212] The Path Forward Project is a Keewatinowi Okimakanak truth-finding initiative that provides guidance, assistance, and support to Keewatinowi Okimakanak Survivors, Indigenous families, and communities engaged in searching for, identifying, commemorating, and repatriating missing and deceased children at former Indian Residential Schools, hospitals, and sanatoria. As part of their work, they have been analyzing *NAGPRA* to determine whether similar legislation would be suitable in Canada. First, they outlined the basic provisions of

NAGPRA. Then they asked participants to consider the following: what could *NAGPRA*-style legislation look like in Canada; should the legislation incorporate the TRC's Call to Action 74 that provides for the reburial of the children where requested and Article 12 of the *UN Declaration*; and what would need to be adapted for the Canadian context? They noted that, despite its shortcomings, *NAGPRA* has been impactful in the United States. It has codified the States' legal and human rights obligation to take positive action to protect and return ancestral remains and cultural items. However, as the applicability of a *NAGPRA*-style law to the Canadian context is contemplated, careful consideration must be given on how to strengthen a similar repatriation legislation in Canada.

For example, how should a *NAGPRA*-style law apply to medical examiners and coroners' offices? In the United States, State laws govern the disposition of human remains, but *NAGPRA* applies when these human remains are over 50 years old. When medical examiner and coroner offices receive federal funding, either directly or indirectly through the State, they are federal institutions or agencies and must therefore comply with *NAGPRA* regulations.[213] In a presentation to the OSI, officials at the Ontario Ministry of the Solicitor General presented the following key findings from a repatriation jurisdictional scan that they conducted in 2023:

> A 2018 survey of American Medical Examiners/Coroners (ME/Cs) with 185 respondents, found that:
>
> > ME/C offices receive over 300,000 skeletal remains each year, with between 55 to 915 cases being non-forensic Native American remains.
> >
> > No respondents had an official or unofficial protocol related to non-forensically significant Native American remains that was compliant with NAGPRA.
>
> Of those respondents that said they had a formal protocol, most indicated that their offices were transferring the remains to archaeologists or another institution such as a university or museum, in contravention of NAGPRA.
>
> As of April 2023, only 7 ME/Cs had submitted notices of inventory completion to the Federal Register, and of these, only 4 had made Native American remains available to tribes.

> In 2019, the University of Tennessee received funding from the National Institute of Justice to help ME/Cs in 5 states complete inventories of remains that fall under the jurisdiction of NAGPRA and provide education and training to promote compliance.[214]

As chapter 8 of this Final Report indicates, medical examiner and coroner offices have a significant role in supporting efforts to locate, identify, and investigate the deaths of the missing and disappeared children. However, there is no national consistency in how medical examiner and coroner offices deal with repatriation and no national legislation like *NAGPRA* that would establish clear legal, regulatory, and reporting requirements. This is only one of the many aspects of repatriation that must be thoroughly investigated in developing a *NAGPRA*-style legislation in Canada. However, it is also important to consider the foundational concepts, ethical principles, and emerging practices of repatriation developed through *NAGPRA* and how these can inform Indigenous-led repatriation processes for the missing and disappeared children in the context of genocide and mass human rights violations.

Concepts, Ethical Principles, and Emerging Practices of Repatriation

Over the past three decades, a significant body of literature on *NAGPRA* has been established. Until recently, the primary focus has been on how to repatriate Indigenous human remains and cultural items from museums, universities, national parks, and other State agencies. However, the recently published *Federal Indian Boarding School Initiative Investigative Reports* and the conflicts that arose relating to the repatriation of Native American children's remains from the cemetery at the former Carlisle Indian Industrial School has now shifted the focus.[215] Like Canada, the United States has now publicly acknowledged the need to investigate, document, and be accountable to the thousands of Indigenous children who died at State-run institutions of forced child removal and lie buried in marked or unmarked graves and to repatriate them when requested. When viewed through a human rights lens, as archaeologist Stephen E. Nash and anthropologist Chip Colwell point out:

> *NAGPRA* went to the heart of Native America's rights to its ancestors, cultural practices, and religious freedoms. It was a law that directly confronted the colonial histories of museums and ethical blinders of archaeology. Few would agree that the law is perfect, but no other country has (yet) created a similar national law.... *NAGPRA* is now many things to many people. Legally, it is civil rights law, administrative law, Indian law, and property law.... Morally and ethically, *NAGPRA* has

> induced, if not forced, colonialist institutions ... to (re)consider their role in the development of archaeology, anthropology, and even civil society if their collections contained Native Americans but (comparatively) few other human remains.... Repatriation is also deeply shaping notions of national heritage and the attempt to confront colonial legacies far outside the United States ... in that *NAGPRA*-like conversations and claims are engulfing many other countries ... [including] colonial settler nations such as Canada, Australia, and New Zealand.[216]

While the recent amendments to *NAGPRA* regulations align it more closely with the *UN Declaration*, its limited scope and power remain problematic. The proposed independent Truth and Healing Commission would be a more robust mechanism to fully investigate and make recommendations on reparations for the violation of Native Americans' repatriation rights as one of the many human rights violations perpetrated in the US Indian Boarding School System.

NAGPRA hinges on the foundational concept that Indigenous Peoples have a fundamental human and cultural right to repatriate their ancestors' human remains, funerary objects, and Sacred cultural items. However, this critical fact was often lost in the jurisdictional conflicts that pitted the legal and scientific interests of museums and other State institutions and agencies against those of Indigenous Peoples. Colwell observes that, "although *NAGPRA* and its regulations do not include the words healing, reconciliation, or justice, these concepts have come to be seen as a core part of the law's implementation.... [However], [m]uch of the scholarly analysis of repatriation in the United States has focused on the historical, moral, and political conflict over the control of Native America's cultural heritage."[217] He argues that reframing the implementation of *NAGPRA* through the conceptual lens of repatriation as a process of healing, justice, and reconciliation situates it more squarely in the realm of restorative justice that legislators in the US Congress envisioned.[218] In a survey he conducted with Tribal repatriation workers, Colwell identified five key conceptual themes based on responses to the question: does repatriation lead to healing?[219]

1. There is potential for further harm when repatriation claims are rejected or delayed that offset any potential healing benefits.

2. Healing is for both the dead and the living by giving the ancestors proper respect in spiritual ceremonies that heal both.

3. Healing is the restoration of peace and harmony within the Tribe through the process of repatriating, reburying, and caring for the ancestors.

4. Repatriation as a healing process of cultural revitalization repairs broken relationships both within Tribal communities and externally with museums and other institutions where it can establish and build trust.

5. Repatriation is healing and promotes justice when museums and other institutions acknowledge past wrongs and take corrective action to remedy these harms.

Colwell's findings confirm once again that, in the context of reparations, the process is as important as the outcome. His five conceptual themes are congruent with what Survivors, Indigenous families, and communities as well as Indigenous leadership have said over the past two years about the repatriation of the missing and disappeared children.

Other scholars conceptualize repatriation as being essential to healing from the unresolved historical trauma of genocide and the structural colonial violence that manifests in collective intergenerational unresolved grief, eroding individual and community health and well-being.[220] Cherokee anthropologist Russell Thornton points to the recent efforts of Rosebud Sioux, Standing Rock Sioux, Northern Arapaho, and others to repatriate their children's bodies from the Carlisle Indian Industrial School Cemetery. He argues that:

> repatriation laws and actual repatriations have brought closure to episodes of Native American history by allowing Indians control over Ancestral Remains and their objects of history. Closure to trauma is important to mental health on both individual and group levels, and the closure of repatriation has undoubtedly improved the collective mental health of Native Americans in American society."[221]

Speaking to Canadian media about what Indigenous Peoples in Canada might learn from Rosebud Sioux Nation, who were finally able to repatriate nine of their children from Carlisle Cemetery, Sydney Horse explained that the process began when her youth group—the Tokala Inajinyo Youth Mentoring Project—visited the Carlisle Cemetery back in 2015. Working with Rosebud Sioux councillors and meeting with US Army officials and government representatives, the repatriation negotiations took six years. When asked why she was doing this, Sydney Horse said that, "For me, it's bringing them home to their mom, to their grandma, to their family.... It's just coming home ... [and, in the process,] we're learning and we're healing."[222]

While concepts of healing are discussed in more detail in the next chapter, it is important to note here that Survivors and Indigenous political leadership in Canada and across the globe envision healing and cultural revitalization as a form of anti-colonial political resistance that

is linked to exercising Indigenous sovereignty and rights of self-determination.[223] Nash and Colwell highlight several examples to demonstrate how for Tribal Nations, "repatriation has become a form of ritual and expression of sovereignty."[224] They note that, although, "As a piece of legislation, *NAGPRA* never intended to address the use, much less creation, of new Indigenous ceremonies as a matter of practice ... these are important, if unintended, cultural consequences of the newly created processes and relationships between tribes, institutions, and the individuals therein."[225] While American legislators may not have intended such consequences, from a Tribal perspective, applying their own laws, principles, cultural protocols, and ceremonial practices to repatriation processes is essential to healing, accountability, justice, and reconciliation.

NAGPRA Plus Legislation: Braiding Together Indigenous, Canadian, and International Laws

> The right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws, and cultures was taken away by [Canadian] law. Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression.... As a result, law has been, and continues to be, a significant obstacle to reconciliation.... [T]he courts are still reluctant to recognize [Indigenous Peoples'] own traditional means of dispute resolution and law.
>
> — TRC's Final Report[226]

Since the TRC made this finding in 2015, the legal landscape has shifted. As discussed in chapter 7 of this Final Report, the 2024 Supreme Court of Canada decision in the *Bill C-92 Reference* case applied the *UN Declaration* to Canadian law, as incorporated into positive law by the *UN Declaration on the Rights of Indigenous Peoples Act*,[227] to rule that the *Act Respecting First Nations, Inuit and Métis Children, Youth and Families* was constitutional.[228] The court's decision recognized Indigenous Peoples' right to exercise jurisdiction and apply their own laws in the area of child and family services. The court pointed out that:

> developed in cooperation with Indigenous [P]eoples, the Act represents a significant step forward on the path to reconciliation. It forms part of the implementation of the *UNDRIP* [*UN Declaration*] by Parliament.... The Act creates space for Indigenous groups, communities and peoples to exercise their jurisdiction to care for their children. The recognition

> of this jurisdiction invites Indigenous communities to work with the Crown to weave together Indigenous, national and international laws in order to protect the well-being of Indigenous children, youth and families.[229]

As noted in chapter 7, the Supreme Court of Canada's decision marks a promising shift; it will impact how Canadian courts interpret the *UN Declaration* and apply it to federal, provincial, and territorial laws. It provides critical guidance for co-developing robust national repatriation legislation that braids together Indigenous, Canadian, and international laws. This new repatriation legislation should build on insights gained from *NAGPRA* and the failed Bill C-391 and must apply to federal, provincial, territorial, and municipal governments, churches, and private entities.

INDIGENOUS-LED REPATRIATION: EXERCISING SOVEREIGNTY AND APPLYING INDIGENOUS LAWS

> Our Ancestors are our relatives, and we have a deep connection to them. We are who we are today because of them. We believe that as long as the remains of our Ancestors are stored in museums and other unnatural locations far from home, that the souls of these people are wandering and unhappy. Once they are returned to their homeland of Haida Gwaii and are laid to rest with honour, the souls can rest, and our communities may heal a bit more.
>
> — Skidegate Repatriation and Cultural Committee[230]

Despite the interventions of settler colonial laws and policies, Indigenous Nations have always asserted and exercised their sovereign rights and responsibilities, applying Indigenous laws to all aspects of their lives. Caring for, respecting, and maintaining relationships with the ancestors and deceased relations is central to the spiritual health of Indigenous Peoples.[231] Ancestors have a central place within living kinship systems, which is not impacted by the length of time that people have been deceased. As Karen Aird (Saulteau First Nation), the heritage manager for the First Peoples Cultural Council in British Columbia, explains, "For Indigenous people, we look at people who have passed not in terms of age—historic or prehistoric. We see them as Ancestors, whether it's 100 years or 1,000."[232]

A person's death, burial, and burial site have deep significance for Indigenous Nations. This significance is reflected in Indigenous laws and enacted in ceremonies, protocols, and

obligations. Anishinaabe burial practices, for example, encompass care for a loved one's body, Spirit, and onward journey. As described by Chippewas of Nawash Unceded First Nation (Neyaashiinigmiing) Elder Basil Johnston:

> Upon the death of a loved one, the family would comb the dead person's hair, paint their face, dress them in ceremonial clothing and wrap them in blankets. Families would bury the deceased with personal possessions, such as pipes, tobaccos, pouches, bowls, and kettles, and medicine bundles to assist the deceased on their journey to the Land of Souls. Relatives place a totem at the head of the grave of the deceased and keep a fire burning for the deceased for four nights. Gravesites would often be visited by relatives who keep them clean and tidy and who may leave food and objects for their departed loved ones.[233]

Both the bodies of loved ones and ancestors as well as the items placed lovingly in the burial are to be respected, cared for, and protected. At times, Indigenous Nations' laws and protocols relating to safeguarding the burials of loved ones and ancestors involved transporting and relocating their burials:

- Algonquian-speaking Peoples (encompassing a broad array of Nations from the Blackfoot in the west to the Mi'kmaq in the east) historically endeavoured to bring home members of their communities who died outside their territories.[234]
- Traditions of keeping deceased relations close are reflected in the Kanien'kéha name for men—Rotiskaré:wake—meaning, "the ones that carry the bones on their backs," which refers to the ancient Kanien'kehá:ka practice of bundling and bringing along ancestors when a village site moved.[235]
- Haudenosaunee societies, such as the Huron-Wendat, exhumed and reburied deceased relations in collective ossuaries in Feast of the Dead ceremonies that took place around major events such as the relocation of villages, the death of a leader, or the reformulation of inter-village alliances.[236]

In addition, many Indigenous Nations have protocols relating to reburying Indigenous human remains that have been accidentally disturbed.[237] However, the laws and protocols of virtually all Indigenous societies indicate that the original burial sites of ancestors and

deceased relations should be left undisturbed. Stephanie Scott (Anishinaabe, Roseau River First Nation) notes that:

> Ancestral remains were never intended to be exhumed, and therefore, no traditional ceremony exists to return them to the ground. Elders use their knowledge of traditional ceremonies, reworking them to apply to reburial.... In some communities, the lack of a proper traditional ceremony has hindered them from engaging in repatriation efforts to recover Ancestral remains. Additionally, there is a death taboo that some communities must overcome in order to deal with these remains.... [But] in many cases, as soon as First Nations groups are informed of the whereabouts of their [ancestors'] remains, they feel obliged to act.[238]

In situations where decisions are made to relocate burials or where burials must be relocated to protect them from natural risks or incompatible land uses, exhuming and repatriating loved ones and ancestors must be done in accordance with Indigenous laws and Indigenous-led processes.

Hul'qumi'num Laws Relating to Repatriation

The Hul'qumi'num, like all Indigenous Nations, have robust laws, cultural protocols, and ceremonial practices relating to the care for ancestors. Although the primary law is that burials should never be disturbed,[239] the Hul'qumi'num have developed laws and protocols relating to exhumation and reburial. Tending to, and caring for, the burials of loved ones is a family responsibility,[240] and the family will call in those with specialized knowledge to care for the dead. Specialists who work with the dead, "have the inherited right to do so [through familial lines] and thus, have the ritual knowledge to protect themselves [and others]. Those people commonly make ceremonial use of the pigment tumulh (red ochre) because it is known to guard against supernatural powers."[241]

In addition to family members, other community members also have particular responsibilities to care for human remains and burials. A person who finds bones or human remains thus has a personal responsibility to ensure that they are treated with respect and cared for in accordance with Hul'qumi'num laws.[242] If an exhumation and reburial is to occur, Hul'qumi'num law first specifies that, where possible, the remains should be reburied ceremonially in the same location.[243] Arvid Charlie (Cowichan Tribes) explains, "When they are disturbed, you need to 'a'lhut [respect

them]. You need to look after whatever's been dug up and preferably put it back to the same spot or vicinity. Sometimes it gets impossible to put them back, but every effort has to be made to get them back into the same area."[244] If the remains must be moved and reburied in a different location, this, "is permitted only under a restricted set of circumstances, such as … [where the] protection of burial sites [is] threatened by natural erosion, flooding, or natural occurrence."[245] Arvid Charlie indicated, "We have at least two places where the … riverbank is eroding. And the remains [have] been exposed. We've been taking those remains out of the ground, pick up what's exposed, dig back a little ways, take the remains out of the ground and then rebury them … at a set aside place for doing that."[246] Those with specialized knowledge must be present if an exhumation and reburial must occur, "The disturbance or removal of any ancient human remains without the appropriate guidance of … ritual specialists is considered to be against Hul'qumi'num customary law, which recognizes Hul'qumi'num peoples' primary authority to care for the dead as an inherited family right."[247]

Exhumations and reburials under Hul'qumi'num laws must take place within a certain window of time. August Sylvester (Penelakut Tribe) explains:

> We don't … move our dead … people at night. We only move them in the daytime. The reason is they travel from three o'clock until six in the morning. We're not supposed to move our dead people … until six in the morning. That would be like taking their body away and moving it somewhere. Then they have to come back and then they have to look for the body—where did their body go? Things like that we don't do. You've got to respect the people. That's why they say you make sure you bury your … dead before twelve o'clock because they are still home…. That's why we've got laws for burial and looking after our people.[248]

Items buried with the ancestors belong to them and must not be disturbed or taken. According to Sylvia Harris (Chemainus First Nation), "With regard to teaching or caring for … all of these belongings, they belong to the individuals…. What we were told is that person still knows it is theirs. Like if a person finds … a carving … what if the spirit is like … that's mine."[249] The taking of such items may anger the Spirits of the deceased person, which are believed to remain part of this world.[250] Mabel Mitchell (Chemainus First Nation) recounted, "We were taught not to take anything from a grave. Even now, you don't do that. You respect the deceased because if you take something from there, something bad will happen to you."[251]

> Sally Norris (Lyackson First Nation) emphasized the importance of these items for those who are buried there, "It's not a treasure. It's people's belongings, belonging to that person … they're digging and they … know it's a grave. But they keep on, you know, like they found a treasure, and that just really scares me, and you know, [breaks] my heart…. How, why did they do that?"[252]
>
> The Hul'qumi'num recognize a distinction between items or artifacts found outside burials and those found within the graves of their ancestors. Those items placed in graves were deliberately placed there for the person who died and are not meant for the living.[253] These burials and items are Sacred. If disturbed or removed, it may cause harm or danger to the living.[254] Due to the threat to items deliberately placed in burials, the Hul'qumi'num people face difficult choices about whether to leave those items where they lie or to move them. Arvid Charlie has said, "I know that some say leave them where they are. I do need to say this—really, today, much of that is impossible to leave there. If we don't … look after it, somebody else will go pick it up and we won't know where it's gone—[whether to] somebody's private collection or sold on the market."[255] Hul'qumi'num laws relating to reburial and the care of human remains and items in burials provide just one example of the robust Indigenous laws and protocols that exist in Indigenous Nations across Canada. Each Indigenous Nation has its own laws and protocols to guide decision-making relating to the repatriation and reburials of the missing and disappeared children.

Adapting Indigenous Laws to Support Repatriation

Repatriation has almost always occurred only after non-Indigenous people have unlawfully exhumed ancestors from their original burial sites or resting places and taken them from their home territories, often to be stored or displayed at institutions around the world.[256] While the Indigenous-led repatriation processes being developed in relation to the return of ancestors from museums are ongoing, the repatriation of the missing and disappeared children is occurring in a very different context. These are not the ancient remains of ancestors stored in carefully catalogued museum collections, but the human remains of children buried at government and church-run institutions of forced child removal that still existed up to the 1990s. While few repatriations have yet to occur, those that have provide important insights into why Indigenous leadership of repatriation is essential. This will ensure that Indigenous laws, cultural protocols, and ceremonial practices are respected, that Survivors, families, and communities receive the support that they need, and that the outcomes meet the needs of Indigenous communities and families.

Repatriation of the Children Buried at Dunbow Indian Residential School

The cemetery at the Dunbow Indian Residential School, which operated on Treaty 7 Territory from 1884 to 1922, was located along the banks of the Highwood River. At least 73 children who died after being taken to Dunbow Indian Residential School were buried at this site. It lay neglected for many years after the institution was closed. In 1996, the river overflowed, exposing and disturbing children's coffins and remains. Some were swept away by flood waters.[257] As recounted by Tsuut'ina Elder Jeannette Starlight at the National Gathering in Edmonton, Alberta, a young community member found some remains on the riverbank and alerted the leadership. Elders and others immediately responded with offerings of food, tobacco, and other protocols to care for the bodies and Spirits of the children who had been disturbed.[258] They made plans for a longer-term solution.

In 2001, the Tsuut'ina Nation Culture Museum, with support from the Anglican Healing Fund, the Government of Alberta, and the Archaeological Survey of Alberta, brought together Elders from First Nations in Treaties 6, 7, and 8 and the Métis of Alberta to lead the respectful relocation of the disturbed and endangered burials. The work involved six Pipe Holders and included three separate ceremonies to move 34 of the children away from the riverbank to a nearby site. The new cemetery is now marked with a rock monument and a cairn and protected by a fence,[259] and it is a designated Provincial Historic Resource. As Elder Jeanette Starlight highlighted, the work towards a respectful approach to this relocation now informs all future work, "By doing this project, by working with all the Pipe Holders, I wrote a protocol regarding human remains. And today the archaeologists on the reserve follow this protocol."[260]

Responding to the Desecration of Burials of Children at the Muscowequan Indian Residential School

The Muscowequan Indian Residential School operated on Treaty 4 Territory in what is now Saskatchewan from 1889 to 1997. Treaty, non-Treaty, and Métis children from many communities were taken to the institution. An unknown number of children died at Muscowequan and were buried in several sites that, over the years, were neglected, repurposed, or "forgotten."[261] In 1992, construction workers unexpectedly disinterred the remains of children buried in an unmarked cemetery on the former Muscowequan Indian Residential School grounds. Instead of stopping

work, contractors put the children's remains into garbage bags.[262] When community leaders were notified, they ordered work to be stopped immediately. When they learned about how the contractors had treated the remains, the community, "experienced shock, grief, anger, disbelief and hurt."[263] After further investigation, 19 unmarked burials were found.

Muskowekwan Elders consulted with Elders and Knowledge Keepers from the communities whose children had been taken to the Muscowequan Indian Residential School over the institution's 111-year history, including Daystar First Nation, Kawacatoose First Nation, George Gordon First Nation, Fishing Lake First Nation, Kinistin Saulteaux Nation, and Yellow Quill First Nation. Following these consultations, and with protocols and ceremonies that followed the laws and traditions of all seven First Nations, the children's remains were reburied in a cemetery on Muskowekwan First Nation Territory.[264] Muskowekwan is continuing to search for and find the unmarked burials of more children on the grounds of this institution.[265]

Repatriation without Excavation: Bringing Home the Children's Spirits

Some Indigenous families, communities, and Nations are choosing, at least for now, not to excavate the potential burial sites or exhume the children's bodies who have been recovered. Instead, they are conducting ceremonies in accordance with their Indigenous laws to bring the children's Spirits home. For example, the children who may be in the unmarked burials located on the territory of Onion Lake Cree Nation are being cared for through Cree ceremonies to help their Spirits journey onwards. And, as part of the Stó:lō Nation's Xyólhmet ye Syéwiqwélh (Taking Care of Our Children) work, commemoration ceremonies were conducted in September and October 2023 to return a sense of dignity and respect for the Spirits of the children in unmarked burials on the grounds of the former St. Mary's Indian Residential School in Stó:lō Territory.[266]

The Shingwauk Indian Residential School and Wawanosh Home for Girls in Sault Ste. Marie are two separate sites. Between both institutions, which operated for over 97 years, children from 84 different communities were taken. At the National Gathering in Winnipeg, Manitoba, a participant, active in the search on the grounds of the Shingwauk Indian Residential School, discussed alternatives to the exhumation and physical repatriation of the children:

> We have decided to do a memorialization. This is a spiritual connection, Indigenous and Christian. So far we have decided not to exhume, just to memorialize. If you exhume, there is a whole set of challenges, it is

> not an easy challenge and it is not guaranteed.... Really investigate that route [of exhumation] because it can be difficult, not only in a nuts-and-bolts kind of way but also in a spiritual way, in a triggering way for the Survivors. I can't imagine going to 84 communities asking for their DNA to find out if the remains that we found belong to one of those family members. If we get that DNA all collected and we get the hopes up of those families [what if] the remains don't match up? ... there are other ways you can memorialize and bring your children home ... [for example] bring a piece of the earth, dig up a piece of earth, have a ceremony and bring that piece of earth back to your community.[267]

The Osborne family (Pimicikamak Cree Nation) conducted ceremonies to bring home the Spirits of Nora, Isobel, and Betsey, three sisters who were disappeared after being taken to Indian Residential Schools in the 1930s. It took decades for the family to trace the girls across several institutions, sanatoria, and hospitals and locate their burials. The family was eventually able to locate the cemeteries, which were far from their home community, and the locations of two of the sisters' graves. In 2022, the Osborne family brought earth from the burial sites back to Pimicikamak Cree Nation and spiritually reburied the three girls, in small caskets, next to their mother's grave. Elder William Osborne, a nephew who helped locate his three Aunties, said the ceremony was, "a beautiful thing.... We didn't use the shovel to cover the graves. We used our hands." Betsy Oniske, a niece who also helped search for and recover her three Aunties, considered it, "a proper burial for [the sisters], to bring them back to us."[268]

Regional or National Resting Places

During the Carlisle Indian Industrial School repatriation process discussed earlier in this chapter, it was found that some children who had been exhumed in the hope of repatriating them could not be immediately identified. It was necessary to rebury them while work continues to discover their identities. Similarly, in Canada, it is likely that at least some, if not many, of the missing and disappeared children who have been buried far from home will not be identified soon, if ever. For some children, it may not even be possible to determine with any certainty which community they came from, given that most institutions apprehended children from many different Nations. With the guidance of Elders and Knowledge Keepers, Survivors, Indigenous families, and communities leading search and recovery efforts at the sites where unidentified children are found must decide how to create respectful resting places for them and how they should be memorialized and commemorated. When appropriate, many communities may decide to rebury these children where they were found.

Provinces, territories, and municipalities have policies regarding the burial of unidentified persons, and, in Saskatchewan, for example, the province, under the *Archaeological Burial Management Policy* established a 10-acre "Central Burial Site" on the South Saskatchewan River in 1998 as a "last alternative" for the reburial of Indigenous human remains unearthed from archaeological or construction sites that have not been identified or claimed by a specific Nation.[269] The Saskatchewan Indigenous Cultural Centre's Elders' Council, with representation from all eight linguistic and cultural groups, coordinates ceremonies and prayers for these unknown ancestors when they are reinterred at this site.[270] In 2011, the media described the site as a, "secret Aboriginal burial ground"; however, as a spokesperson for Saskatchewan's Heritage Conservation Branch explained, "There's a certain level of confidentiality that has to be maintained here.... This is considered a very [S]acred burial ground to First Nations, unique in that it accommodates all different tribal affiliations."[271]

There are also some international models to draw on. For example, in Australia, as part of repatriating ancestors whose remains were stolen, bought, or traded, the government has committed to establishing a National Resting Place within a new national Aboriginal and Torres Strait Islander cultural precinct in Australia's capital Canberra-Ngurra Precinct. The National Resting Place will house and care for ancestors returned from overseas by the Australian government whose community of origin cannot be ascertained.[272]

South Australia: Wangayarta Cemetery

Located in South Australia, Wangayarta is a purpose-built cemetery designed to hold the repatriated remains of the Kaurna Nation as well as forty-six hundred Aboriginal and Torres Strait Islander people[273] who were kept at the South Australian Museum.[274] The Kaurna Smithfield Memorial Park Project was developed after a series of conversations between respected Kaurna Elder Uncle Jeffrey Newchurch, chair of the Kaurna Yerta Aboriginal Corporation and Robert Pitt, an official with Adelaide Cemetery Authority.[275] Working with museum staff, an agreement was reached to set aside two distinct one-hectare plots for a Kaurna repatriation burial site and a space for contemporary descendants within the larger cemetery. The intention is that Wangayarta will become a multi-generational space to accommodate contemporary burials so that Kaurna people can rest next to their ancestors.[276]

The Wangayarta Implementation Reference Group was created to ensure that the repatriation process is guided and informed by the Kaurna community. The

museum has established a "Keeping Place," which is a welcoming, respectful space where Kaurna community members can participate in the process of preparing the ancestors for the journey home.[277] Kaurna Elders and Knowledge Keepers have adapted their customary laws, cultural protocols, and burial practices to facilitate the inclusion of those who are Kaurna but not from the immediate area in which they will be reburied.[278] Kaurna Elders and Knowledge Keepers held a Wangayarta Kaurna Soil Ceremony so that, "spreading soil from all over Kaurna Country is a way of bringing the land that the Ancestors walked across back to them."[279] John Carty, the museum's head of humanities who is involved in the repatriation process, noted the complexity of the Sacred work that fell on the shoulders of the Kaurna Elders and Knowledge Keepers. He said that, "People never reburied hundreds of Ancestors, let alone built a burial ground to make that happen. It's not a burden that should ever have been placed on this generation, or any generation."[280]

The first Kaurna ancestors were laid to rest on December 7, 2021. A second group of ancestors was buried and returned to the country in June 2022. A prayer was offered during the ceremony that spoke to the intention and effect of Wangayarta:

> On this historic day, we pay our respects to our Old People, Our Ancestors. Those that walked this land before us. Those who were awoken and disturbed from their resting place. We return our Old People to their Yarta today. To their Country. A Final resting place, a peaceful place. A place to reflect, to heal.[281]

Kaurna Elder Madge Wanganeen said that, "sometimes … people out there just think of them as bones and now they are being recognised as human beings."[282]

A National Cemetery in Canada?

As noted in a subsequent chapter, the Beechwood Cemetery has been designated as National Historical Site and Canada's National Cemetery. A designated area within the cemetery, including a Children's Sacred Forest and Monument, has been dedicated to commemorate the children who were never returned home from Indian Residential Schools.[283] While it is unclear whether the National Cemetery has the capacity to rebury the unidentified children, this provides a starting point for further dialogue on the feasibility of a National Cemetery for the missing and disappeared children who cannot be repatriated to their home communities.

Indigenous laws generally emphasize the importance of preventing the disturbance of grave sites. Many Nations did not make provision for the relocation of remains in their laws and

protocols or envisioned such relocations only in quite limited circumstances. The circumstances of the current search and recovery efforts are unprecedented and unique. In many cases, children died and were buried far from their families, homes, and communities and were denied burials that accorded with Indigenous laws, cultural protocols, and ceremonies. Many Indigenous Nations do not have established processes that can be easily applied to these circumstances. However, as discussed in chapter 6 of this Final Report, Indigenous laws, cultural protocols, and ceremonies for taking care of deceased relations have evolved over innumerable generations. Importantly, Indigenous laws are living legal systems that can adapt to changing circumstances, including developing repatriation processes to guide Survivors, Indigenous families, and communities as they make decisions about if, when, and how to repatriate the missing and disappeared children.

CONCLUSION

The heartbreaking struggles that Charlie Hunter's family experienced and that Percy Onabigon's family are still enduring to bring these children back home are only two of many similar accounts. The circumstances surrounding the deaths, burials, and decades-long efforts to repatriate countless other children demands strong human rights-based legislation and reparations measures. Across the country, Indigenous children from all Nations are buried at or near the former sites of Indian Residential Schools, hospitals, sanitoria, reformatories, and other State-run institutions. Canada, like other settler colonial countries, including Australia, Aotearoa New Zealand, and the United States, has international legal obligations to make reparations for violating Indigenous Peoples' inherent right to repatriate the missing and disappeared children who were victims of genocide and mass human rights violations at the hands of the State and its agents.

While it is important to build on the significant body of work relating to repatriation from museums, universities, and other holding institutions, the need for national repatriation legislation relating to the missing and disappeared children in the context of search and recovery work is unprecedented. This chapter has focused on *NAGPRA* through a human rights-based lens, highlighting its strengths and weaknesses and the concepts, ethical principles, and emerging practices that have shaped it over time. While recent amendments have aligned it more closely with the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*), its limitations make it ill-suited to guide the repatriation process that is underway at Indian Boarding School sites across the United States. Canada is even less well situated, with no national legislation and a patchwork of provincial and territorial laws and policies that were never designed for this purpose. The federal government's current funding program, which

is subject to arbitrary changes that disrupt search and recovery efforts, do further harm, and damage trust, is a partial and inadequate response.

The Supreme Court of Canada has issued important guidance for braiding together Indigenous, Canadian, and international laws that can inform the development of a *NAGPRA*-style law in Canada. This legislation would establish the necessary legal framework for Indigenous Peoples to exercise their sovereignty, asserting their human and cultural rights in Indigenous-led repatriation processes governed by Indigenous laws, cultural protocols, and ceremonial practices. Reframed through a human rights-based lens, Indigenous-led repatriation processes are integral to healing, accountability, justice, and reconciliation.

Key Elements of a Repatriation Framework

Based on the findings in this chapter, the following key elements should guide the development of a repatriation framework for the return of the remains of the missing and disappeared children. Repatriation must be:

- **Indigenous-led:** Indigenous leadership of this work is an essential reflection of sovereignty and self-determination. It is also essential to ensuring that repatriation processes and outcomes meet the needs of Indigenous families and communities. As part of supporting an Indigenous-led process, Indigenous communities must be provided with capacity-building information, training, and education to navigate the complex scientific and practical issues associated with repatriation.
- **Informed by a human rights approach:** respecting international law and principles and aligned with the *UN Declaration*. This human rights approach requires recognition of Indigenous Peoples' rights to self-determination, culture, property, spirituality, religion, language, and traditional knowledge.
- **Governed by Indigenous laws and cultural protocols:** Indigenous Peoples have always been guided by laws and protocols regarding the care and protection of the dead. These laws and protocols must be respected in all aspects of repatriation—from decisions about exhumation and identification to those regarding relocation, memorialization, and the ongoing care of burial sites.

- **Sustained by adequate and ongoing funding:** repatriation is costly, imposing expenses that are a barrier to repatriation as well as an unjust imposition on Indigenous families and communities that are already bearing heavy burdens from the loss of their children. Funding structures must recognize the realities of repatriation, taking into account the needs of many families and communities to return their children home, the lengthy time periods required for repatriation processes, and the types of expenses associated with repatriation.

- **Coordinated among jurisdictions:** through national repatriation legislation and policy as well as a strategy and action plan for implementation. Depending on the location of a grave or burial site, repatriation may fall under the jurisdiction of a federal, provincial or territorial government. Provincial and territorial governments will remain responsible for many legal aspects, such as laws related to cemeteries and heritage designations. As well, where decisions are made to relocate the remains of a child, families and communities may need to navigate more than one jurisdiction. It is therefore important that a repatriation framework ensures coordination among jurisdictions. Building on *NAGPRA* and Bill C-391 to develop new legislation and policy that is compliant with the *UN Declaration* and a national repatriation strategy and action plan for implementation would be a critical first step in establishing a more holistic, seamless repatriation process.

- **Provide effective supports for Indigenous families and communities navigating the repatriation process:** Quebec's Bill 79, with its provision for financial, legal, practical, technical, emotional, and spiritual support for families, much of it flowing through an Indigenous-led organization, is a starting point for developing a meaningful framework of supports.[284]

> The kids have to return to us. The remains have to come back to us ... then we can effect the greater part of our reconciliation. Not reconciliation with the Canadian people or the federal government, but reconciliation with the Spirits of the children who were stolen from the embrace of Mother Earth.
>
> **— Elder and Survivor, Doug George-Kanentiio[285]**

Repatriation of the missing and disappeared children is essential to meeting fundamental human needs: the need to know the fate and resting place of those we love; to uphold responsibilities to ensure respect for their burials in accordance with family and community beliefs; and to be able to maintain a sense of closeness with loved ones and ancestors by visiting their burial places. For Indigenous Peoples, these are not merely needs; they are also laws that must be upheld to maintain balanced and respectful relations with the ancestors and loved ones across the generations.

The Indian Residential School System has interrupted the ability of Survivors, Indigenous families, and communities to maintain their relationships with the missing and disappeared children and to treat them with the honour, respect, and dignity that they deserve. In breach of international laws, families and communities have been left to wonder about the fate of their child and left in a spiral of unanswered questions:

- What happened to my child?
- Did they suffer?
- Are they alive?
- If not, how did they die?
- Where are they buried?
- How can I bring them home?

There is an urgent need to find the children, ensure that their deaths have been marked with the proper ceremonies and bring them home—whether physically or spiritually.

Indigenous families and communities have a right to repatriate their children under the *UN Declaration*. Repatriation is also an element of the right to truth under international human rights law. Yet, up to this point in time, Canada's legal and policy frameworks have neither recognized nor facilitated the realization of this right. Indigenous families and communities continue to struggle with a myriad of obstacles in their determination to recover their children. The development of a coherent, sustainable, and Indigenous-led legal framework for repatriation is an essential element of reparations to bring justice to Survivors, Indigenous families, and communities and most of all to the thousands of missing and disappeared children who have yet to be returned home.

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PART FOUR

Supporting Indigenous-Led Healing and Countering Settler Amnesty

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CHAPTER 13

Resilience as Resistance: Indigenous-Led Healing and State Reparations

> You carry intergenerational trauma but [you also] carry the strengths of your ancestors. How do you awaken that?
>
> — Elder Eleanor Skead[1]

The forced removal of Indigenous children from their families and communities, the suppression of cultural practices and languages, and the egregious physical, mental, and sexual abuse in Indian Residential Schools caused acute physical, mental, emotional, and spiritual harms to the missing and disappeared children and Survivors. This trauma has been transmitted through generations and across communities. Families and communities have also been traumatized by the loss of loved ones who were never returned home and by the intergenerational impact of these losses. For Survivors, the search for, and recovery of, the missing and disappeared children and unmarked burials involves revisiting painful experiences, a seemingly endless search for answers, harmful encounters with media, and confrontations by denialists who question their veracity. While search and recovery efforts provide important and necessary opportunities to access and share truth, they can also be retraumatizing for Survivors, Indigenous families, and communities.

Participants at each National Gathering stressed the magnitude of the trauma, grief, and loss associated with the Indian Residential Schools System. They also emphasized the strength, resistance, and resilience of Indigenous Peoples. Many participants spoke about the strength drawn from their ancestors in surviving the genocidal actions of government. Their resistance is evident in the ongoing struggle for the right to truth, accountability, and justice,

and the revitalization of Indigenous governance and legal systems, cultures, spirituality, languages, histories, and identities. Indigenous resilience is strong as Elders and Knowledge Keepers guide Survivors, Indigenous families, and community members through the search and recovery process, following Indigenous laws, cultural protocols, and ceremonies to heal as they honour, grieve, and remember the children. While there are numerous studies on the relationship between trauma, Indigenous resilience as a form of resistance, and healing, this chapter focuses on these three concepts through the lens of reparations. Earlier chapters examine the international law, principles, and practices that guide reparations and identify the limitations of Canada's ad hoc, piecemeal approach to reparations relating to the Indian Residential School System. Indigenous resilience as resistance can be traced in the history of Survivors' and Indigenous leadership's determination to hold Canada to account for these harms on political and legal levels.[2] This same determination now manifests in the efforts to locate, identify, recover, and commemorate the missing and disappeared children and unmarked burials.

This chapter identifies Indigenous-led resilience-based approaches to healing as an integral element of an Indigenous-led Reparations Framework that is governed by Indigenous laws, cultural protocols, and ceremonies. First, resilience-based healing is set in the broader international and domestic context of reparations where Indigenous Peoples are reframing concepts of victimhood and healing on their own terms. The personal, collective, intergenerational, and interconnected elements of trauma and their adverse impacts are then examined. Despite widespread adoption of a trauma-informed approach, non-Indigenous health-care systems and interventions can cause further harm. Historical trauma, disenfranchised grief, and ambiguous loss—the products of genocide and settler colonialism—shape an endless search for answers, as Survivors, Indigenous families, and communities cope with the grief and loss that haunts those left searching for the missing and disappeared. This was evident at National Gatherings and community visits over the past two years where the impacts of these terrible losses are deeply felt. Equally important, the resilience, agency, and expertise of Indigenous people who are proactively leading search and recovery processes were also evident.

Drawing on the long history of Indigenous resilience as a form of resistance to genocide and settler colonialism, this chapter frames Indigenous-led healing through a resilience-based lens to examine how Indigenous laws, principles, cultural protocols and ceremonies for burying, mourning, and commemorating deceased loved ones are essential to the healing process. Indigenous approaches to grieving foster resilience and generate hope that individuals and communities can heal from grief so that they can thrive. To illustrate this point, several representative examples of emerging practices are highlighted throughout the chapter. Indigenous-led resilience-based healing is essential but does not absolve Canada of its

responsibility to provide health-related reparations that are consistent with international human rights laws and principles and the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*).[3]

INDIGENOUS-LED HEALING IN THE CONTEXT OF REPARATIONS

Tanana Athabascan Indigenous studies scholar Dian Million notes that Indigenous Peoples in Canada are engaged in a reparations process informed by trauma theory and the language of victimhood used in international human rights law and principles that inform transitional justice mechanisms such as truth and reconciliation commissions.[4] Of the five types of reparations identified in the 2005 *UN 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*, two are especially relevant to this chapter.[5] States must provide compensation to victims of mass human rights violations, including their right to health. Redress for physical, emotional, and psychological harms must include the, "costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Rehabilitation should include medical and psychological care as well as legal and social services."[6] In 2021, Fabián Salvioli, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, found that, "rehabilitation of the victims of colonialism is still pending and a matter of urgency.... [They] have suffered for decades from the continued presence of physical injuries and physical and mental health problems associated with that trauma.... Victims of the ... [R]esidential [S]chools in Canada have reported many of these symptoms."[7]

Million points out that Survivors and Indigenous political leadership are reframing the international human rights language of "victimhood" into a counter-narrative of healing as political resistance and a pathway to self-determination and sovereignty:[8]

> The move to use trauma theory by First Nations women and peoples illustrated an active mobilization for justice attached to ardent national discourses on domestic violence and finally a burgeoning worldwide movement for the reparation of historical trauma ... a mobilization that empowers [R]esidential [S]chool cases into an international forum.[9]

This reframing can be traced back to some of the earliest reports and studies produced by Indigenous organizations and scholars in the 1990s. For example, the Assembly of First Nations' 1994 report, *Breaking the Silence: An Interpretive Study of Residential School Impact*

as Illustrated by the Stories of First Nations Individuals, made it clear that Survivors themselves would frame their own narrative, emphasizing that, "truth is built and rebuilt over time through the stories we tell, individually and together in community about our experience of a particular event such as [R]esidential [S]chools."[10] Individuals and communities must be free to choose Indigenous methods of healing and/or Western therapeutics.[11] In Million's view, the report, "suggests a model for healing in Aboriginal communities that is holistic ... and goes beyond the individual. Healing cannot omit the larger community of Canada—which is called on to take responsibility for its own actions."[12]

Similarly, the Truth and Reconciliation Commission of Canada (TRC) concluded that, "self-determination is a foundational right, without which Aboriginal [P]eoples' rights cannot be fully realized.... The Commission believes that community well-being and healing from the trauma of [R]esidential [S]chools will only be achieved through Aboriginal self-government and self-determination."[13] The National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry) concluded that:

> The encounters that Indigenous women, girls, and 2SLGBTQQIA people have in the areas of culture, health, safety, and justice—show how imposed solutions created by governments or agencies that don't prioritize the knowledge of Indigenous Peoples don't work. Rights to culture, health, security, and justice are based on another foundational right: the right to self-determination.... [E]mbedded within these stories of the encounters that families and [S]urvivors see as significant, are also the strong voices and acts of resilience and strength—the encounters and relationships leading to healing.[14]

This is consistent with Canada's obligation to implement Articles 21, 23, and 24 of the *UN Declaration* to support Indigenous-led health and wellness initiatives to address trauma that is the direct result of State-imposed assimilative and genocidal laws, policies, and systems. As the TRC pointed out:

> The *UN Declaration* is but one of several international human rights documents that collectively establish a right to health, including a right to health care and a right to a culturally appropriate health-care system. There are no human rights without health—and no health without human rights. In other words, the right to health in international law is a holistic concept that incorporates much more than simple access to health care. It is intimately tied to other key social, economic, and political rights: the right to food, the right to adequate housing, the

> right to education, the right to work and rights at work, the right to life, the right to information, the right to physical integrity, the right to be free from discrimination, and the right to self-determination.[15]

A study by the UN Expert Mechanism on the Rights of Indigenous Peoples noted that the articles on health in the *UN Declaration* build and expand on existing international law through the lens of Indigenous self-determination. It found that:

> Indigenous peoples continue to experience intergenerational trauma owing to the removal of children from families and residential schooling. The health impacts of such practices are profound and include mental illness, physical and sexual abuse, self-harm and suicide, and drug or alcohol addiction....The high rate of removal of [I]ndigenous children from their families and communities worldwide and the far-reaching health effects of intergenerational trauma attributable to such removal and placement in residential schools and other facilities should be further investigated by States.[16]

Together, these various elements of international law on health as a human right and domestic reparations policy and discourse set the context for examining various concepts of trauma, disenfranchised grief, and ambiguous loss that underpin Indigenous resilience-based approaches to healing and counter pathologizing narratives of victimization.

Trauma Is Personal, Collective, Intergenerational, and Interconnected

What Is Trauma?

Trauma is an emotional response to a terrible event like an accident, crime, natural disaster, physical or emotional abuse, neglect, experiencing or witnessing violence, death of a loved one, war, and more. Immediately after the event, shock and denial are typical. Longer-term reactions include unpredictable emotions, flashbacks, strained relationships, and even physical symptoms like headaches or nausea.[17]

For Indigenous Peoples, trauma is personal, collective, and intergenerational. The trauma resulting from the Indian Residential School System manifests in multiple, overlapping,

ongoing, and interconnected systems of settler colonial violence and oppression.[18] Gilad Hirshberger, an experimental social and political psychologist, notes that:

> The term collective trauma refers to the psychological reactions to a traumatic event that affect an entire society; it does not merely reflect an historical fact, the recollection of a terrible event that happened to a group of people. It suggests that the tragedy is represented in the collective memory of the group, and like all forms of memory it comprises not only a reproduction of the events, but also an ongoing reconstruction of the trauma in an attempt to make sense of it. Collective memory of trauma is different from individual memory because collective memory persists beyond the lives of the direct survivors of the events, and is remembered by group members that may be far removed from the traumatic events in time and space.[19]

Because trauma is embedded in personal, collective, and intergenerational memory, the experiences of abuse and systemic violence in the Indian Residential School System are not only limited to the Survivors themselves but are also passed down through the generations that follow. In a study of the intergenerational effects of Indian Residential Schools, psychiatry and neuroscience scholars Amy Bombay (Anishinaabe), Karen Matheson, and Hymie Anisman found, "consistent evidence of the enduring links between familial IRS [Indian Residential School] attendance and a range of health and social outcomes among [their] descendants ... [and concluded that] there appear to be cumulative effects."[20]

Participants at the National Gatherings discussed their own experiences of intergenerational trauma. One participant at the Vancouver Gathering described how she had nightmares, "as if it was me in the Residential School."[21] When Survivors returned to their families and communities, they brought with them the learned behaviours and physical, emotional, psychological, and spiritual trauma from their detainments in these institutions. Trauma can interfere with one's ability to form and maintain healthy family relationships, manage negative emotions, or resolve conflict constructively,[22] "As people who struggle with trauma, when people are struggling with what they're feeling, most often they will lash out at the people that they love. And so that's going to be your spouse. It's going to be your children.... And so, what does it have to do with Indian Residential School? That goes back to that fear-based learning."[23] The intergenerational trauma related to the missing and disappeared children and unmarked burials is layered onto other forms of colonial trauma. Niibin Makwa (Derek J. Nepinak), Chief of the Minegoziibe Anishinabe (Pine Creek First Nation) points out that, "the system of isolation and disconnection led to great harms, including the death of

a significant number of children in our community [and] great trauma that transcended the time and place where it occurred. Today the legacy of the schools impacts our families through unresolved trauma which lives in the genetic memory of our people."[24] There may be a biological aspect to the transmission of trauma. Recently, scientists have been examining the possible role of epigenetics in the intergenerational transmission of trauma. Epigenetics is the study of cellular variations that are caused by external, environmental factors that "switch" genes "on" and "off." This can result in changes to the way in which genes are expressed, without making changes to the underlying DNA sequence. These effects have been observed in the children of traumatized parents.[25]

There is a growing interest in, and need for, Indigenous-led research on the role of biology and epigenetics relating to Indigenous Peoples' health and well-being. For example, in collaboration with the Thunderbird Partnership Foundation, Bombay and others are engaged in collaborative research projects. They have created a website designed as an ethical space to share information and education on genetic, epigenetic, and other biological research. They have also developed educational curriculum on the impacts of settler colonialism, intergenerational trauma and epigenetics, and Indigenous resilience.[26] At the Winnipeg National Gathering, family nurse practitioner, member of the National Indian Health Board, and elected Tribal Chief Beverly Kiohawiton Cook, of the Saint Regis Mohawk Tribal Council, explained the connections between trauma, biology, and epigenetics. She said that children's experiences in Indian Residential Schools inflicted many kinds of trauma that were transmitted intergenerationally through biology and learned behaviours. Other factors such as prejudice, violence in the community, or being put in foster care can also cause trauma. If a mother experiences trauma, pain, and stress during her pregnancy, it can affect the way in which the baby's brain develops. Kiohawiton Cook explained that traumatic experiences can have epigenetic effects, meaning that trauma can affect the way in which a person's genes work.[27] She made clear, however, that Indigenous spirituality, ceremonies, and relational connections can help people cope with, and move forward from, the traumas they have experienced.[28]

Survivors who are engaged in search and recovery efforts such as walking the grounds and providing oral history testimony about cemeteries and unmarked burials at former Indian Residential Schools and associated institutions can be retraumatized as they relive difficult memories from their childhood. Retraumatization can worsen existing symptoms of trauma, which include increased risks of health problems and illness. Both vicarious trauma and secondary trauma are indirect trauma. They occur when someone is a witness to another person's trauma.[29] At the Winnipeg National Gathering, Dr. Marcia Anderson, a Cree Anishinaabe physician, discussed how vicarious trauma can affect Healers, helpers, and

others involved in search and recovery processes. Vicarious trauma can emerge and re-emerge in different ways.[30] Dr. Sherri Chisan, president of the University nuhelot'įne thaiyots'į nistameyimâkanak Blue Quills, shared how seeing the NCTR's Memorial Cloth, which has the names of the children from the TRC's Register of Confirmed Deaths, at the Gathering brought her back to the terrible reality of what happened to the children who died while in the care of the State and churches at Indian Residential Schools. She said that, "even though I have been involved in this work for some time, I was still overcome, and I wept. My mind was screaming 'how could this ever have happened?' It became real in a new way ... for all of us engaged in this work, every day it will become real in a new way and we will have to find our way ... through that."[31] Survivors, Indigenous families, and communities and all members of the investigation teams, including health support workers, are vulnerable to indirect trauma and should be properly supported using both Indigenous and Western-based healing practices, as appropriate.

The Health Impacts of Trauma

Health problems may be both a product and source of trauma. There is a growing field of study examining the impact of adverse childhood experiences (ACEs), such as witnessing or experiencing violence, abuse, or neglect. ACEs can have lasting, serious, negative effects on health and wellness not only in childhood but also throughout the course of a person's life. People who experience ACEs are at higher risk for a wide range of chronic diseases and leading causes of death, such as cancer, diabetes, heart disease, and suicide.[32] Childhood adversities have also been associated with greater risk of adult chronic conditions, including cardiovascular disease, stroke, cancer, asthma, chronic obstructive pulmonary disease, kidney disease, diabetes, and being overweight or obese.[33] Given that Survivors were victims and witnesses to a wide range of traumatic events, their experiences at Indian Residential Schools place them at greater risk of adverse health outcomes. The trauma associated with the death, unresolved disappearance, or suffering of their loved ones at Indian Residential Schools will have long-term health effects for families and communities.

The adverse health impacts of the Indian Residential Schools that were transmitted through generations are part of the broader harms associated with settler colonialism. The TRC found that:

> It is not always possible to chart health impacts that are tied directly to the intergenerational impacts of the residential schools as opposed to other factors. However, it is indisputable that many of the recognized social determinants of health—income, education, employment, social

> status, working and living conditions, health practices, coping skills, and childhood development—were themselves impacted by attendance at residential school. As a result, there can be no doubt that residential schools have had a lasting impact on the health of former students, their families and their communities. And whatever the cause, negative social and health conditions pose a serious obstacle to healing the wounds left by the residential schools.[34]

Survivors who seek supports from colonial health-care systems are at risk of retraumatization. The TRC pointed out that, "the institutional environment typical of hospitals can trigger traumatic childhood memories. Indeed, just the fact of having to leave home communities to obtain services reproduces harmful patterns associated with [R]esidential [S]chools."[35] Colonial health-care systems and institutions are frequently ill-equipped to address Indigenous trauma. There is a lengthy history of racism and inadequate treatment that contributes to health inequities among Indigenous people.[36]

Non-Indigenous Health-Care Systems and Interventions Can Cause Further Harm

> The fact that funding gets poured into the Western health system led mainly by non-Indigenous people who don't have the same respect for our knowledge of Indigenous health systems is a barrier to having Indigenous-led, culture-led, Knowledge Keeper-led health systems.
>
> — Dr. Marcia Anderson, MD, vice-dean of Indigenous Health, Social Justice, and Anti-Racism, Rady Faculty of Health Sciences, University of Manitoba[37]

Speakers and participants at the Winnipeg National Gathering spoke of how traumas resulting from the Indian Residential School System continue to be ineffectively addressed by non-Indigenous health-care systems. Sometimes interacting with public health institutions and staff can retrigger or worsen existing trauma. To heal, Survivors, families, and communities require access to care that is trauma-informed, anti-racist, and culturally respectful and responsive. For example, Dr. James Makokis, a family physician from Saddle Lake Cree Nation, explained that, when Survivors are brought into non-Indigenous institutions like hospitals or long-term care homes, they can be retriggered due to traumatic experiences that they endured at Indian Residential Schools.[38] Despite the shift towards trauma-informed care, non-Indigenous health-care systems and interventions are often ineffective and can cause further harm.

What Is Trauma-Informed Care?

In 2015, Dr. Evan Adams (Tla'amin First Nation), the chief medical officer for the First Nations Health Authority in British Columbia, explained that:

> Trauma-informed practice (TIP) is a holistic approach … that begins from a place of understanding that First Nations people are over-represented among those who have experienced psychological trauma, and this is considered in all aspects of policy, planning and service delivery. Attempts are made to ensure clients feel safe, have a feeling of control over their own treatment and are included in their care and treatment choices. A trauma-informed practice approach not only benefits people who have lived through trauma, but is also an excellent approach for all clients—as we never know who has experienced trauma. Cultural safety, the work of addressing historical and ongoing power imbalances in clinical encounters through self-reflection, policy and practice change, aligns with a trauma-informed practice approach.… TIP doesn't treat trauma directly but addresses the need for healing from trauma and aims to heal the mind, body, spirit and emotions.… TIP can help individuals understand that their responses to their experiences of trauma are not personal failures, but responses to systemic factors such as colonization that are overwhelming their ability to cope with trauma-related stress in healthy ways.[39]

Trauma-informed care is a systems-based strategy for organizations and service providers to ensure that the care being provided to those dealing with trauma does not create further harms. In 2022, the First Nations Health Authority (FNHA) announced that, after four years of engagement with First Nations and input from Métis Nation British Columbia, a new Cultural Safety and Humility Standard had been established and would be implemented in British Columbia. The new Standard is a significant step forward in addressing systemic anti-Indigenous racism in the health-care system. The FNHA noted that, "it will lead to work in other provinces and nationally, including health authorities, health regulatory bodies, health organizations, health facilities, patient care quality review boards, and health education programs in BC, to adopt an accreditation standard for achieving Indigenous cultural safety through cultural humility and eliminating Indigenous-specific

racism."[40] The Health Standards Organization[41] has released the first edition of the British Columbia Cultural Safety and Humility Standard.[42]

Dr. (Nel) Wieman (Anishinaabe), deputy chief medical officer for the First Nations Health Authority in British Columbia, told participants at the Winnipeg National Gathering, "We have to make the health-care system more accountable. We have to improve the quality of service; we have to make it actively anti-racist. And we will know that we are providing trauma-informed care when we actually see people's health and wellness improve."[43] Dr. Anderson, Dr. Wieman, and Dr. Makokis, who are all Indigenous health practitioners in the Canadian health-care system, emphasized that governments must implement and enforce standards for cultural safety and cultural competency training for health-care professionals who interact with Indigenous patients. The trauma associated with Indian Residential Schools and the search for missing and disappeared children and unmarked burials is unique. Dr. Wieman said that, "grief relating to unmarked graves is a public health emergency."[44] Measures developed and implemented to respond to this crisis must be Indigenous-led, with clear objectives and evaluation, measurement, and accountability mechanisms to monitor results.

Dr. Cornelia (Nel) Wieman, MD, delivering comments at the National Gathering on Unmarked Burials: Addressing Trauma in the Search and Recovery of Missing Children and Unmarked Burials, Winnipeg, Manitoba, November 29, 2022 (Office of the Independent Special Interlocutor).

Several speakers and participants at the Winnipeg National Gathering indicated that an over-reliance on non-Indigenous approaches to health, such as Western accredited health-care professionals, ten-minute

appointments, pharmaceuticals, and other non-Indigenous methods, do not truly support Indigenous people to heal from trauma. As one participant noted, "a lot of youth are being heavily medicated to deal with their symptoms, not knowing that they can turn to Indigenous healing and supports."[45] Personal testimonies, health indicators, and leading research all demonstrate that the traumas associated with search and recovery efforts are poorly addressed by non-Indigenous approaches.

ON SILENCING, TRUTH-TELLING, AND TRAUMA IN SEARCH AND RECOVERY WORK

> Historical trauma is a serious issue in our community, and it has become one of the leading contributing factors to the well-being of our people. Missing children and possible unmarked graves are recognized by our community leaders as a number one priority in healing.
>
> — Ogimaw Andy Rickard[46]

Participants at all National Gatherings shared many difficult truths. These truths expose the links between colonization, genocide, trauma, grief, and loss that form part of the search for the missing and disappeared children and unmarked burials. At the Vancouver National Gathering, Haisla youth representative Meghan Metz said:

> The stories that have been documented should be made available to us. With no hesitation, no hurdles, and no delays. We deserve to know our history, what was done to our family members, our loved ones, our people. No more ... sweeping things under the rug. No more denying what our Survivors have been saying for years. No more belittling what it was. Because it was genocide.[47]

Since June 2022, at National Gatherings and community visits across the country, one message rang clear: Survivors, Indigenous families, and communities who have endured the grief and loss of so many children are asserting their right to mourn them, honour and restore their dignity, and commemorate their memory. They are asserting their right to do so according to Indigenous laws, cultural protocols, and ceremonies for mourning, burying, and memorializing the dead. Indigenous-led truth-finding processes are also resilience-based acts of individual and community healing and Nation rebuilding.

Silencing was a key element of the traumas that children experienced at the Indian Residential Schools. Rocky James, an intergenerational Survivor of the Kuper Island Indian Residential School, noted, "Silence played such a key role in how people were abused. If you tell anybody, I'm going to hurt you.... If you tell anybody, I'm going to kill you.... Silence is still the most persistent aspect of the intergenerational trauma. And so, I've had Survivors from my community tell me this past summer, I can't talk about it. That's how I've survived."[48] The trauma inflicted at Indian Residential Schools and other institutions has silenced the voices of many Survivors and their families. Judy Gingell, former chair of the Yukon Residential Schools and Missing Children Project, said that, "we were taught to speak when asked to speak, be quiet or you get a strap."[49] The silence can impose its own loneliness and suffering. Truth-telling that releases long-suppressed suffering can be a powerful source of healing. In her Pulitzer Prize-winning documentary about St. Michael's Indian Residential School in Saskatchewan, Connie Walker (Okanese First Nation), an investigative journalist, observes that, "the thing about trauma is that it doesn't often stay buried. It keeps popping up. And one of the ways to heal is to talk about it."[50] Some Survivors have chosen to trust family members or other loved ones to speak their truths. At the Vancouver National Gathering, Sheryl Rivers (Sḵwx̱wú7mesh, Squamish Nation) shared how her mother, an Indian Residential School Survivor who has now passed away, told her how difficult it was to repeatedly tell her story to the media and others, saying that, "it is really hard because I go back, and it really hurts me, and it's hard for me." As her daughter, Sheryl promised to, "be her voice and share her story, so that she wouldn't have to do that any longer."[51]

Truth-telling is a very difficult process. Not all Survivors choose to talk about their Indian Residential School experiences, and their choice must be respected. As one participant in the Iqaluit Gathering said, "I don't know when I'll be able to tell my story fully, I don't know if it will ever happen, but I've just locked them [memories] away. There's a lot of other things I can talk about Residential School, but I don't want to talk about them right now."[52] George E. Pachano (Cree Nation of Chisasibi), who acts as the Residential School response coordinator in Chisasibi, Quebec, said that some members of his community are hesitant to actively engage in search and recovery work or to volunteer information. He emphasized that it is necessary to prepare the community prior to information gathering and to support people as they decide whether to share what they know.[53] The act of sharing their testimonies undoubtedly has significant impacts on the emotional and physical well-being of Survivors. Reverend Dr. Carmen Lansdowne (Heiltsuk First Nation) shared how her grandfather fell into a three-month-long coma after reliving his trauma while testifying to the TRC about his experiences at St. Michael's Indian Residential School.[54] It is therefore essential that Elders

and Knowledge Keepers are available to provide culturally appropriate supports and that members of search and recovery teams interviewing Survivors and families are trained to use trauma-informed statement-gathering protocols and practices.

Sexual Violence and Stolen Babies

As demonstrated in the history of the Magdalen laundries in Ireland and similar institutions in Canada, documented in *Sites of Truth, Sites of Conscience*, the reality of sexual violence, unwed mothers, and deceased or stolen babies is not limited to Indian Residential Schools. At the Iqaluit National Gathering, many participants spoke about how sexual violence in institutions in the North was rampant. Aluki Kotierk, president of Nunavut Tunngavik Inc., said that Inuit, "are expecting to expose truth about babies born in these institutions, the role of sexual violence in the colonization of Inuit and the inadequacies of Canada's political and legal responses to known cases of horrific abuse against Inuit children." Kotierk said that, "Inuit told us, and it is well-documented, that the Priests and teachers raped students in their care. The pregnant [girls] and staff would be hidden in the dorm until their babies were born."[55]

Several people at the Iqaluit National Gathering spoke about these babies. For example, Lillian Elias, an Inuk Survivor, recalled her experience of being at an institution where babies' remains were destroyed in the furnaces.[56] When asked about the prospect of learning more about what happened to these babies, Métis forensic pathologist Dr. Rebekah Jacques cautioned participants that, although we know from Survivor truths that there were babies born at the institutions, and that some were burned in the furnaces, it may be very difficult to obtain forensic evidence to determine the cause of death.[57]

Despite formidable challenges, the search for these babies must continue. Some girls were told that their babies were sent away to Belgium or France to be adopted. Their families want to be reunited, to find their lost ones, and to help them find truth and healing. The families have a right to access government and church records that would have documented international adoptions. Kotierk spoke of the need to honour these little ones, "We know other babies have gone missing or were buried in and around the Residential Schools in Nunavut. Their lives must be remembered and honoured."[58]

The search and recovery process of truth-finding is intimately connected to the process of truth-telling. Survivors' oral history testimonies and their knowledge of the sites of former Indian Residential Schools and other institutions where unmarked burials may be located are essential. For some Survivors, this experience can be healing. Regional Chief Gerald Antoine said that, "when we tell the truth, [the fear] goes away."[59] The sharing of truths is also a necessary part of healing for families and communities. As Elder Eleanor Skead points out, "the stories and interviews with Survivors ... are life energy. Those life experiences are passed on to the next generation so that they will know what genocide looks like. They'll know what oppression looks like. And they'll know how to be different."[60]

HISTORICAL TRAUMA, GRIEF, AND LOSS ARE PRODUCTS OF GENOCIDE AND SETTLER COLONIALISM

> When we think about the impacts that colonization and Residential Schools has had on our families, the systematic dismantling of our family units and structures and governance structures ... we see it in the taking apart of our families where all of the institutions and layers of protection we had to protect our Elders and children were replaced by colonial institutions violently through genocidal policies that still continue to impact us today.
>
> — Dr. James Makokis, MD (Nehiyo, Plains Cree)[61]

> Historical trauma is a serious issue in our community, and it has become one of the leading contributing factors to the well-being of our people. Missing children and possible unmarked graves are recognized by our community leaders as a number one priority in healing.
>
> — Niiban Makwa (Chief Derek J. Nepinak)[62]

Many participants at National Gatherings spoke of how the Canadian government's genocidal policies and actions, including the Indian Residential School System, have contributed to the trauma experienced today. Dr. Makokis pointed out that Indian Residential Schools are only one genocidal element of colonization. Settler colonial policies of land dispossession, the *Indian Act*, and forced child removals designed to destroy Indigenous Peoples' political and governance structures and family life were, in effect, policies of elimination.[63] The

Honourable Murray Sinclair said that certain truths about the Indian Residential School System are indisputable, noting that:

- The System existed for so long because it benefited Canadians;
- It broke family structures, eroded cultural and community bonds, and denied and displaced Indigenous laws, to allow the land to be taken; and
- Together with other colonial laws and policies, this allowed Canada to pretend that there were no treaties, no friendships, and no promises worth keeping.

He emphasized that only the full acceptance of the truth that this was genocide will make reconciliation possible.[64] In 1998, social work scholar Maria Yellow Horse Brave Heart (Lakota) and medical anthropologist Lemyra M. DeBruyn published a path-breaking article in which they argued that Native Americans were victims of genocidal violence that has been transmitted across many generations. They outlined a theory of historical unresolved grief—"a legacy of chronic trauma and unresolved grief"—that has contributed to the contemporary health and social ills impacting the lives of Native Americans.[65] They found that historical trauma and unresolved or disenfranchised grief stems from the genocidal impacts of colonization, including land dispossession and the forced removal of children to Indian Boarding Schools.[66] Social work scholar Hilary M. Weaver (Lakota) points out that historical trauma theory is congruent with Indigenous Peoples' non-linear and relational conception of time in which past, present, and future generations are interconnected. In Seven Generations teachings, which include the principles of accountability and taking the long view, there is, "a sense of connection to ancestors and their ongoing relevance for the day-to-day lives of contemporary Indigenous Peoples.... Colonial brutality, massacres, and devastation caused by diseases are not perceived as distant, historical artifacts, but rather factors that continue to shape our existence and well[-]being. The past informs the present and the future in interactive, circular, mutually reinforcing ways."[67]

Dr. Amy Bombay and co-authors Karen Matheson and Hymie Anisman apply the concept of historical trauma to an empirical study of the Indian Residential Schools in Canada to argue that:

> Just as the impact of a stressor on individual functioning is influenced by a person's past experiences and current environment, the influence of a collective trauma on well-being needs to be considered in the context of the group's historical and contemporary stressor experiences.... [T]he concept of historical trauma addresses this issue, as it highlights the idea

> that the accumulation of collective stressors and trauma that began in the past may contribute to increased risk for negative health and social outcomes among contemporary Aboriginal peoples.[68]

Drawing on other studies, they identify the characteristics that define a discrete or chronic event of historical trauma and those of responses:

- The event was widespread among a specific group or population, with many group members being affected;
- The event was perpetrated by outgroup members with purposeful and often destructive intent; and
- The event generated high levels of distress in the victimized group.

There are three general characteristics of responses to historical trauma:

1. Historical trauma events continue to undermine the well-being of contemporary group members;
2. Responses to historically traumatic events interact with contemporary stressors to influence well-being; and
3. The risk associated with historically traumatic events can accumulate across generations.[69]

Importantly, they conclude that applying the concept of historical trauma to Indian Residential Schools not only contributes to creating more culturally effective treatments to deal with its impacts at the individual level, but also learning about and understanding historical trauma can support healing for Survivors, families, and communities. Canadians can also develop a better understanding of how this history impacts the health and well-being of Indigenous Peoples today.[70] They note that applying the concept of historical trauma to understanding its impacts and Survivors' responses also provide critical insights into how resilience is strengthened through the reclaiming of culture, language, and identity.[71]

Social work scholar Karina L. Walters (Choctaw Nation of Oklahoma) points to the historical trauma of genocide, forced relocations, and forced child removals of Native Americans to Indian Boarding Schools to argue that, "contemporary health and health risk behaviours are, in part, the embodiment of HT [historical trauma]."[72] That is, historical trauma is also intergenerational trauma, and its biological and epigenetic markers are carried within the body, manifesting in poor physical and psychological health and well-being, and transmitted to subsequent generations over time.[73] At the Iqaluit National Gathering, Jody Tulurialik,

an Inuk youth intergenerational Survivor, said that, "I have had to fight the feeling of never being good enough. Never feeling worthy of sharing my voice.... I felt like I had to stay put and small. Where do I get these feelings of self-doubt and fear? I feel isolated.... I didn't know where I got these scars I was born with. To be an Inuk individual means I will live my life grieving for loved ones and a life that was taken from me."[74]

ONGOING AND COMPOUNDING SOURCES OF TRAUMA IN SEARCH AND RECOVERY WORK

The Indian Residential Schools cannot be understood or treated solely as a historical issue or as a horror that can be safely confined to the past. The TRC's Final Report concluded that the history of the Indian Residential School System has left a profound and troubling legacy for all Canadians and that it continues to reverberate as a source of ongoing, personal, collective, and intergenerational trauma for Survivors, Indigenous families, and communities. While significant work is being done to address the direct and intergenerational trauma associated with Indian Residential Schools and other genocidal harms targeting Indigenous Peoples, the Sacred work to recover the missing and disappeared children and unmarked burials can introduce new traumas and reinvoke existing ones. As Survivors work with search and recovery teams to locate unmarked burials on the sites of former Indian Residential Schools and other institutions and hear news about ground searches in their own community or in others, many Survivors relive their trauma. Some remember holding the hand of a friend who died, while others relive the horror of burying other children. Painful memories are layered one on top of the other in an ongoing cycle of compounding trauma.

The Endless Search for Answers: Disenfranchised Grief and Ambiguous Loss

> It's really traumatic for those families who don't know what happened to their child or relative in the schools.
>
> — Dr. Chief Wilton Littlechild, Survivor, former TRC Commissioner[75]

A lack of answers following the disappearance of a loved one has long been recognized as a source of prolonged grief and trauma that has profound consequences for those left behind.[76] The concepts of historical trauma, disenfranchised grief, and ambiguous loss are particularly relevant to those engaged in searching for the missing and disappeared children and unmarked burials.

What Is Disenfranchised Grief?

Disenfranchised grief occurs when the loss of a loved one is not acknowledged or accepted as legitimate by the society around us. As explained in *Sites of Truth, Sites of Conscience*, the disregard for the dignity and care of Indigenous children before and after their deaths signifies what Judith Butler describes as "ungrievable lives"—that is, lives that are dehumanized and devalued both in life and in death.[77] Within the Indian Residential School System, the ungrievability of Indigenous children's lives was evident in the denial of grief. Not only were parents and families often not informed of children's deaths or burial places, but Indigenous children were either not told of a death in their family or not permitted to attend the funeral, thereby denying them an opportunity to grieve.[78] Losses that are not socially supported, publicly mourned, or openly acknowledged denies human dignity to the deceased and their relatives.[79]

For Indigenous Peoples who have experienced multiples losses from the impacts of genocide and mass human rights violations, the disenfranchisement of grief is an empathetic, political, and ethical failure on the part of the State. It is an empathetic failure of government, churches, and Canadian society who ignored or minimized Indigenous children's, families', and communities' need to grieve when deaths and burials occurred at the Indian Residential Schools and associated institutions. It is a political failure involving the State's abuse of power and authority that made decisions about where children should be buried without the knowledge or consent of their families. It is an ethical failure that denies fundamental human dignity to the deceased, their families, and communities in profoundly disrespectful ways. All these failures violate the fundamental human right to grieve according to one's own beliefs, customs, and practices of mourning.[80]

Brave Heart and DeBruyn examined historical trauma using the concept of disenfranchised grief to argue that Native Americans were denied the opportunity to grieve not only the loss of their loved ones but also their extended kin, cultures, lands, and whole way of life:

> The concept of disenfranchised grief facilitates the explanation of historical unresolved grief among American Indians. The historical legacy denied cultural grieving practices, resulting in multigenerational unresolved grief. Grief from traumatic deaths following the Wounded Knee Massacre and boarding school placement, for example, may have been inhibited both intrapsychically with shame as well as societally

> disenfranchised through the prohibition of ceremonial grieving practices. Further, European American culture legitimizes grief only for immediate nuclear family in the current generation. This may also serve to disenfranchise the grief of Native people over the loss of ancestors and extended kin as well as animal relatives and traditional language, songs, and dances.[81]

At the Winnipeg National Gathering, Dr. Marcia Anderson explained the intersecting traumas that have impacted Indigenous people in recent years. These include the COVID-19 pandemic, the toxic drug crisis, the climate crisis, the loss or degradation of lands, and the ongoing confirmation of unmarked burials. These traumas, Dr. Anderson explained, can result in complex forms of post-traumatic stress disorder (PTSD) and "disenfranchised grief." For many Survivors, Indigenous families, and communities, disenfranchised grief compounds the pain of not knowing where the children are. The violence of Indian Residential School denialism, particularly regarding the missing and disappeared children and unmarked burials, may further deepen disenfranchised grief.[82] Those seeking answers also suffer a sense of ambiguous loss that comes with not knowing the circumstances of their loved one's death, where they are buried, or whether unidentified human remains that are found belong to their child.

What Is Ambiguous Loss?

Ambiguous loss has long been used as a standard framework for understanding how individuals and families are affected by the absence of a relative. In the context of a missing or disappeared person, ambiguous loss is defined as an unclear loss that has no resolution because the family lacks definitive information about the fate and whereabouts of the lost person.... For individuals or families, and indeed for communities as a whole, this ambiguity freezes the grieving process, prevents cognition, blocks decision-making processes, and immobilizes people, holding them in the painful limbo of not knowing.[83]

Writing about ambiguous loss in the context of large-scale cases of missing and disappeared persons due to catastrophic systemic violence, genocide, or natural disasters, psychologist

and mental health expert Pauline Boss, who developed the theory of ambiguous loss, notes that:

> ambiguity destroys the customary markers of life or death, so a person's distress is never validated.... For many, there is never a body or body part to bury. What then? Why is having a body so important? The answer may be cultural. People need to see the body and participate in rituals to break down denial, and cognitively begin to cope and grieve.... [I]t might be impossible to let go of a loved one unless one can actively participate in the rituals of honour and farewell that begin the process of detachment. The long-term effects on families of the missing are remarkably similar across time and culture.[84]

The 2021 *Report of the Independent Civilian Review into Missing Persons Investigations* evaluated how the Toronto police investigations into missing persons, particularly those from LGBTQ2S+ and other marginalized communities, including Indigenous people, have been conducted.[85] The report highlighted the additional suffering and trauma associated with ambiguous loss, emphasizing, "the unending pain of not knowing what happened. Without closure, loved ones cannot move on. Many become preoccupied by the search for their loved ones, worrying that something else should be done in their eternal hope of finding answers."[86]

In speaking about ambiguous loss at the Winnipeg National Gathering, Saulteaux counselling psychologist and educator Brenda Reynolds explained that, "loss stays with us. When we do nothing to [deal with it], it can be really harmful. It's really important to know how to address the loss, and to keep the relationship with the thing [or person] we lost. The feelings of loss can feel unmanageable. The best way to manage the loss is to [open yourself up to] feel those feelings ... [and stay] grounded while [doing so]."[87] The Honourable Murray Sinclair shared how he lost his brother under tragic circumstances. He described how, to this day, he hopes to hear his brother's voice on the phone or to find him by chance in public. Sinclair said that not knowing the whereabouts or fate of a loved one is a "displaced trauma" that creates an unresolved form of grief. This grief, he says, is what is experienced by family members who do not know the whereabouts of their missing and disappeared children. They are unable to heal because the information they need to find them is held by colonial institutions.[88]

The trauma of not knowing was recognized by the Quebec Superior Court in the case of *Kahentinetha c. Société québécoise des infrastructures*.[89] In this court case, as described earlier in this Final Report, the Kanien'kehá:ka Kahnistensera (Mohawk Mothers) successfully

obtained an injunction to protect potential unmarked graves on the site of the Royal Victoria Hospital and the Allan Memorial Institute, which is being redeveloped by the Société québécoise des infrastructures and McGill University. The court found that the Kanien'kehá:ka Kahnistensera had demonstrated that continued excavation without appropriate safeguarding would cause serious or irreparable harm. In issuing the injunction, the court noted that:

> The plaintiffs speak of the trauma that results from not knowing what happened to their family and community members, from the possibility that they were mistreated and suffered, and from the threat that their remains will be disturbed. They refer to the ceremonies that must be conducted at burial sites but that aren't part of the redevelopment plans.
>
> The plaintiffs and some of the people who came to support them reacted emotionally during their presentation in court. They described their anguish at being prevented by the redevelopment project from fulfilling their obligations to look after generations past, present, and future. They expressed their frustration about having to fight every level of government to receive help in discovering the truth about what happened to their ancestors.[90]

Survivors, Indigenous families, and communities have so many unanswered questions about the fate of children who were taken away to Indian Residential Schools and other institutions and never returned home. This lack of closure has often meant years or decades of fruitless searches for answers. As documented in *Sites of Truth, Sites of Conscience*, when children were transferred between multiple institutions, their families were often not notified. Records were lost, destroyed, or never maintained at all. Where records exist, they may be dispersed across many locations or institutions. Families may encounter bureaucratic delays, procedural barriers, reluctance, or outright resistance to gaining access to this information. The search consumes energy and time, but, more than that, it can also be traumatic. Removing the barriers to accessing answers is an essential first step to healing for Survivors, Indigenous families, and communities. At the Winnipeg National Gathering, Tracie Leost, a Métis youth representative, described her feelings when she found her grandfather's burial record:

> I remember opening the page of burial records in a church and seeing my grandfather's name. He was buried in an unmarked grave with TB [tuberculosis] patients. For years we searched and searched for information, and then I just found it. I was filled with a sense of relief and sadness. Relieved that I found his name, and sad that he was taken

> away and never made it home. All these years, we wondered where he was, and now he is found.[91]

Qikiqtani Truth Commission

For Survivors, Indigenous families, and communities, the ambiguous loss of not knowing the fate of a loved one or where they are buried is deeply traumatic. The Qikiqtani Truth Commission heard testimonies about how Inuit families were never informed about what had happened to their loved ones after they were taken south to tuberculosis sanatoria. The Qikiqtani Truth Commission found that:

> Another tragic aspect of the policy to send Inuit south, rather than to build facilities in the North, related to the deaths of patients and the treatment of their remains. Some relatives were never informed that a family member had died down south until long afterward—if at all. Jaykolasie Killiktee told us:
>
> > In those days, when my grandmother left on the ship, I think my whole clan—especially our grandfather—was going through stressful times. The only time we could see our grandmother was the next year, or as long as it took to heal. There were no airplanes, no means of mail, no means of telephone, no means of communication with our loved ones. I remember them crying, especially the old ones. It was very traumatic and it had a profound impact on our people. Even when my older brother left, it felt as if we had lost our brother because we knew we wouldn't be in touch—only on very odd occasions we would get a letter. When my grandmother passed away, we were never told if she passed away, or where she passed away.
>
> Inuit with family members who died down south are still hurting from never having had the proper closure that could come from knowing where their relatives are buried or being given the opportunity to visit the graves.[92]

The Qikiqtani Truth Commission recommended that the federal government provide funds for Inuit to locate and visit the burial sites of family members.[93]

EMERGING PRACTICE: THE NANILAVUT INITIATIVE—"LET'S FIND THEM"

In response to the Qikiqtani Truth Commission, the Nanilavut Initiative was created. The Nanilavut Initiative is led by the Inuvialuit Regional Corporation and is aimed at helping Inuit families find information on loved ones sent away during the tuberculosis epidemic from the 1940s to the 1960s. Nanilavut means "let's find them" in Inuktitut. People of all ages were taken to sanatoria by the federal government and never returned. Part of the work of the Nanilavut Initiative is to trace the transfers of each missing loved one, including Inuit children at Indian Residential Schools and Federal Hostels. At the Winnipeg National Gathering, Deacon Rebecca Blake reflected on the importance to the families of finding the burials of their loved ones, "At every gravesite, [families] were saying 'finally we have found you. And we have so missed you and we have always, always loved you.' [Finding the graves] lifted the burden of not knowing—that now we can allow our loved ones to rest; that these were just their carrying cases that were left behind in a foreign land, but their Spirits can now soar free."[94]

Deacon Rebecca Blake speaking during the Voices of Community Panel, "Perpetuating Trauma and How to Address Trauma" at the National Gathering on Unmarked Burials: Addressing Trauma in the Search and Recovery of Missing Children and Unmarked Burials, Winnipeg, Manitoba, November 30, 2022 (Office of the Independent Special Interlocutor).

As noted in earlier chapters of this Final Report, forensic search investigations, repatriation, and commemoration processes in Guatemala, Columbia, and other countries that have experienced mass human rights violations and disappearances have highlighted the importance of the process of truth-finding as essential to healing. Indigenous and community-led processes of truth determination alleviate disenfranchised grief and ambiguous loss. Survivors, families,

and communities can restore human dignity to victims who were disrespected and devalued in life and after death. Indigenous Peoples within Canada are engaging in similar processes through an Indigenous and human rights-oriented lens. Survivors, Indigenous families, and communities are working to find answers so they can lay the children to rest and memorialize their memory in accordance with their own spiritual and cultural beliefs, laws, and burial practices.

THE NEED TO ADDRESS SPIRITUAL AND CULTURAL VIOLENCE, HARMS, AND TRAUMA

> There were four things that were broken by the Residential Schools system: we got disconnected from the land, disconnected from ourselves, disconnected from our communities and relationships, and disconnected from our Spirit.
>
> — Elder William Osborne[95]

At every National Gathering, participants including Elders, Survivors, and Indigenous political leaders spoke about the devastating impacts of government and church attacks on Indigenous spirituality, cultural traditions, and languages. At the Iqaluit National Gathering, Levi Barnabus, vice president of the Qikiqtani Inuit Association, said that these losses are grieved profoundly by many Indigenous families and communities.[96] Both the TRC and the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry) concluded that, through laws and policies of land dispossession, forced child removal, and the suppression of spirituality, languages, and cultures, Canada inflicted significant harms on Indigenous Peoples, including spiritual and cultural violence and trauma. The TRC took particular note of the role of Christian churches in perpetrating acts of spiritual violence against the children in the Indian Residential School System during their lives and following their deaths.[97] The Commission found that, "as their traditional ways of worshipping the Creator were disparaged and rejected, so too were the children devalued. They were not respected as human beings who were loved by the Creator just as they were.... The effects of this spiritual violence have been profound and did not end with the schools."[98] Cultural violence targets a distinct group because of their cultural identity, which also encompasses their spiritual beliefs and practices, subjecting them to systemic, structural, or direct violence.[99]

The MMIWG Inquiry examined how colonial violence perpetuates intergenerational trauma through loss of culture, noting that, "in sharing their truths with the National Inquiry, families, [S]urvivors, Knowledge Keepers, and others made it clear that culture must be part of any undertaking to restore and protect Indigenous and human rights.... As such, many witnesses described cultural rights as a necessary condition for the enjoyment of all rights."[100] The MMIWG Inquiry highlighted the important role of culture in both intergenerational harm and healing, concluding that:

> In generating harm, the violation of cultural rights disempowers Indigenous Peoples, particularly women, girls, and 2SLGBTQQIA people, through racism, through dismissal, and through heavy-handed state actions that seek to impose systems on them.... On the other hand, the role of culture in healing—the promotion of cultural rights and cultural continuity, that is, the passing of culture from one generation to the next—was a key element of what many witnesses identified as an area in which their loved ones could have found comfort, safety, health, and protection from violence.[101]

Social medicine, population, and public health scholar Andrew Subica and sociologist Bruce Link examine how the collective historical and cultural trauma caused by harms inflicted on Indigenous Peoples restricts their ability to access their own cultural resources that support community healing and protect health and well-being. This in turn perpetuates ongoing intergenerational trauma and health disparities. They identify three cultural resources for health. First, there are cultural modes—that is, a group's worldview, norms, values, and customs that define their identity and are essential for healthy functioning and protection from trauma. Colonization damaged cultural modes, "including the banning of the ... language, prohibiting traditional spiritual ceremonies and rituals ... [that] generated cultural confusion and spiritual damage, which manifests as [contemporary] health disparities."[102] Second, there are institutions or the socio-cultural systems and structures that govern community life, including family, political, legal, economic, educational, religious, and health systems. When governments disrupt institutions through forced child removals by assimilating Indigenous children into Western institutions, the ensuing cultural trauma results in poor health outcomes. Third, there are lands that protect and sustain the cultural life, health, and well-being of the community. Land dispossession through colonial and genocidal policies of forced assimilation causes historical and cultural trauma that ruptures Indigenous ways of life. For example, Indigenous communities are unable to access Sacred cultural sites for ceremonial purposes or land-based healing practices. This results in psychological harms

and cultural loss, thereby depriving people of access to protective cultural resources to maintain health and well-being.[103]

Importantly, Subica and Link point out that the State employs various direct and indirect mechanisms to suppress access to cultural resources even as Indigenous Peoples resist these oppressive measures. Using strategies of resistance and resilience, Indigenous Peoples are reclaiming their cultural resources, revitalizing their ceremonies, traditions, and practices that protect and promote healthy communities. At the structural level, governments enact policies such as the Indian Boarding School System (or the Indian Residential School System in Canada) that weaken cultural connections, while, at the interpersonal level, actions involving abuse, violence, and discrimination or a failure to act to remedy these harms further exacerbates cultural trauma. Other mechanisms are more indirect. The first involves stigmatization through labeling, stereotyping, discrimination, and, "justify[ing] their cultural trauma by propagating narratives that denigrate, blame, or cast as inferior affected groups—mimicking perpetrators' use of 'victim-blaming' attributions to justify traumatizing behaviors."[104]

The second indirect mechanism involves restricting or limiting access to cultural resources such as money, power, and prestige that support community health and well-being. In the Canadian context, this is evident in the government's ad hoc, piecemeal approach to health funding for Indigenous individuals and communities, discussed later in this chapter. As these mechanisms become ineffective in the face of resistance, governments introduce new measures, adjusting laws and policies to adapt to changing circumstances without disrupting the settler colonial status quo. Finally, Subica and Link emphasize that Indigenous resistance to cultural harms and trauma manifests as interventions that foster resilience by restoring cultural resources and protective measures based on Indigenous systems, structures, and practices of healing, health, and well-being.[105]

Voices of Youth: Healing Intergenerational Trauma and Learning Resilience

> There is a certain heaviness that comes with this work. These schools were once sites of pain and suffering. They tried to tear us apart—[tear] our families and our communities apart. They tried to break us and tell us that as Indigenous people we don't belong here. Indigenous people are strong, we are resilient, and the resilience of our Survivors and our ancestors is why we are still here. We are still here; our stories, ceremonies and voices are stronger than ever.
>
> — Benjamin Kucher, Métis youth[106]

Youth brought their voices to every National Gathering, providing important perspectives on how intergenerational trauma affects them and how Elders and Survivors are teaching them about resilience-based healing. Participants recognized that the Indian Residential School System was designed to break the connections between Elders and youth. These connections are essential to learning, upholding, and transferring Indigenous traditions, culture, and history, which is why they were a target of Canada's settler colonial genocide. At the Toronto National Gathering, Stephanie Nirlungakuk, an Inuk youth representative, said that, "it is essential for our youth to know who we are—the raw, real history. Knowing where you come from and putting context into why our families are in the situations we are in ... is essential to building healthy communities.... To know where we are going, we must first know where we have been."[107] While the need to re-establish and strengthen these connections takes time and effort, the National Gatherings provided opportunities for crucial intergenerational sharing, which is a vital starting point for healing.

At the National Gathering in Iqaluit, youth representatives on the Voices of Youth Panel spoke about how the trauma inflicted by Indian Residential Schools and other institutions has silenced the voices of many Survivors and their families. Métis intergenerational Survivor Storm Cardinal talked about the difficulty his father has in speaking about his experiences in the Indian Residential School System. He reflected on the impact that this silence has had and on how it has interfered with his ability to understand his father's experience and, ultimately, in knowing his own story. He recognizes that he may never learn his father's truths and said, "My father was never one to show any pain ... try to stay strong. I know it eats away at him.... I wonder if I will ever know his story."[108] Storm spoke of his struggles with feelings of doubt and anxiety, issues with substance use, and the painful cycle that he goes through. He

Richard (Pakak) Picco and Jody Tulurialik during the Voices of Youth Panel, "Search and Recovery of Missing Children" at the National Gathering on Unmarked Burials: Northern Voices, Iqaluit, Nunavut, February 1, 2024 (Office of the Independent Special Interlocutor).

encouraged all youth to speak for themselves and be honest about the intergenerational harms that they are experiencing so that they can heal.

Richard (Pakak) Picco, an Inuk youth, talked about overcoming his own inability to share his lived experiences at an earlier National Gathering because the pain of the then recent loss of his best friend to suicide was more than he could bear. He said that:

> It just doesn't stop here.... It's hard up here with suicide and addictions, and I feel like a lot of it comes from intergenerational trauma or experiences within Residential Schools or Federal Day Schools. In the last 12 months I have lost three close friends and relatives—people I enjoyed hunting on the land with. And the one thing they all had in common is a family member who went to Residential School or Federal Day Schools.... Here we are in 2023, 2024, and we are still losing our kids."[109]

Pakak spoke of the intergenerational harms he and his friends have experienced. He talked about the high rate of suicide and substance use among his friends, including the grief and loss he has felt already in his life. He said, "I feel like the federal government and churches have won" because of all the death and despair in the community. But he also said that it warms his heart to see Gatherings with Survivors because he then knows that Canada did not win, "as we are still here."[110]

Jody Tulurialik, a Inuk youth representative, shared her intergenerational trauma and how she often does not feel worthy, "I did not choose this life. To live with the after-effects of genocide." Jody said that she wanted to see more collaboration between all the regions in Nunavut for healing programs, "so that everything we dream of for our people will come true."[111] In the context of healing the intergenerational harms of colonialism, which were so evident in the Voices of Youth Panel and throughout the Iqaluit Gathering, thriving must be seen as an act of resistance. As one youth pointed out, "my mere existence is colonialism's worst nightmare—the failure of the genocidal experiment."[112] Meghan Metz, a Haisla intergenerational youth, said that, while Survivor Gatherings trigger uncomfortable emotions, "it is in this discomfort that we learn more about ourselves and each other. We find new ways forward. This shame and discomfort was never ours to carry. We must give ourselves grace, remembering how to love; ourselves and each other. And listen to your inner voice. Strengthen your connection to it. Listen to your heart."[113]

Testifying before the Standing Senate Committee on Indigenous Peoples, Cree Survivor, educator, and author Dr. Edmund Metatawabin emphasized the importance of spending time with youth to teach them about all aspects of their history:

> When we talk about what we need for the future of our young people, it's the ability to continue telling our story in a good way, to talk about this dark chapter that we're talking about today and to have it included in our story. We have a long story that we can tell of our people, a story that started long before the arrival of the settlers, a story that has been shared by our Elders who talk about the legends and what it was like long ago. Language is an important component to proper socialization into one's society. If you can communicate with the senior members of your clan, then you possess the rules and guidelines that help you to understand your culture. If you hear about your history and your heroes, mythical or real, and if you can name the creeks, rivers and lakes in your traditional area in their original form, you have found your home.[114]

The Standing Senate Committee on Indigenous Peoples adopted Metatawabin's recommendation that an Elder's teaching house be established to support Elder-youth learning and recovery from intergenerational trauma.[115]

Role of Indigenous History, Laws, and Cultural Protocols in Strengthening Resilience and Supporting Healing

> Resilience in colonial contexts takes many forms. The fact that resilience exists in no way indicates that colonialism has not done harm. Indeed, resilience is often formed in a crucible of trauma.... Damage and trauma, however, are only part of our story.
>
> — Hilary N. Weaver (Lakota)[116]

Indigenous-led resilience-based approaches to healing are not new. As the MMIWG Inquiry's Final Report observes, "the link among cultural teachings, identity, and resilience was fractured through the process of colonization—but not broken. The fact that ceremonies, teachings, and languages do survive today is a testament to those women, those cultural carriers who, along with male, female, and gender-diverse Elders, continue to carry the ancestors

as a potential path forward toward healing and safety."[117] Cultural knowledge informs Indigenous legal systems and the ceremonies, cultural protocols, teachings, and practices of Indigenous laws. Legal scholars Giulia Parola and Margherita Paolo Poto observe that, despite their diversity, Indigenous legal systems across the globe share common cosmologies based on three fundamental concepts and values.[118] First, there is inclusion or the belief that all human beings are interconnected, with relationships and responsibilities towards each other, our ancestors, and the natural world governed by legal orders that establish norms to protect individuals, communities, and the environment against violations. Second, there is coexistence or the belief that humans and non-humans can coexist peacefully in mutually respectful relationships that are governed by legal pluralism. Third, adhering to values of inclusion and coexistence fosters resilience or the ability to adapt in the face of adversity and trauma. Parola and Poto point out that, "resilience can be learned from [I]ndigenous legal orders that have withstood the wave of marginalization and developed around systems of governance that are now exemplary models of mitigation and adaptation in challenging times."[119]

Working with Mi'kmaq, Mohawk, Métis, and Inuit communities, social and transcultural psychiatry scholar Lawrence J. Kirmayer and colleagues found commonalities in respective narratives or stories of resilience despite distinct cultural differences. The cultural knowledge, concepts, language, teachings, and strategies of resilience conveyed are crucial to healing the traumatic impacts of colonization, oppression, and exclusion and improving health outcomes. They concluded that:

> Re-examining the historical record from [I]ndigenous points of view finds strength and value in their negotiations, [T]reaties, and acts of resistance or creative transformation.... Another basic source of individual and collective resilience comes from efforts to revitalize language, culture, and spirituality as resources for self-fashioning, collective solidarity, and individual and collective healing.... These ways of narrating identity and collective experience can contribute to resilience by emotion regulation, problem solving, social positioning, and collective solidarity. The ways that Aboriginal Peoples are portrayed in the dominant discourses of popular culture and the bureaucratic and technocratic institutions of government also impact significantly on their mental health. Stories of Aboriginal history and resilience can circulate outside the community as well, reconfiguring the representations of Aboriginal Peoples in the larger society in ways that can foster resilience through recognition, respect, and reconciliation.[120]

Indigenous legal scholar Michalyn Steele (Seneca Nation) points out that there are valuable lessons to be learned from Native American and Alaska tribes in the United States about maintaining resiliency in the face of severe societal disruption. Her observation is equally applicable to First Nations, Inuit, and Métis Peoples within Canada. Indigenous Peoples across Turtle Island share similar centuries-old histories of historical trauma wrought by the onslaught of genocide, diseases, and colonization, including laws and policies of land dispossession and forced child removals. She argues that, over time, Indigenous Peoples have relied on their own cultural and legal principles and traditions to withstand these attacks on their Nations:

> If the essence of resilience is that an organization or individual absorbs disruption while preserving core identity and purpose and without being fundamentally altered by it, the stories of the survival of tribes offer significant lessons in resilience. In looking to America's tribal nations, we see them weather disruption and insult from law, policy, military might, natural disaster, and attempted genocide. We see how many of them, in responding to these existential threats, have retained their unique purposes and identities as peoples, communities, and governments.[121]

She identifies key Indigenous principles embedded in political, governance, and legal systems that, although damaged by colonial governments, continue to sustain Indigenous Peoples' core identities as distinct sovereign and self-determining peoples, able to adapt to changing circumstances over time. Indigenous Peoples' survival is, "a real-world study in resilience ... [and] [I]ndigenous resilience has its roots in [I]ndigenous traditions ... principles, and values ... [that] have been tested in the cauldron of colonization."[122]

To illustrate her point, Steele draws on the cultural, political, and legal history of the Haudenosaunee Confederacy to ask, "How have the Haudenosaunee survived the assaults on culture through the centuries? What has empowered their legal and cultural resilience?"[123] To answer these questions, she focuses on, "principles drawn from two seminal traditions: the founding of the Haudenosaunee Confederacy, with its governing Great Law of Peace, and the wampum tradition of treatymaking and diplomacy."[124] She identifies seven principles as the source of resilience that protect the core identity and values of the Haudenosaunee:

1. **The Seven Generations principle of accountability and taking the long view** affirms that leaders have a political and moral duty to act in the best

interests not only of the present generation but the ancestors and children yet unborn, "This restraint on the temptation to act on short-term, or self-interest has been an important aspect of resilient tribal systems."[125]

2. **The Hyenwatha Belt principle of community, kinship, and interconnectedness** affirms an individual's tribal and clan membership and responsibilities they must fulfill. The kinship principle is articulated in the Thanksgiving Address that reminds people of their obligations to each other and the natural world. When relationships damaged by colonization and government interventions are healed, resiliency is strengthened.[126]

3. **The One Dish, One Spoon principle of sharing and cooperation in the commons** is a covenant of peaceful coexistence and treaty-making that values the equitable sharing of resources over self-interest. In contemporary times, tribes have pooled resources and developed common strategies to advance litigation to protect tribal lands from appropriation.[127]

4. **The Tadodaho principle of caring for the most vulnerable** was established by the Haudenosaunee Confederacy when the Peacemaker and Hyenwatha chose Tadodaho, who was physically and mentally unwell, to represent the League of Chiefs. To heal him, the Founders of the Confederacy tended to his physical, emotional, and spiritual needs, performing rituals to restore his human dignity. Expressing grief and compassion for him using similar healing practices they used for the Haudenosaunee Nations, they modeled the vital principle of Indigenous resilience that requires a particular care of the vulnerable and wounded.[128]

5. **The Six Nations Belt and the principle of spreading the peace dividend** affirms the Peacemaker's vision that the Tree of Peace symbolizing the Haudenosaunee Confederacy would spread in the four directions. New alliances to foster peace and prosperity were negotiated using Sacred wampum belts that symbolized and formalized political alliances, "The [I]ndigenous resilience principle embodied in the Six Nations wampum is that growth through alliance can aid resilience.... [T]he Haudenosaunee welcomed the Tuscarora as equals who maintained their identity, their sovereign character, and their culture. The Haudenosaunee did not require assimilation to welcome the Tuscarora under their roof."[129]

6. **The George Washington Belt and the principle of adaptive transformation**, commissioned by President George Washington, has signified a Nation-to-Nation covenant of peace and friendship between the Six Nations and the United States for over two hundred years, "In negotiating the Canandaigua Treaty of 1794 and adopting the associated symbolism of the George Washington belt, the participating Haudenosaunee tribes modeled a reliance of the resilience principle of adaptive transformation. Their new reality meant embracing the view that peace was better than war and seeking an alliance with a former enemy in the interest of survival."[130]

7. **The Two Row Wampum or Gus-wen-tah principle of cooperative sovereignty** symbolizes the commitment to a respectful diplomatic relationship between two sovereign Nations, affirming Haudenosaunee identity as self-determining peoples who, "have retained their essential character as tribes, unique legal entities, and unique cultural entities, in spite of rapidly changing circumstances and potentially existential threats. That resilience has been built in large part upon the foundation of [I]ndigenous principles ... [that] identify a representative set of ideals by which the tribes have navigated the rough waters of American history."[131]

Steele's powerful example demonstrates the longevity of Haudenosaunee resiliency forged in a holistic, relational vision of peaceful coexistence based on cultural and legal principles of mutual recognition, respect, responsibility, and caring. These ethical principles also inform how Haudenosaunee respond pragmatically to existential threats and harms. Steele concludes that understanding how American Indian and Alaska Native tribes cope with ongoing historical trauma provides critical insights into how Indigenous, "resilience systems engage in risk mitigation" by applying Indigenous values and principles in several key areas of contemporary life. She explains, for example, how these resilience-based principles can be applied to addressing intergenerational trauma and contemporary health-care inequities that threaten tribal physical and psychological well-being and quality of life:

> The Tadodaho principle of [I]ndigenous resilience stands for the significant value of each individual, no matter how infirm, to the tribe. The Founders of the Haudenosaunee Confederacy modeled the attention, care, and priority that [I]ndigenous leaders owe to the plight of

> the vulnerable. Similarly, the Seven Generations principle may also underscore this obligation: the history of tribes is one of intergenerational trauma—trauma that will presumably continue if the vulnerable of today aren't healed, potentially perpetrating that trauma to coming generations.... [A] deeper examination of [I]ndigenous values in building resilience in the vulnerable reveals a deep concern and obligation to the most vulnerable and exiled. These values not only inform how tribes are responding to the trauma and afflictions of their people ... but also offer opportunity for those interested in building resilience in the vulnerable more broadly to re-envision current practice and policy.[132]

While providing representative examples from each Indigenous Nation is beyond the scope of this Final Report, those highlighted here illustrate the efficacy of Indigenous-led, resilience-based cultural and legal principles and practices to heal the historical trauma, disenfranchised grief, and ambiguous loss suffered by Survivors, Indigenous families, and communities searching for the truth about the missing and disappeared children and unmarked burials.

As the earlier chapter on Indigenous laws notes, every Indigenous Nation has distinct laws, principles, cultural protocols, and memorial practices to honour, remember, and care for those who pass into the Spirit World. The children who died and were buried at Indian Residential Schools and associated institutions were not properly honoured and sent on this Sacred journey, and families are unable to overcome disenfranchised grief and ambiguous loss. By reclaiming and revitalizing the laws, cultural protocols, and memorial practices governing the care of the deceased, Survivors, Indigenous families, and communities are fulfilling their Sacred legal and cultural obligations to facilitate the children's journeys to the Spirit World. Upholding these laws is healing for those who struggle with the trauma, grief, and loss of unanswered questions. As Joanasie Akumalik, Project Manager of Nanilavut Project with Nunavut Tunngavik Inc., observed at the National Gathering in Iqaluit, "when you go to the cemeteries, when you find Inuit graves and find where they are buried, you are releasing the [S]pirit and the soul of that person to heaven."[133] As the persistence of those searching for answers so that the children can finally rest in peace so powerfully demonstrates, while trauma is inherited from the ancestors, resilience is also intergenerational.

INDIGENOUS-LED, RESILIENCE-BASED SOURCES OF HEALING IN SEARCH AND RECOVERY PROCESSES

> We are inherently resilient. When we talk about our challenges, we cannot forget about our resilience.
>
> — Dr. Cornelia (Nel) Wieman, MD (Anishinaabe)[134]

> Every single community should have the opportunity for people to 100% of the time learn their languages, learn their Medicines, learn who they are. Because we know that all of these are protective factors for keeping our people healthy, breaking that cycle of intergenerational trauma, and causing intergenerational healing to happen.... In our Sweat Lodges and ceremonies, all of our natural laws are found in everything that we do, honesty, sharing, kindness, strength and determination that connects us back to that sweet grass trail and puts us back onto that healing way.
>
> — Dr. James Makokis, MD[135]

> We need our land, our languages, our relationships: this is how we address trauma ... [through] our ceremonies, that's our psychology.
>
> — Dr. Sherri Chisan[136]

Drs. Wieman, Makokis, and Chisan all spoke about the importance of resilience and the need to protect and practice cultural traditions to foster Indigenous resilience-based healing. Métis Elder Jimmy Durocher said that, "they will never destroy our culture, they will never destroy us as a people. They tried for hundreds of years but we are still strong, as long as we do it together."[137] Indigenous-led, resilience-based healing is critical to search and recovery work. Participants and speakers at each of the National Gatherings discussed how healing supports to address the trauma related to the missing and disappeared children and unmarked burials must draw on sources of health and well-being found in the distinct cultural and legal traditions of each Indigenous Nation. These supports must be tailored to meet the needs of each person and community accordingly. One participant said that more is required than simply adopting the buzzword of being "trauma-informed." Rather, we need to ask, "what is trauma-informed for us?" In answering this question, care must be taken to avoid taking a pan-Indigenous approach. However, several overarching, interconnected, and

intergenerational sources of Indigenous-led, resilience-based health and well-being resources were identified at the National Gatherings.

Principles

At the National Gatherings, participants shared the foundational principles of the Sacred work across communities. These include, but are not limited to:

- **Courage:** continuing to do the work, even when it is difficult, and efforts are met with resistance;
- **Kindness:** demonstrating kindness to each other and to the land where search and recovery work is being conducted;
- **Choice:** respecting everyone's right to make an informed decision about whether to participate in search and recovery work and designing oral history testimony protocols and practices accordingly;
- **Balance:** establishing balance between Traditional Healers, Knowledge Keepers, and Western-trained mental health clinicians to achieve better outcomes using a holistic approach to taking care of one's mind, body, and Spirit while experiencing trauma or re-traumatization;
- **Belonging:** strengthening relationships and relying on family, kin, and community as a source of support and healing;
- **Safety:** accessing safe spaces, processes, and interventions when necessary to take care of one's health and Spirit and to make the Sacred work sustainable over long periods;
- **Joy:** using joy and laughter as a way to heal from trauma and grief; and
- **Love:** loving one another within and across families and communities.

Creating Safe Spaces: Elders, Knowledge Keepers, and Indigenous Healers

Elders, Knowledge Keepers, and Indigenous Healers are vital to addressing the trauma associated with the search for the missing and disappeared children and unmarked burials. Their lived wisdom and substantive knowledge of Indigenous approaches to healing deepens their ability to guide those who are experiencing trauma associated with search and recovery work.

Dr. Makokis noted that Elders, Knowledge Keepers, and Healers create safe Indigenous spaces where, "we can access traumatic memories in that loving supportive space without ... dissociating or having negative coping mechanisms to deal with that. [We can] start to reprogram our brain[s].... This is one of the benefits of having access to our ceremonies and to our Medicines and to our Healers as part of our own health systems. [These] have been systemically dismantled by the Canadian State and they need to be systematically repaired."[138] Safety, as Dr. Beverley Jacobs indicated, must include emotional, spiritual, physical, and mental well-being.[139] Many speakers and participants at National Gatherings said that the burden of trauma can trigger a range of negative and sometimes harmful emotions and behaviours. These can make it hard to ensure safety for those who need the most help.

Prioritizing safety helps to address even the most complex forms of trauma. Dr. Marcia Anderson noted the importance of reducing harm and (re)creating individual and collective safety, explaining that, "our primary resources for healing have to be those ... safe spaces." She used a powerful analogy to show how we can all contribute to safe places and practices:

> Buffalo circle those who are weaker ... when there is any kind of threat. As our communities and our relatives go through these times of searching for unmarked graves or repatriating [their loved ones], there are going to be times when people are okay to be on the outside of that circle. But there are also going to be times when everyone will need to step from the outside and go on the inside and be the ones getting supported and loved and receiving that healing, nurturing care. That is a sign of strength too: to know when it's time to step into the middle and be the one who is receiving care.[140]

As one participant at the National Gathering in Iqaluit emphasized, "I want to be with my Elders. I want to get healing from them. I feel that the Canadian government should be recognizing our Elders as certified ... because I need counselling. I need healing."[141] In order to guide others, Elders, Knowledge Keepers, and Indigenous Healers must also be cared for, and have access to supports, to meet their own wellness needs. Those who work to emotionally support others are at risk of vicarious trauma, re-traumatization, burnout, PTSD, and exhaustion. They also must have access to their Medicines and ceremonial items. Finally, the expenses associated with ceremonies create additional barriers that limit the amount of work that Indigenous Elders, Knowledge Keepers, and Indigenous Healers can do to address trauma.[142] They must have adequate pay and supports to do their work effectively.[143]

EMERGING PRACTICE: CEREMONY AND CULTURAL PROTOCOLS: BLUE QUILLS INDIAN RESIDENTIAL SCHOOL

Search efforts at the site of the former Blue Quills Indian Residential School, where the University nuhelot'įne thaiyots'į nistameyimâkanak Blue Quills is now located, begin every day with ceremonies, and they are included at every step of the search process. The search and recovery process also includes Sacred Fires, Circles, smudging, dance, songs, and prayers. At the Winnipeg National Gathering, Dr. Chisan stated that:

> Perhaps one of the most beautiful things that happened that week [when the ground searches began taking place] was that there was a steady presence all day long around the Fire—people gathering, Survivors, their families—sharing memories. And we had grief and loss educators there who also are ceremonial people, so all of the grief and loss support happened in ceremony, and it was like being in ceremony all day long. And there was a real sense of peace and comfort even though we were doing very difficult work that was triggering trauma for everybody.

During the initial search, Survivors and their families were invited to gather and visit at the site, "People came to make offerings, to share songs and memories, to just be with one another and share that healing … that [Sacred] Fire helped us get grounded and remember who we are and what we do and why we do it."

Dr. Chisan added, however, that not everyone was willing or able to come back to the site of the former Blue Quills Indian Residential School, "We will also take this work into our communities. There are Survivors who are not comfortable coming to Blue Quills. The memories they carry are just too painful. And so, we will go to them, and make [these healing activities] available to them." The search and recovery work has included opportunities for Survivors and families to heal through a range of therapeutic activities, including beading, quilting, art workshops, wellness supports, visiting the Healing Garden that has been planted on the grounds, and participating in a Full Moon Walk/Run. As Dr. Chisan noted, "Movement is healing … getting our physical bodies moving is part of our healing process."[144]

Indigenous Healing Ceremonies, Cultural Protocols, and Practices

The Winnipeg National Gathering also focused on the importance of Indigenous healing practices associated with (re)connections to land, language, and one's physical body. The Elders, as Six Nations (Cayuga) Healer Wendy Hill said, know that trauma changes people—it can make them disconnect from their bodies, cloud their minds, and make them feel like giving up. She explained that many Haudenosaunee ceremonies help to reconnect people to their bodies, "Our ceremonies of dancing and songs ... make you sweat and your heart beat hard.... It brings you back to life.... These songs pull our mind back to our body, so we are completely present.... That's our Medicine, that's our therapy."[145] Dr. Makokis also spoke about addressing trauma through Indigenous cultural practices. Moose-hide tanning is one example of a traditional practice that helps move people from their minds, to their hearts, to their hands, "Working with hides, we are doing a repetitive motion over and over again with that moose who is a teacher to us and one of our first clans. And we are having this chance to work side-by-side with people and ... dialogue and work on something physical together.... When we do that, we have those smells [of the moose hides] that create positive experiences that bring us to those good memories."[146]

EMERGING PRACTICE: THE KAATAGOGING INITIATIVE

> We always burn a plate, a Spirit dish ... the children are hungry, the ones that are left on our site that didn't have an opportunity to have proper ceremonies to make it home ... but they're still part of our community.
>
> — Elder Eleanor Skead, Survivor of St. Mary's Indian Residential School[147]

The Kaatagoging Initiative is a Survivor-led search for unmarked burials at the former Catholic-run St. Mary's Indian Residential School site. Between 1897 and 1972, over 6,114 children were taken to the St. Mary's Indian Residential School. Archival records indicate that at least 36 children died during the operation of this institution. Survivor testimonies, however, show that the number of children who died is believed to be significantly higher.

Kaatagoging means "growing together" in Anishaabemowin. There are four principles that guide the Kaatagoging Initiative:

- **Weweni (Take our time):** "Any decisions we make today can affect future generations for many generations."
- **Bebekaa (Doing it right):** "There are consequences to the decisions being made. This is a Sacred, spiritual process. It needs to be done right."
- **Biiziindun (Listen):** "Listen carefully. Everyone will be heard and hear others."
- **Gego Gotachiken (Don't be afraid):** "Survivors felt the oppression of those institutions that took away their voice, their identity. We encourage our Survivors to stand up, speak up."

The Kaatagoging Initiative has developed protocols to guide the search and recovery process based on collective memory and customary laws. These protocols illustrate how the Wauzhushk Onigum Nation is exercising its jurisdiction and sovereignty, including with respect to supporting Survivors, Indigenous families, and community members who are impacted by search and recovery efforts. Healing from trauma, both now and into the future, is central to the Kaatagoging Initiative. It demonstrates the importance of Indigenous-led, resilience-based healing processes to address the intergenerational, multi-dimensional impacts of trauma associated with the missing and disappeared children and unmarked burials. At the Winnipeg National Gathering, Elder Eleanor Skead explained that, "we emphasize connection to land and language as primary healing needs. Our land holds our healing, our healing systems. There are Sacred sites ... in every single reserve. By building that sense of community we're reclaiming those Sacred sites."[148]

Singing and drumming are also powerful healing practices that bring people back to their bodies and help to address trauma. As Dr. Makokis explained, "the heartbeat of Mother Earth, it reminds us of being in utero, safe in our mother's womb, and when we do this together with songs that connect us to our creation stories ... it connects us with our mental and physical parts of our bodies."[149] Search processes are trauma-informed when they nurture

belonging at each stage and for each person. Survivors, Indigenous families, and communities leading search and recovery efforts shared the various ways in which they are incorporating Indigenous healing practices into this work, including:

- Feasting;
- Conducting ceremonies before, during, and after searches;
- Lighting, tending, and visiting the Sacred Fire;
- Singing, fiddling, and drumming;
- Participating in land-based activities;
- Visiting Sacred sites;
- Connecting with loved ones and relations; and
- Learning and speaking Indigenous languages.

INDIGENOUS-LED, RESILIENCE-BASED HEALING GENERATES HOPE

> There is always hope and the hope to overcome trauma is resilience. An Indigenous approach to resilience is rooted in spirituality, ceremony, and connections. It's possible for each generation to heal as we learn lessons from each other, from Elders, and from children.
>
> — Tribal Chief Beverly Kiohawiton Cook, Saint Regis Mohawk Tribal Council[150]

Throughout the National Gatherings, Survivors repeatedly said that an important part of their motivation for reliving their trauma and sharing their experiences is to heal the wounds within their own families and communities. Survivors want to ensure that the generations that come after them understand what happened. They want to plant the seeds of hope—hope for healing and a better way ahead—for the young people in their communities and across the country. The presence of youth was intentional and important to all participants. In Montreal, Survivor and Knowledge Keeper Elizabeth Anderson (Little Salmon Carmacks First Nation) said, "Back home is hard. Our children are hurting. They

Rosalie LaBillois, Joni Karoo, and Kyra De La Ronde during the Voices of Youth Panel at the National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Montreal, Quebec, September 8, 2023 (Office of the Independent Special Interlocutor).

don't know they belong here. My hope is that our communities pray together everyday for our young ones because they need to see a good life. Our young ones need to have a sense of worth and pride. That is my hope. I pray for that every day."[151] Youth representative Kyra De La Ronde (Red River Métis) said, "Thank you so much for having a table full of youth here, because these young people—I see their Spirit, I see their energy, I see the drive and care they have for community, and I know that they are going to be the ones that are going to take care of our next generation. I can see how ready they are to take on that responsibility."[152]

Participants at the Montreal Gathering were challenged, moved, and inspired by the Voices of Youth Panel. Through their presentations, the panelists were able to capture both the anguish that Indigenous youth experience as intergenerational Survivors and the incredible resilience and healing that they have found by being connected to their traditional teachings and their Elders. Rosalie LaBillois (Eel River Bar First Nation) spoke about the privilege and responsibility she feels as an Indigenous youth who was raised deeply immersed in her Mi'gmaw culture.[153] Rosalie gifted the Gathering with a traditional Whale Song.[154] One of the powerful messages that echoed throughout the National Gathering was the mutual

respect and love that exists between the generations in attendance. Inuk youth representative Joni Karoo said that:

> Intergenerational trauma was passed down to me. But so was the strength that comes from my grandfather. He went through so much. His strength really inspires me. It helps me continue to keep going. How resilient Indigenous Peoples are! We push through no matter what [we] have been through. We have been through so much, and we are still here.... You have been through so much and you keep going, keep fighting for us. You give me so much hope. I want to thank you all for that.[155]

Youth Message of Hope and Love to Survivors

At the Montreal National Gathering, the OSI Youth Advisory was moved to share a message with the Survivors who had given so much of themselves throughout the Gathering. Tracey Leost, a Métis youth representative, read the message that the Advisory had prepared:

> As the Youth Advisory, we wanted to express gratitude to each of you. It is so meaningful to be walking this journey with our Elders and our Survivors. As youth from coast to coast to coast, we want you to know that we are here: grounded and proud and powerful in our ways. We are the dreams come true and the prayers answered from our Survivors and our Peoples, and we get to be that because you survived. Each of you continue to show us the way in this journey. We leave this Gathering armed with your love and your Spirits continue to guide us as we journey home to our Home Fires to continue that work in our own communities. So we wanted to say one big Miigwetch. It was made really clear sitting alongside Elders these past few days that the unconditional love has never ever gone away. We hope that our Elders and our Survivors leave here knowing that your Youth love you immensely and we are so proud of each of you.

Participants emphasized the difficulty of healing intergenerational historical trauma, disenfranchised grief, and ambiguous loss in search and recovery processes and demonstrated their resolve to overcome these challenges. Resilience is at the heart of the wisdom and knowledge

they shared about Indigenous approaches to healing that have sustained generations of Indigenous Peoples in the face of settler colonial violence and oppression. As one participant said, "it's not just trauma that is passed down through our bloodlines."[156] Intergenerational resilience as resistance manifests in Indigenous Peoples' ability to protect and continue to practice the distinct cultural and legal traditions that shape their identities as self-determining sovereign Nations and support healing. The history of Survivors' persistence in pursuing truth, justice, and accountability for the harms perpetrated against them in the Indian Residential School System stands as a testament to intergenerational resilience. Throughout this long political and legal struggle, Survivors and Indigenous leaders have always advocated for the federal government to provide more resources for Indigenous-led healing.[157] Search and recovery work to locate the missing and disappeared children and their burial sites has further exacerbated this urgent need.

Tribal Chief Beverly Kiohawiton Cook pointed out that resilience fosters a sense of hope that is crucial to overcoming trauma, and the key to resilience is found in Indigenous spirituality, ceremonial practices, and relationships of support and solidarity. The concept of critical hope is relevant in this context. Paolo Freire, the late Brazilian educator and activist, linked the concept of hope to the political struggle for freedom. He was not referring to an idealistic, naive form of hope that only leads to hopelessness, pessimism, and cynicism but, rather, to a critical hope that is grounded in hard realities of injustice and oppression. He explained that struggle and hope are interconnected:

> To attempt to do without hope, which is based on the need for truth as an ethical quality of the struggle, is tantamount to denying that struggle is one of its mainstays.... Without a minimum of hope, we cannot so much as start the struggle. But without struggle, hope ... dissipates, loses its bearings, and turns into hopelessness.... Hence the need for a kind of education in hope.[158]

Building on Freire's work, the late Black American feminist scholar and educator bell hooks noted the importance of generating critical hope to dismantle, "systems of domination, of imperialism, racism, sexism, or class elitism" that create systemic and structural injustice. She argued that, "hopefulness empowers us to continue to work for justice even as the forces of injustice may gain greater power for a time."[159] Education professor Kari Grain defines critical hope as, "a type of hope that grapples with its own political, emotional, relational, and experiential dimensions in order to enact change.... Critical hope does not accept simple solutions, and it pushes back against the toxic positivity that sometimes accompanies feel-good narratives of hope. Nonetheless, critical hope holds a place of reverence for notions such as love,

freedom, and community."[160] Critical hope requires a combination of critical self-reflection and individual and collective action for transformative social change.

Maintaining hope is essential to healing disenfranchised grief. As noted earlier, the right to grieve according to one's own cultural beliefs, customs, and practices of mourning is a fundamental human right. From a resilience-based perspective, healing disenfranchised grief must not only alleviate suffering but also instill hope that enables mourners to overcome grief and lead healthy, productive lives. Grain points out that critical hope requires action, "Critical hope is not something you have; it is something you practice ... [that] entails a long-term commitment ... and is strengthened through collective commitments by people who have the capacity to do the work."[161] Applied philosopher Thomas Attig argues that healing disenfranchised grief involves respecting mourners whose right to grieve has been discounted by society, but it also requires respecting their resilience and their ability to overcome their grief and carry on with life.[162] He explains that:

> Grieving is about both suffering *and* resilience, experiencing the devastation and hurt *and* reaching through them to affirm life.... [R]esilience [is] inherent in every mourner, no matter how devastating his or her loss.... The power of the remedy of respect for the potential to thrive again and the resilience that can lead to it is clear.... Respect from others promotes mourners' self-respect and self-confidence, and it affirms community solidarity with their efforts to affirm meaning, value, and love.[163]

At the National Gatherings, many participants spoke about the importance of love—love for the missing and disappeared children and love and support for themselves and each other as they come together to build a national community of Indigenous people engaged in search and recovery processes.

Healing Trauma and Grief under Haudenosaunee Law: To Grieve Well Is to Live Well

At the Winnipeg National Gathering, Wendy Hill told participants about the powerful laws and cultural protocols of the Haudenosaunee in supporting people to address grief and trauma. She described the Condolence Ceremony that helps those in mourning to process grief and death supported by community. She

explained the importance of the first 10 days after losing a loved one and how the Spirit of that loved one will hear people talk about them during this time. She said that we can honour those who have died by reflecting on the things that we admired about them and how the world was a better place because of them. The living have a responsibility to help the Spirit of their loved ones journey forward by reassuring the Spirit that those still living will be okay. She said that, "our ancestors knew the importance of the relationship with Spirits so they could leave in a good way."

Hill then explained that the Spirit may visit their family members for a whole year after their death. She emphasized that people need to pay attention to their dreams because that is when the Spirit will come to visit. At the one-year mark, people are invited to gather once again to grieve and to help the Spirit of their loved one continue their journey. In contrast to colonial ways of dealing with death, which have made talking about it taboo, she said that Haudenosaunee healing processes help mourners to accept death so that they can have a good life. Under Haudenosaunee protocols, there are specific ceremonies to help people process trauma; there are different ceremonies for those who are experiencing grief, including ceremonies for those who have lost loved ones in tragic or unexpected ways. She said that, to move on from loss and grief, we need to connect with our Spirit and remain connected to one another.

CANADA'S RESPONSE TO TRC AND MMIWG INQUIRY CALLS FOR EQUITY-BASED HEALTH-CARE REFORM

While Indigenous-led, resilience-based healing is essential, this does not absolve federal, provincial, and territorial governments and health-care systems of their fundamental responsibility to make substantive health-care reforms and provide equitable health care for Indigenous Peoples. To do otherwise places an unjust burden on Survivors, Indigenous families, communities, and leaders. The Truth and Reconciliation Commission of Canada (TRC) and the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry) adopted similar approaches to health-care reform to address the traumatic impacts associated with systemic abuse, racism, and violence directed at Indigenous Peoples (the TRC's Calls to Action 18–24; the MMIWG Inquiry's Calls for Justice 3.1–3.7 and 7.1–7.8).[164] Both called on Canada to recognize and protect Indigenous Peoples' right to health and equitable health care as a human right under international law.[165] Both emphasized the importance of providing stable, equitable, adequate, and ongoing resources to meet the

health-care needs of individuals and communities dealing with trauma. They identified the following key reformative actions as urgent priorities:

- Eliminate systemic racism in health-care systems;
- Recognize and respect Indigenous people's right to access their own healing practices, including access to Elders and Indigenous Healers in the health-care system;
- Support Indigenous-led initiatives for health care and healing;
- Provide education and cultural competency training for health-care professionals; and
- Ensure that health and wellness programs and services available to Indigenous people are culturally appropriate, equitable, accessible, and holistic.

Both Final Reports highlight the ineffectiveness of federal, provincial, and territorial government short-term, ad hoc, and piecemeal approaches to First Nations, Inuit, and Métis health-care policies, programs, and funding, which perpetuates ongoing health-care crises and the need for costly crisis interventions.

TRC Calls to Action

Canada's responses to the TRC's Calls to Action have been tracked by various organizations.[166] There is a consensus that governments have failed to make substantive progress on fully implementing the seven directives on reforming health-care inequities. As of May 2024, the Canadian Broadcasting Corporation's (CBC) tracking monitor found that, while all were in progress—four had projects that were just started and three had projects already underway—none have been completed.[167] The Indigenous Watchdog tracking monitor reported similar results in July 2024; of the seven Calls to Action on health, two are stalled, five are in various stages of progress, and none have been completed.[168]

From 2019 to 2023, Eva Jewell (Anishinaabekwe) and Ian Mosby published a series of accountability reports to track and evaluate Canada's record of completing, rather than simply "making progress" on implementing, the TRC's Calls to Action.[169] They noted that, by 2023, "In total, 13 of the 94 Calls to Action have been completed since 2015. That is a completion rate of 1.625 Calls to Action per year. If Canada continues at this pace, it will take another 58 years until the Calls to Action are completed, meaning that Indigenous [P]eoples will have to wait until 2081 for reconciliation."[170] Overall, they found that there has been little movement on legacy-related Calls to Action that require systemic and structural

change. During the pandemic in 2020, no Calls related to health care were completed, exacerbating the already severe health inequities that Indigenous Peoples face. Public health and social policy professor Renée Monchalin (Anishinaabe/Métis) observed that, "Canada has barely scratched the surface of the TRC Health Calls to Action. Many health service providers have been treating cultural safety training as just a checkbox on their to-do list. But hanging up a painting by an Indigenous artist in your clinic is far from being enough. Health services and programs need to be Indigenous-led and Indigenous-informed if we want to see any real change."[171]

In 2021, Jewell and Mosby reported that none of the health-related Calls to Action were completed. However, they also observed that, just three weeks after Tk'emlúps Secwépmec made the public announcement of potential burials of children at Kamloops Indian Residential School, the federal government, facing increased public scrutiny, moved to complete three reconciliation-related Calls to Action.[172] However, once public pressure had eased, the lack of overall action resumed. In the 2022 accountability report, Dr. Janet Smylie, a Métis physician and health researcher, commented on the fact that not a single health-related Call to Action had yet to be completed, noting that:

> In fact, what we've seen instead over the past seven years is piecemeal action. Part of the challenge is the complicated health-care landscape in Canada.... But the interconnected nature and complexity of the health-care system are not the root causes of this inaction. Rather, it is due to a gap in real commitment on Canada's part to honesty and transparency when it comes to reform. The first step Canada needs to take is a recognition of the colonial roots of Indigenous health inequities. For many, there is only denial.... Clearly, until all of the leaders of the federal government and the provinces and territories can acknowledge systemic racism, there will be limited progress.... Quality in health requires a comprehensive plan. But instead of a Comprehensive Health Plan in Canada, we have a Colonial Health Plan based on fiscal constraints versus true population counts and needs assessments. This approach normalizes the exclusion or discounting of our relatives, and it imposes inadequate non-Indigenous systems.... If Canada wants to meet its commitments to [R]esidential [S]chool Survivors and complete the health Calls to Action, it needs to make sure that Indigenous communities—whether they are on reserves or major urban centres like Toronto—have the resources and decision-making powers they need.[173]

After five years of monitoring the relative lack of progress, Jewell and Mosby decided to forego further tracking, concluding that:

> If morbid and traumatizing revelations of Indigenous children's graves advanced completion on Calls to Action that are only symbolic, what will have to happen for Canada to complete Calls to Action that are substantive?... To our minds, the only way to breathe life back into the conversation on reconciliation would be for Canada to first accept the truth that there are too many systems still in place that actively harm Indigenous peoples, particularly the most vulnerable. Accepting this truth exposes any notion of simply "repairing" the relationship between Indigenous peoples and Canadians for what it is: pure fantasy. Real and meaningful transformative change to underlying systems of oppression—not just individual tinkering around the edges of a broken colonial machine—is, therefore, required.[174]

Two equity principles—Joyce's Principle and Jordan's Principle—are key to government decision-making on health policy relating to Indigenous Peoples and must be applied in practice by public health officials and practitioners.

What Is Joyce's Principle?

In September 2021, the federal government announced that it was adopting Joyce's Principle to ensure that all Indigenous people have equitable access to health and social services without discrimination and that their right to good physical, mental, emotional, and spiritual health is upheld. The Atikamekw Nation created Joyce's Principle following the death of Joyce Echaquan when she was subjected to racist treatment by staff at a medical centre in Joliette, Quebec, and never received proper medical care.[175]

What Is Jordan's Principle?

Jordan's Principle is named in memory of Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba who was born in 1999. Jordan was medically required to stay in hospital until it was determined that he could be moved into a home tailored to meet his needs with home care. Subsequently,

the provincial and federal governments argued for more than two years over which government had the responsibility to pay for his home care.[176] The dispute was that, constitutionally, the federal government is responsible for children with status under the *Indian Act*, while the provinces are responsible for health and child welfare services.[177] Tragically, Jordan died at the age of five, never having spent a day outside a hospital.[178] As a result of Jordan's tragic death, the House of Commons unanimously passed Jordan's Principle in 2007.[179] Jordan's Principle aims to address health-care inequalities and delays for First Nations children by requiring government jurisdictions to take a child-first approach by providing care first and then settling jurisdictional disputes over who is responsible for funding health services afterwards.[180]

MMIWG Inquiry Calls for Justice

Progress on the overall completion of the MMIWG Inquiry's Calls for Justice, including those that are health related, have been similarly slow. In June 2023, the CBC issued a progress report on implementing the MMIWG Inquiry's Calls for Justice on Health and Wellness, concluding that:

> Most of these calls for justice—six out of seven—are not started, despite commitments to do so. Indigenous health legislation—designed to enshrine and elevate the rights and equitable access to culturally appropriate health and wellness services—has not been created. Governments have not ensured that all Indigenous communities are receiving immediate and necessary resources for permanent, no-barrier, preventative, accessible, holistic, wraparound services. This is despite the fact that federal government research confirms Indigenous peoples *continue to have reduced access* to physical and mental health care compared to other Canadians.[181]

In June 2024, the Assembly of First Nations (AFN) released a comprehensive progress report on the implementation of the MMIWG Inquiry's Calls for Justice. The report concluded that, despite various government departmental initiatives, in consultation with First Nations, Métis, and Inuit organizations to draft Indigenous health legislation, and various other policy and program reforms, "Little progress has been made to advance health and wellness equity for First Nation people."[182] Although Indigenous Service Canada launched an engagement process with First Nations, Inuit, and Métis organizations to co-develop distinctions-based Indigenous health legislation and policy options,

"the [consultation] process, timeline, and funding for engagement have been problematic. Although the Government of Canada aimed to table the bill in Winter 2024, this has not taken place."[183] The report acknowledged that there have been significant budget allocations to health and wellness initiatives:

> The 2021 and 2022 Budgets allocated funding to ensure children receive the health support they need through Jordan's Principle. Budget 2023 invested $2 billion over 10 years through a new Indigenous Health Equity Fund to address the unique challenges Indigenous Peoples face when it comes to fair and equitable access to quality and culturally safe health-care services. In Budget 2023, the Government of Canada committed to invest $810.6 million over five years, beginning in 2023–24, to support medical travel and maintain medically necessary services through the Non-Insured Health Benefits (NIHB) program. While this investment falls short of addressing access issues identified by First Nations, it may help address some of the significant barriers First Nations individuals face to access health care, especially in northern, remote, and isolated areas. The $562.5 million allocated to the NIHB Program for 2024–25 is a positive step to enhance necessary services, including mental health services, medical transportation, dental and vision care, and medications. Nevertheless, there remains a pressing need for reform within the NIHB Program.[184]
>
> Despite a small amount of government funding for the establishment of culturally wholistic wraparound services, including competent mobile trauma and addictions recovery teams, crisis response teams, and the incorporation of Elders, Grandmothers, and Knowledge Keepers into trauma-informed programs, these services are not available equitably in all regions and communities. The funding is often project-based, resulting in issues with consistency and reliability. There are also issues with data access and transparency for First Nations.[185]

Importantly, the report found that, overall, government efforts to provide equity-based health care and services and support recognition of First Nations' knowledge and expertise in healing and wellness falls far short of what is required:

> Many of the investments made to ensure health and wellness services include healing from all forms of unresolved trauma are a continuation

> of previously announced funding. Most of the initiatives may include input from Indigenous communities; however, they are not led by Indigenous communities. Government investments are often reactionary to critical incidents, like Joyce Echaquan's death. In November 2022, the federal government announced $42.5 million over six years for the James Smith Cree Nation, after a deadly stabbing incident on the Saskatchewan First Nations ended with 11 lives lost and 18 people injured. No concerted efforts to address the significant lack of Indigenous health professionals and service providers have been made.... Training, education, and retention efforts to increase the representation of Indigenous peoples in health human resources are needed to improve the cultural safety, accessibility, and efficacy of health services for First Nations, especially for those at-risk and recovering from gender-based violence. Mandatory cultural competency and trauma-informed training for all health-care professionals is also needed.[186]

The development of the *Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan* in 2021 was intended to coordinate efforts to implement the Calls for Justice and drive transformative change to end racism and gendered violence.[187] The *Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People* (*Federal Pathway*) is the federal government's contribution to the National Action Plan.[188] It sets out a wide range of projects and initiatives outlined in the 2023–2024 progress report. It is clear that efforts to implement broad systemic and structural transformative change is proving exceedingly difficult. In gauging the federal government's response to the TRC's and MMIWG Inquiry's Calls, it is also important to consider what the Department of Justice Canada's 2023 *United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan* (*Federal UNDA Action Plan*) provides for in relations to equitable health care consistent with Articles 21, 23, and 24 of the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*).[189]

Federal UNDA Action Plan

As a signatory to the *UN Declaration*, Canada has committed to the following rights of Indigenous Peoples with respect to health:

- The improvement, without discrimination, of social and economic conditions, including their health (Article 21);

- To be actively involved in developing and determining health programs affecting them and, as far as possible, to administer such programs through their own institutions (Article 23);
- To their traditional medicines and the maintenance of their health practices, including the conservation of their vital medicinal plants, animals, and minerals (Article 24);
- Access, without any discrimination, to all social and health services (Article 24); and
- The enjoyment of the highest attainable standard of physical and mental health as a right of progressive realization (Article 24).

The *Federal UNDA Action Plan* commits the federal government to build on and complement the recommendations of the Royal Commission on Aboriginal Peoples, the TRC, and the MMIWG Inquiry.[190] In terms of health-related measures, the *Federal UNDA Action Plan* commits the federal government to:

> Fully implement Joyce's Principle and ensure it guides work to co-develop distinctions-based Indigenous health legislation to foster health systems that will respect and ensure the physical, mental and cultural safety and well-being of Indigenous peoples. Co-development of the distinctions-based Indigenous health legislation will be undertaken with First Nations, Inuit, Métis, intersectional partners, and provinces and territories to inform potential legislative options (Indigenous Services Canada).
>
> Work with partners, including Indigenous organizations, health systems partners, educational institutions and engage with provincial and territorial governments, to develop a longer-term national approach to addressing anti-Indigenous racism in health systems to support health equity and accessibility for Indigenous peoples. This work includes:
>
> - Developing a longer-term national approach to improving access to culturally-safe health services and integrating cultural and patient safety in health systems;
> - Introducing measures to increase accountability within health systems; and

- Support for and capacity building in health human resources.

The longer-term approach will be informed by the ongoing National Dialogues, the renewal of Canada's Anti-Racism Strategy, and the co-development of distinctions-based Indigenous health legislation in order to fully implement Joyce's Principle (Indigenous Services Canada, Health Canada).

Work with provinces and territories to improve fair and equitable access to quality and culturally safe health services, including through seamless service delivery across jurisdictions and meaningful engagement and work with Indigenous organizations and governments (Indigenous Services Canada, Health Canada).[191]

The *Federal UNDA Action Plan* will also continue the implementation of the *Federal Pathway*, tabled in 2021.[192] Together, the independent reports produced by the CBC, Eva Jewell and Ian Mosby, and the AFN and others highlight Canada's failure to implement the health-related Calls issued by the TRC and MMIWG Inquiry, respectively. They also demonstrate how Canada's ad hoc, piecemeal approach to providing equitable health services and funding to Indigenous Peoples to address intergenerational trauma and related health concerns continues to fail profoundly.

FULFILLING CANADA'S EXISTING HEALTH-CARE OBLIGATIONS IS NOT A SUBSTITUTE FOR REPARATIONS

Over the past decade, government efforts towards ensuring that Indigenous Peoples have equitable access to health care in Canada are framed primarily as direct responses to the TRC's Calls to Action and the MMIWG Inquiry's Calls for Justice that demonstrate government commitment to reconciliation and justice. For example, the federal government's progress update on the TRC's Call to Action 18 acknowledges that, "the current state of Indigenous health is a direct result of the shameful colonialist policies and interventions against the well-being of Indigenous peoples and communities, including residential schools, the Sixties Scoop and other harmful practices"[193] and highlights initiatives aimed at addressing anti-Indigenous racism in health-care systems and developing distinction-based Indigenous health legislation that implement Jordan's Principle and the *UN Declaration*.[194] While these long-overdue reforms are a form of reparation, it must also be pointed out that providing equitable health care has always been one of Canada's legal obligations to Indigenous Peoples. Fulfilling this fundamental responsibility should not be conflated

with providing dedicated health-related reparations to Survivors, Indigenous families, and communities for specific harms and trauma suffered as a consequence of genocide and mass human rights violations under international law. The recently released investigative report on the Indian Boarding School System made a similar point.

Health Funding Recommendations in the *Federal Indian Boarding School Initiative Investigative Report* in the United States

On July 17, 2024, Bryan Newland, the assistant secretary for Indian Affairs, submitted his final report, entitled *The Federal Indian Boarding School Initiative Investigative Report*, with eight recommendations, to the Honourable Deb Haaland, secretary to the US Department of the Interior.[195] The report confirmed, "that at least 973 American Indian, Alaska Native, and Native Hawaiian children died while attending Federal Indian boarding schools, [and] that there are at least 74 marked and unmarked burial sites at 65 different school sites."[196] Notably, under Recommendation 2: Invest in Remedies to the Present-Day Impacts of the Federal Indian Boarding School System, the report recommends that funding for healing:

> [S]hould be in addition to annual appropriations to fund agency programs to fulfill the U.S. Government's trust and treaty obligations, and consistent with the full scope of its authority to act on behalf of Indians under various articles and clauses of the Constitution. The funding should be designed to remedy the present-day harms caused by historical Federal Indian boarding schools and policies of forced assimilation.... Funding to remedy the harms flowing from assimilationist policies and institutions should consider that Federal Indian boarding schools received funding and investments above and beyond annual appropriations from Congress.[197]

With regard to support for individual and community health and healing, the report recommends providing funding and support for:

> [C]ulturally-based, community-driven healing efforts ... aimed at addressing the effects of Adverse Childhood Experiences (ACEs), traumatic stress, and intergenerational trauma.... It is also important

> to develop infrastructure to support this work, including facilities to provide specialized patient services for the treatment of historical and intergenerational trauma caused by the Federal Indian boarding school system and other institutions.[198]
>
> These recommendations highlight the importance of dedicated funding and resources for Survivors of the Indian Boarding School System that are tailored specifically to address historical and intergenerational harms relating to the forced child removal policies of assimilation.

Canada is not alone in framing a pre-existing legal obligation as a form of reparation to advance societal reconstruction or reconciliation efforts. At the international level, the *Belfast Guidelines on Reparations in Post-Conflict Societies* build on international human rights law to identify key principles and practices for developing and implementing reparations programs, cautioning that, "reparations programs are sometimes conflated with development programmes, diminishing the right to remedy and appropriate measures for victims."[199] Accordingly, "reparations often need to be complemented, not substituted, by development and assistance programmes to alleviate the damage caused to communities.... Reparations should be connected to other programmes aimed at redressing historical grievances and marginalizing structures to maximise the effects of reparations, such as addressing ... institutional reform."[200] Similarly, the UN Office of the High Commissioner for Human Rights published a toolkit for reparations programs, noting that:

> Collective material reparations are constantly at risk of not being seen as reparations at all or of having minimal reparative capacity. Part of the problem is that they do not target victims specifically.... Most development programmes concentrate on the production and provision of basic goods [and services], which all citizens are entitled to as citizens. Making them available to victims is an ordinary obligation and function of the State that cannot count as reparation. Beneficiaries perceive them, correctly, as programmes that distribute goods to which they have rights as citizens, and not necessarily as victims....
>
> Generally speaking, there are good reasons for reparations programmes to be concerned with health issues, not least the very high incidence of trauma induced by the experiences of violence.... Providing medical services, including psychiatric treatment and psychological counselling, constitutes a very effective way of improving the quality of life of

> survivors and their families. Providing these services effectively, however, is not easy. Some of the challenges are:—It is a mistake to think that it is enough to make existing medical services available to the victims. First, victims have special needs, some of which the existing medical services may be unable to satisfy. The traumas produced by ... violence are unlike other traumas and these patients, therefore, need specialized care.... [V]ictims of serious human rights violations have histories that make them unlike other patients—and not only regarding psychological counselling. Their prior experiences affect the way services of all kinds need to be delivered, and great efforts are required to make providers at all levels aware of these special needs.[201]

These international guidelines, based on studies conducted on a global scale, offer valuable guidance on designing and implementing Survivor-centred reparations policies and programs that are uniquely tailored to provide individual and collective support to victims of State genocide, violence, and oppression. More precisely in the context of this Final Report, while providing equitable health care is of course a vitally important goal, this will not address the public health emergency associated with search and recovery work identified by Dr. Cornelia (Nel) Wieman.

CONCLUSION: TOWARDS AN INDIGENOUS-LED, RESILIENCE-BASED, NATIONAL HEALING STRATEGY FOR THE REPARATIONS FRAMEWORK

As this chapter demonstrates, Indigenous-led, resilience-based approaches to healing must be an integral element of an Indigenous-led Reparations Framework that is governed by Indigenous laws, cultural protocols, and ceremonies. In the broader international and domestic context of reparations, Indigenous Peoples are reframing concepts of victimhood and healing on their own terms. Understanding the personal, collective, intergenerational, and interconnected elements of trauma and how their adverse health impacts are compounded in search and recovery work is essential. Viewing the concept of healing through the anti-colonial lens of Indigenous resilience as resistance, this chapter reveals how Indigenous laws, principles, cultural protocols, and ceremonies for burying, mourning, and commemorating deceased loved ones are essential to the healing process. Indigenous approaches to grieving foster resilience and generate hope that individuals and communities can heal from grief so that they can thrive. Survivors, Indigenous families, and communities experience historical trauma,

disenfranchised grief, and ambiguous loss that is particular to those involved in forensic investigations to find the truth about what happened to their missing and disappeared loved ones.

Indigenous-led, resilience-based healing is essential, but it does not absolve the federal government of its responsibility to provide health-related reparations. While it is important to acknowledge government efforts to ensure equity-based health reforms for Indigenous people, responses to the TRC's Calls to Action and the MMIWG Inquiry's Calls for Justice have been too slow. In addition, while ensuring equity in the health-care system is critical, Indigenous Peoples' right to health is much broader, encompassing the right to lead healthy, productive lives in resilient communities that are thriving. Consistent with Articles 21, 23, and 24 of the *UN Declaration*, Canada has an international obligation to support Indigenous-led, resilience-based healing and health care for those experiencing trauma or re-traumatization during search and recovery processes. These health-related reparations must be understood as such by both recipients and the public. Equity-based health reform by governments remains an urgent priority that should complement these reparations. To avoid an ad hoc, piecemeal approach, an Indigenous-led, resilience-based, and holistic national healing strategy to address the health and wellness needs of those conducting investigations is required, supported by sufficient, long-term government funding. This may include, for example, building First Nations, Inuit, and Métis healing lodges and centres to address the trauma relating to the missing and disappeared children and unmarked burials and supporting Indigenous Elders, Healers, and health-care workers to provide culturally safe supports and services.

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CHAPTER 14

Pursuing Accountability and Justice Through Apology

> A formal and unconditional apology should be made by all the participants in the acts of genocide that occurred in Indian Residential Schools, including the government and religious institutes.
>
> — Native Women's Association of Canada, Office of the Independent Special Interlocutor (OSI) Submission[1]

> Apologies, accountability, and action for the harms that occurred at other institutions of assimilation and genocide are long overdue. These include federal, provincial, and religious entity apologies for harm, neglect, abuse, and assimilationist tactics which were the foundation for treatment of patients and prisoners at Indian Hospitals, juvenile detention centers, psychiatric facilities, sanatorium, Day Schools, boarding homes, orphanages, and provincial schools.
>
> — Anishinabek Nation, OSI Submission[2]

June 11, 2008, the day that then Prime Minister Stephen Harper stood in the House of Commons to deliver an official apology to Survivors of the Indian Residential School System, Indigenous families, and communities, was a day that hundreds of now elderly Survivors had fought for years to make happen. Sadly, thousands more did not live to see this day, including the missing and disappeared children who died in these institutions and whose burial sites remain unknown to their families. The apology included just one sentence acknowledging

that, "tragically, some of these children died while attending residential schools and others never returned home."[3] Just one sentence was included to acknowledge the tremendous loss and grief of the many families whose children were never returned home from Indian Residential Schools. Just one sentence was added to sum up the lost lives of those little ones who died while in the care of the State and churches.

It would take another 13 years for Canada to begin confronting the full horror of this short statement. Before Indigenous communities began making public confirmations in 2021 about the unmarked burials of the children, government leaders and church officials were silent. This was despite the Truth and Reconciliation Commission of Canada's (TRC) Final Report in 2015 documenting thousands of children's deaths and the existence of unmarked burials in cemeteries at former Indian Residential Schools across the country.[4] Up until 2021, there was no public outcry, and there was little action taken to implement the TRC's Calls to Action 71–76. Perhaps the Canadian government thought that the brief admission in the apology that some children had died and were never sent back home was sufficient. For the Survivors, Indigenous families, and communities, who have never stopped searching, it is not. Although no words can ever erase the grief of losing a child—of not knowing where they are buried or whether their burial site is even marked—surely the thousands of missing and disappeared children who died deserve more than a one-sentence apology. While words alone can never be enough to atone for these deaths, or the dehumanizing ways in which the children were treated, official apologies must admit the full scope of the atrocities committed. This establishes a public record of wrongdoing that makes denial impossible and serves as a catalyst for further action on accountability, justice, and reconciliation.

Prior to the apology, the federal government was well aware of the disappearances and deaths of the children. On April 24, 2007, speaking in the House of Commons, Liberal Member of Parliament (MP) Gary Merasty, from Peter Ballantyne Cree Nation, asked then Conservative MP Jim Prentice what, if anything, the government planned to do to remedy the matter:

> [Indian Residential Schools] were set up to assimilate a people against their will. They were places of disease, hunger, overcrowding and despair. Many children died. In 1914 a departmental official said, "fifty per cent of the children who passed through these schools did not live to benefit from the education which they had received therein." Yet, nothing was done.... Mr. Speaker, above all else, I stand for these children, many of whom buried their friends, families and siblings at these schools.... I ask that we all think about this for a moment as we go forward and think about what is really fair. Will the Prime Minister commit to

> the repatriation of the bodies and an apology to the residential school [S]urvivors?[5]

In response, Prentice stated, "Mr. Speaker, the hon. member goes too far in his question.... We will get to the bottom of the disappeared children. The truth and reconciliation commission will hear much about that. I have instructed our officials to look into that and to work with oblate records of the churches to get to the bottom of this issue, and this sad chapter in our history."[6]

Yet, in 2024, almost 20 years later, Canada has not yet got, "to the bottom of the disappeared children," as Prentice promised. Canada has continued to evade accountability for the so-called, "sad chapter in our history." Survivors, Indigenous families, and communities are still searching for the truth. Those who want to mark their child's grave, hold proper ceremonies and commemorations, or bring them home for reburial are still waiting to do so. While Canada's apology in 2008 was significant, it only acknowledged a partial truth, and the same can be said about the apologies made by the churches and the Royal Canadian Mounted Police (RCMP) (originally the North-West Mounted Police [NWMP]). As the written submissions to the OSI from the Native Women's Association of Canada and Anishinabek Nation make clear, the Indian Residential School System was genocidal, and its harms spread through other institutions such as Indian hospitals, sanitoria, psychiatric institutions, boarding homes, and juvenile detention centres where the children were forcibly transferred to. This partial truth-telling shapes how official apologies are carefully drafted to acknowledge only certain harms while ignoring the totality of settler colonial violence against Indigenous Peoples within Canada.

Apologies are an essential form of reparation; acknowledging harm, repairing trust, and upholding the honour of the Crown is a critical first step in restructuring the relationship between Indigenous Peoples and Canada. Yet settler amnesty and a culture of impunity aim to deny, minimize, and limit the scope of these harms to evade accountability for genocide, crimes against humanity, and mass human rights violations. This chapter analyzes the apologies that have been made in the context of Indian Residential Schools and assesses whether they comply with international and Indigenous criteria for meaningful apologies and reparations. Although many apologies are mentioned, this chapter focuses on those given by the Canadian federal government, the churches, and the RCMP because of their central roles in operating and/or maintaining the institutions.

APOLOGY AS A FORM OF REPARATION: EMERGING ANTI-COLONIAL CRITERIA

The United Nations (UN) Human Rights Commission has established international principles and guidelines on the right to a remedy and five forms of reparation for victims of mass human rights violations, including restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition. As a form of satisfaction, "public apology, including acknowledgement of the facts and acceptance of responsibility," is an essential element of reparations.[7]

United Nations Special Rapporteur's Study

A United Nations (UN) General Assembly study issued in 2019 by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, focused on the role of apologies for gross human rights violations and serious violations of international humanitarian law. It concluded that States and public institutions must ensure that apologies are victim centred so that their rights, agency, and perspectives are central to the process, emphasizing that women, whose perspectives may otherwise be ignored, must be actively represented and engaged in all aspects of the apology-making process.[8] The study made several key findings and recommendations on public apologies, including the following priorities.

Consultation with Those to Whom Apology Is Addressed

Comprehensive and effective consultation with those affected by harms inflicted is key to the delivery of a victim-centred apology. It enables the apologizer to establish what victims want and need to hear and what they do not want to hear. Victims should ideally be afforded the opportunity to read draft apologies and to offer feedback on the appropriateness of the language used and the setting and context of the delivery of the apology, which helps to avoid unnecessary pitfalls and the possibility of an apology causing more harm than good. In situations in which collective apologies are being issued, it is important that victims groups consult internally and agree, insofar as possible, upon the parameters of what they would like the apology to include.

Consultation within the Apologizing Constituency

In order to deliver a meaningful apology that is not subsequently qualified, rescinded, or undermined, apologizers should consult widely within their own constituencies. If there are limits to what the apologizer can say, the apology should at least be communicated clearly to

victims and their representatives as part of the consultation process in order to manage the expectations of victims.

Naming and Acknowledging of Harm Deliberately or Negligently Inflicted

A public apology should commence with a clear acknowledgement of the nature, scale, and duration of the harm inflicted. It should specify clearly whether the harm was inflicted deliberately, with intent, or negligently. The direct and indirect impacts of the harm on different categories of victim should be acknowledged. The gender dimensions of the harm should be clearly articulated. Under no circumstances should the apology be used as a platform to minimize or obfuscate culpability.

Truthful Admission of Individual, Organizational, or Collective Responsibility

Truthful apologies are necessary to validate the experience of victims and to restore their dignity. Establishing the truth of what occurred is almost always a prerequisite, but, in some instances, an apology can effectively provoke a truth recovery process. In the light of the truth, the apology should clearly admit responsibility—individual, organizational, and/or collective—and blame should be accepted for the infliction of the harm. There should be no attempt to justify, explain, rationalize, or contextualize the harm. In circumstances in which the apologizer believes that some elements of past harms or human rights violations were justifiable, the public apology is not the time or place to restate that belief.

Statement of Remorse and Regret Related to the Wrongful Acts or Omissions

The apology should include a clear statement of regret for the named harms. The language used should be carefully chosen to communicate sincere remorse. It must be unqualified and unreserved.

Delivered in a Context Designed to Maximize the Potential of the Apology

The timing and context for the delivery of the apology should be carefully considered, ideally in consultation with the victims and, when appropriate, arranged with other events. In some cases, it may be appropriate for the apology to coincide with an anniversary or other date deemed significant by the victims. In others, it would be most appropriate for an apology

to be issued at the conclusion of an investigation designed to establish the truth of what occurred, such as an internal organizational review, a criminal trial, a truth recovery process, or a public inquiry. The setting for the apology should also be designed to maximize its impact and effectiveness.

Delivered by Those with the Credibility to Speak for the Organization or Institution

The person or persons selected to deliver the apology must have the necessary leadership and credibility to effectively represent those who inflicted the harms. The individual chosen should have the authority to speak on behalf of the State, institution, or organization responsible for the harm. It is important that both the victims and the apologizing organization or institution recognize the authority of the apologizer, which is an essential element for avoiding the subsequent diminution, rejection, or undermining of an apology.

Delivered with Due Respect, Dignity, and Sensitivity to the Victimized

The manner in which an apology is delivered is centrally important. The apologizer should speak clearly, using terms that are clear and unambiguous. Insensitive terminology and language should be avoided at all costs. Victims are highly alert to overly staged or hollow apologies. Honesty, sincerity, and humility are essential components of their effective delivery. In some instances, it may be appropriate for the public apology to be linked to broader political, societal, religious, or communal events or rituals to maximize the symbolic power of the public apology.

Credible Promise of Non-recurrence

Apologies on their own are unlikely to be effective unless they are supported by a credible promise of non-recurrence. The apology should clearly indicate the practical steps that have been taken to ensure that the apologizing individual, organization, or institution will not inflict the same harms again. There must be no sense of entitlement to, or expectation of, forgiveness, acceptance, or reconciliation on the part of the apologizer.

Appropriate Compensation or Reparations

Apologies should be accompanied, as appropriate, by reparative measures designed to assist those who have been affected by past harms. They may include accepting legal liability, a commitment to provide monetary compensation, a restoration of the rights of victims, and/or appropriate commemorations or acts of memorialization. Reparative measures may also

include a commitment to pursue justice, truth, and information recovery fulsomely and effectively.

Non-regression

Apologies should be part of a State policy, which is sustained and reaffirmed over time, under which regressions or actions that counter the effect of the original apology are not permitted.

Apologies and Reconciliation

Properly crafted and delivered public apologies may contribute to reconciliation processes when accompanied by a comprehensive transitional justice strategy. Apologies adopted in the context of reconciliation, understood as the restoration of victims' trust in the State and its institutions and conditions under which individuals can trust one another as equal rights holders should not be used as a substitute for criminal justice or other transitional justice measures.[9]

The UN General Assembly study concludes that:

> Truthful apologies are a fundamental part of humanizing—or "rehumanizing"—those who have suffered past abuses and re-establishing their human worth, dignity, and self-respect. More broadly, the truth-telling function of public apology is required to establish an accurate public record of the past, educating the wider community on the nature and extent of past injustices, and contributing towards reconciliation.[10]

The UN Special Rapporteur's findings and recommendations establish important principles, standards, norms, and best practices for official apologies that States and public institutions should follow.[11] He draws on various court decisions and policy initiatives relating to apologies involving Indigenous Peoples;[12] however, he makes no specific recommendations on the need to take an anti-colonial approach by making Indigenous laws and criteria central to the crafting of official public apologies in settler colonial contexts.

Apology in Settler Colonial Contexts

Scholars and practitioners across the globe have published a substantive body of literature on the role of apology as a critical step in ending socio-political conflict and reconciling divided societies in the aftermath of genocide, crimes against humanity, and mass human rights violations.[13] For Indigenous Peoples in settler colonial countries, these atrocities are not situated

solely in the past but remain ongoing. As noted earlier, some States have issued official apologies to Indigenous Peoples for grievous harms, including genocide (Guatemala), forcible child removal policies and abuse and forced relocations (Canada, Australia, and the United States), and Treaty and land rights violations, including land dispossession (Canada and New Zealand Aotearoa).

The TRC identified criteria for determining what makes an official apology meaningful and authentic rather than just empty rhetoric on the part of the State. Drawing on the work of political scientist Matt James, an authentic apology: (1) is recorded officially in writing; (2) names the wrongs in question; (3) accepts responsibility; (4) states regret; (5) promises non-repetition; (6) does not demand forgiveness; (7) is not hypocritical or arbitrary; and (8) undertakes—through measures of publicity, ceremony, and concrete reparation—both to engage morally with those in whose name the apology is made and to assure the wronged group that the apology is sincere.[14] However, in addition, the Commission concluded that:

> [O]fficial apologies offered to Aboriginal peoples by the state and its institutions must not only meet the criteria of Western-based political and legal cultures but must be measured by Indigenous criteria as well. Indigenous peoples document their histories through oral-based traditions, including the official recording of apologies and restitution made in order to rectify harms. In doing so, they rely on their own culturally specific laws, ceremonies and protocols.[15]

The TRC's anti-colonial criteria for apology are examined in more detail later in this chapter. In addition to the criteria set out above relating to the need for a full and public truth-telling account of wrongdoing and harms, apologies also have important political and relational elements. The potentially reparative role of apology in reparations and reconciliation processes should not be underestimated.

In a comparative study of apologies and truth commissions in Australia, Canada, Guatemala, and Peru, Tsalagi (Cherokee) scholars Jeff Corntassel and Cindy Holder argue that:

> [T]o conceive of an apology or truth commission as a way for politics to neutralize a history of wrongs is to set it up for failure for Indigenous peoples, and to neglect an opportunity for transforming existing relationships that go beyond hollow, symbolic gestures.... We contend that decolonisation and restitution are necessary elements of reconciliation because these are necessary to transform relations with Indigenous communities in the way justice requires.[16]

In other words, an apology should be a catalyst for anti-colonial action. In a comparative analysis of settler State apologies in Canada, Australia, the United States, and New Zealand Aotearoa, Anishnaabe scholar Sheryl Lightfoot assesses whether official apologies advance Indigenous self-determination or ultimately work to serve the assimilationist goals of settler colonial nation building. Expanding on James's criteria for an authentic apology, she proposes, "a new Indigenous-specific framework" with two additional criteria, "It must, first, fully and comprehensively acknowledge the wrongs of the past and/or present. Second, the state must make a credible commitment to do things differently, to make substantial changes in its policy behaviour."[17] When measured against these criteria, she found that:

> [T]he 2008 Canadian apology attempts to isolate historical wrongs, apologizing and seeking reconciliation for only the Residential Schools policy. It is thus seeking forgiveness for only this particular issue. Even so, the Canadian government continues to resist opening the archives to expose the reality of Residential Schools, suggesting that it does not want to admit full guilt for this policy. Furthermore, it has compartmentalized the wrongs against Indigenous peoples, confining the apology to the [S]urvivors of Residential Schools while remaining silent on the larger processes of colonization.[18]

In her view, the ultimate goal of apologies made by settler colonial States is to, "solidify the status quo of a colonial set of power relations in Indigenous-state relationships."[19] Countering this would require the State, "not only [to] make a rhetorical, normative statement of guilt, but also make a credible commitment to ... give up a certain degree of real, material, and political power in exchange for a new, renegotiated, more just and legitimate relationship with Indigenous peoples."[20]

On Acknowledging Wrongdoing, Repairing Trust, and Upholding the Honour of the Crown

In describing the impact of Canada's June 11, 2008, apology to Survivors, the TRC wrote that, "many spoke of the intense emotions they had when they heard the prime minister acknowledge that it had been wrong for the government to take them away from their families for the purpose of 'killing the Indian in them.'... Survivors and their families needed to hear those words."[21] Yet the apology was also controversial, "The many references to the apology heard by this Commission showed that some saw it as an important step toward individual, community, and national healing, whereas others viewed it as nothing more than some well-crafted words designed to make the government look good."[22] The TRC noted

that, "apologies have the potential to restore human dignity and empower victims to decide whether they will accept an apology or forgive a perpetrator. Where there has been no apology, or one that victims believe tries to justify the behaviour of perpetrators and evade responsibility, reconciliation is difficult, if not impossible, to achieve."[23] There are compelling reasons not to overstate the need to forgive as a prerequisite for reconciliation. In her study of the South African Truth and Reconciliation Commission, ethics and human rights scholar Lyn S. Graybill observes that many victims who came before the Commission felt significant pressure to forgive their perpetrators. Yet many refused to do so.[24]

This is consistent with legal scholar Francesca Dominello's finding on the Australian official apology to Survivors of the Stolen Generations. After the apology, "no talk of forgiveness followed.... This may be because forgiveness had never been on the agenda of [I]ndigenous politics in Australia.... [I]ts acceptance (or not) was framed not in ... the language of forgiveness, but in the language of healing."[25] This was also the case in Canada where Survivors framed their responses to government and church apologies not only in terms of healing but with a certain degree of scepticism and distrust. An apology, while important, is not enough; they wanted to see what concrete actions would follow.

Former Special Rapporteur on truth, justice and reparations and guarantees of non-recurrence Pablo de Greiff makes a similar point, noting that, while political apologies can foster reconciliation, they cannot do this in isolation. Rather, an apology must be linked to other reparations measures that together can repair damaged trust through actions that produce transformative political change.[26] He argues that "reconciliation ... presupposes that both institutions and persons can become *trustworthy*, and this is not something that is merely granted but *earned*."[27] In Canada, Indigenous Peoples have a deep distrust of the State based on their lived experience of settler colonial genocide involving land dispossession, forced relocations, and forcible child removals that span over two centuries.

An official apology must publicly acknowledge that as a settler colonial society, acts of wrongdoing have been committed that must be redressed. Philosopher Trudy Govier argues that such acknowledgement is important because it recognizes the humanity of those we have harmed. It sends a message to victims that, as citizens who are beneficiaries of these historical injustices, we accept collective responsibility to remedy them.[28] The Royal Commission on Aboriginal Peoples (RCAP) wrote that before reconciliation can happen, "a great cleansing of the wounds of the past must take place. The government of Canada, on behalf of the Canadian people, must acknowledge and express deep regret for the spiritual, cultural, economic, and physical violence visited upon Aboriginal people, as individuals and as Nations, in the past. And it must make a public commitment that such violence will never

again be permitted."[29] The RCAP pointed out that, "the restoration of trust is essential to the great enterprise of forging peaceful relations."[30]

The TRC highlighted that in the immediate aftermath of Canada's apology in 2008, many Survivors and their families expressed cautious hope that it represented a turning point in Canada's relationship with Indigenous Peoples.[31] However, over the course of its work, "Survivors have indicated that despite the Settlement Agreement and Canada's apology, trust has not yet been restored."[32] Dene political scientist Glen Coulthard notes that, "the benefit of the doubt that was originally afforded the authenticity of the prime minister's apology has since dissipated. Public distrust began to escalate following a well-scrutinized address by Harper at a gathering of the G20 ... on September 25, 2009. It was there that Harper made the somewhat astonishing ... claim that Canadians had 'no history of colonialism.'"[33] That he did this so shortly, "following an official government apology to Indigenous [S]urvivors of one of the state's most notoriously brutal colonial institutions" demonstrates the high level of denial and truth evasion about Canada's history that persists in Canadian society.[34] In 2015, the TRC concluded that:

> [A]lthough some progress has been made, significant barriers to reconciliation remain. The relationship between the federal government and Aboriginal peoples is deteriorating. Instead of moving towards reconciliation, there have been divisive conflicts over Aboriginal education, child welfare, and justice.... The promise of reconciliation, which seemed so imminent back in 2008 when the prime minister, on behalf of all Canadians, apologized to Survivors, has faded.[35]

The TRC held that, "repairing trust begins with an apology, but it involves much more than that.... The consequences of this broken trust have serious implications far beyond residential schools. The trust relationship and the federal government's particular obligation to uphold the honour of the Crown with regard to Aboriginal Peoples go to the very heart of the relationship itself."[36]

This relationship was negotiated and ratified through the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, which together, "established the legal and political foundation of Canada and the principles of Treaty-making based on mutual recognition and respect."[37] The TRC emphasized that the honour of the Crown is tarnished, citing several key court decisions that together caution governments that, "the honour of the Crown is not merely an abstract principle but one that must be applied with diligence."[38] As Canadian lawyer and legal scholar George Neil Reddekopp observes, "there is something particularly appropriate

in applying the Honour of the Crown to situations where the Crown makes promises. As far back as the thirteenth century, the motto of Edward I was 'pacts should be kept'.... The Honour of the Crown requires that Crown promises are to be interpreted consistently with the expectation that the Crown will honour them."[39]

Canada has broken trust with Indigenous Peoples. Even as they negotiated subsequent Treaties with the Crown in good faith, the settler colonial government declared Indigenous Peoples "wards of the State" by unilaterally imposing the *Indian Act* and giving Canada legislative authority to seize and control Indigenous lands, forcibly relocating Indigenous Peoples, and forcibly removing Indigenous children from their families.[40] This breached the Crown's Treaty obligations and fiduciary duty to deal honourably with Indigenous Peoples. The long history of Indigenous resistance to colonization and the fight for Indigenous rights continues to the present day.

SETTLER COLONIALISM: GENOCIDE THROUGH LAND DISPOSSESSION AND FORCIBLE CHILD REMOVALS

Official apologies should fully recognize historical injustices. As agents of empire and settler colonialism, the government, churches, and the RCMP worked together to enforce settler colonial laws, policies, and strategies of land dispossession (including forced relocations) and forcible child removals. These were deliberate efforts to eliminate Indigenous Peoples as sovereign Nations with their own cultures, languages, spirituality, governance systems, and laws. Survivors across the country told the TRC that these injustices are all connected. At the Manitoba National Event in Winnipeg, Indian Day School Survivor, political leader and educator Sol Sanderson said:

> What were the objectives of those empire policies? Assimilation, integration, civilization, Christianisation, and liquidation. Who did those policies target? They targeted the destruction of our Indigenous families worldwide. Why? Because that was the foundation of our governing systems. They were the foundations of our institutions, and of our societies, of our nations. Now those policies still form the basis of Canadian law today, not just the *Indian Act*, [which] outlawed our traditions, our customs, our values, our language, our culture, our forms of government, our jurisdictions.... They say we have constitutionally-protected rights in the form of inherent rights, Aboriginal rights, and Treaty rights, but we find ourselves in courts daily defending those rights

> against the colonial laws of the provinces and the federal government. Now, we can't allow that to continue.[41]

Making visible how these institutions, laws, and policies function together in the colonization process counters settler amnesty. Disentangling the goals of the Indian Residential School System from the broader goals and actions of settler colonialism is not possible; they are interconnected and deeply embedded in systems and patterns of genocide.

Land Dispossession

The churches, as religious institutions, were deeply complicit in transnational systems of European empire, working to pacify Indigenous Peoples and remove them from their lands by converting them to Christianity as part of the settler colonial project of nation building in Canada. The European legal foundation for claiming sovereignty over and seizing Indigenous lands is found in fifteenth-century papal bulls or decrees issued by the Roman Catholic church, theological concepts known as the Doctrine of Discovery and *terra nullius* (lands belonging to no one).[42] The TRC noted how the State and the churches justified their actions, explaining that:

> [A]t their height, the European empires laid claim to most of the earth's surface and controlled the seas. [They justified doing so based] on two basic concepts; (1) the Christian God had given the Christian nations the right to colonize lands they "discovered" as long as they converted the Indigenous populations, and (2) the Europeans were bringing the benefits of civilization (a concept that was intertwined with Christianity) to the "heathen." In short, it was contended that the people were being colonized for their own benefit, either in this world or the next.[43]

The TRC found that, while other Christian faiths rejected Catholic doctrine and papal authority, they, "did not necessarily reject the Doctrine of Discovery—they simply modified it. To make a claim stick, the English argued, it was necessary to discover lands and take possession of them."[44]

Scholar Jennifer Reid notes that, "the relationship between law and land in Canada can be traced to a set of fifteenth-century theological assumptions that have found their way into Canadian law.... These claims were made without consultation or engagement of any sort with the resident populations in these territories—the people to whom, by any sensible account, the land actually belonged."[45] In the TRC's view, these, "justifications for intervening in the lives of other peoples ... do not stand up to legal, moral, or even logical scrutiny."[46]

The TRC called on Canada and the churches to repudiate the Doctrine of Discovery and terra nullius, declare a new Royal Proclamation of Reconciliation, and declare a new Covenant of Reconciliation.[47]

The Doctrine of Discovery

> On March 30, 2023, Pope Francis formally rescinded the Doctrine of Discovery; however, the Catholic Church is yet to return land and sacred items to First Nations.
>
> — Assembly of First Nations, OSI Submission[48]

The Doctrine of Discovery is not just a concept in an obscure historical document; it has real impacts on the lives of Indigenous Peoples all over the world today. In May 2014, at the thirteenth session of the UN Permanent Forum on Indigenous Issues, a study on the impacts of the Doctrine of Discovery on Indigenous Peoples was issued.[49] In his statement at the forum, Haudenosaunee Faith Keeper Oren Lyons stated:

> We recognize the Doctrine of Discovery and its long-term effects on our peoples led to the atrocities we faced in residential and boarding schools, both in Canada and the U.S.... We further take note of the apologies extended to Indigenous Peoples by Australia, Canada and New Zealand regarding their implementation of boarding schools within their respective countries.... We recognize the legal construct known as the Doctrine of Discovery has global implications. The Doctrine of Discovery has been invoked as a justification for the ongoing exploitation of our lands, territories, and resources and directly violates Article 7 paragraph 2 of the *UNDRIP* [*UN Declaration on the Right of Indigenous Peoples*].[50]

The UN study made several key findings and recommendations that apply to both States and religious institutions, including the following:

- "The Doctrine has been rejected by some international and domestic bodies but continues to have life. Its resilience remains because it is embedded in colonizing cultures and maintained in State laws, policies, negotiations and litigation positions."[51]
- "The Doctrine of Discovery is based invalidly on the presumption of racial

superiority of Christian Europeans.... [It] has been used as a framework for justification to dehumanize, exploit, enslave and subjugate [I]ndigenous peoples and dispossess them of their most basic rights, laws, spirituality, worldviews and governance and their lands and resources. Ultimately it was the very foundation of genocide."[52]

- "With regard to land dispossessions, forced conversions of non-Christians, the deprivation of liberty and the enslavement of [I]ndigenous peoples, the Holy See reported that an 'abrogation process took place over the centuries'[53] to invalidate such nefarious actions. Such papal renunciations do not go far enough.... At the same time, there is a growing movement among faith-based bodies to repudiate the doctrine of discovery. In that context, the World Council of Churches and Canadian Quakers have both emphasized Indigenous Peoples' inherent sovereignty and title concerns."[54]

- "The highest court of Canada has recognized the need for reconciliation of 'pre-existing aboriginal sovereignty with assumed Crown sovereignty'.[55] The Supreme Court has taken judicial notice of 'such matters as colonialism, displacement and residential schools', which demonstrate how 'assumed' sovereign powers were abused throughout history. The root cause of such abuse leads back to the Doctrine of Discovery and other related fictitious constructs, which therefore must be addressed."[56]

- "The Secretary-General has stated that the *United Nations Declaration on the Rights of Indigenous Peoples* provides a principled framework 'on which States can build or rebuild their relationships with [I]ndigenous [P]eoples'. The Declaration is a universal, remedial human rights instrument."[57]

- "For both [I]ndigenous [P]eoples and States, there are compelling reasons to go beyond repudiation. It is essential to replace the colonial Doctrine of Discovery with contemporary international human rights standards and engage in just and collaborative processes of redress. Such processes should encourage peace and harmonious and cooperative relations between States and [I]ndigenous [P]eoples. Where desired by [I]ndigenous [P]eoples, constitutional space must be ensured for [I]ndigenous [P]eoples' sovereignty, jurisdiction and legal orders."[58]

While the UN study makes no specific reference to apology in calling for various forms of redress and restitution, it emphasizes the importance of dismantling the political, legal,

relational, and structural foundations of colonization by implementing anti-colonial human rights-based reparation and reconciliation processes.

Although Indigenous Peoples have advocated for many years for the Doctrine of Discovery and terra nullius to be repudiated, and the TRC called for this in 2015, the Vatican did not do so until March 30, 2023.[59] The Vatican's formal statement repudiating the doctrine came just a few months prior to the pope's apology in Canada in July 2023. It did so, however, with a carefully worded qualification that limited the Catholic church's responsibility. The statement read in part that:

> [T]he "doctrine of discovery" is not part of the teaching of the Catholic Church. Historical research clearly demonstrates that the papal documents in question, written in a specific historical period and linked to political questions, have never been considered expressions of the Catholic faith. At the same time, the Church acknowledges that these papal bulls did not adequately reflect the equal dignity and rights of [I]ndigenous peoples. The Church is also aware that the contents of these documents were manipulated for political purposes by competing colonial powers in order to justify immoral acts against [I]ndigenous peoples that were carried out, at times, without opposition from ecclesiastical authorities. It is only just to recognize these errors, acknowledge the terrible effects of the assimilation policies and the pain experienced by [I]ndigenous peoples, and ask for pardon. Furthermore, Pope Francis has urged: "Never again can the Christian community allow itself to be infected by the idea that one culture is superior to others, or that it is legitimate to employ ways of coercing others."[60]

Survivor Deanna Ledoux, after the statement was issued, asked, "How do you retract hundreds of years of colonial violence and church-run violence? How do you retract genocide?"[61] In July 2023, Indigenous activists intervened at a mass conducted by the pope at the Sainte-Anne-de-Beaupré Basilica outside Quebec City. Speaking to media, Sarain Fox, an artist and activist from Batchewana First Nation, said, "It's important for us to be recognized as human beings so it's not enough just to apologize. You need to talk about the root of everything. Indigenous people are looking for action and our [E]lders have very little time left to see that action."[62]

Lawyers Kate Gunn and Bruce McIvor (Métis) observe that, "the Vatican's inadequate repudiation underscores the need for real truth telling."[63] In the wake of the pope's actions, the government of Canada has not yet taken any legal measures to repudiate the Doctrine of

Discovery and terra nullius but did "denounce" the doctrine in the preamble of Bill C-15, *An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples*.[64] Gunn and McIvor argue that this is insufficient and that legislation should be enacted to formally repudiate the doctrine. Noting that Canada's March 2023 draft National Action Plan on implementing the *United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)*, "makes no mention of the Doctrine of Discovery or what steps Canada will take to resolve the outstanding question of how it came to acquire sovereignty over Indigenous Peoples," they call for Canada to develop concrete measures to do so.[65] The final National Action Plan, which was issued in November 2023, also fails to address the Doctrine of Discovery, even though the UN Declaration Act specifically notes in the preamble (comments reproduced in the Action Plan) the following:

> Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and terra nullius, are racist, scientifically false, legally invalid, morally condemnable and socially unjust. [66]

THE CHURCHES: SPIRITUAL VIOLENCE AGAINST INDIGENOUS CHILDREN IN LIFE AND AFTER DEATH

The role of the Christian churches in advancing settler colonialism extends beyond land dispossession. Through their involvement in the Indian Residential School System, the churches, working in tandem with government officials, vigorously attacked Indigenous spirituality, languages, and culture. In addition, church officials of all the religious denominations successfully lobbied the government to enact laws banning Sacred ceremonies such as the Potlatch on the Pacific coast and the Sun Dance on the prairies.[67] The TRC noted that spiritual violence occurs when:

- A person is not permitted to follow her or his preferred spiritual or religious traditions;
- A different spiritual or religious path or practice is forced on a person;
- A person's spiritual or religious tradition, beliefs, or practices are demeaned or belittled; or
- A person is made to feel shame for practising his or her traditional or family beliefs.[68]

The TRC concluded that, in forcibly converting Indigenous children to Christianity in the Indian Residential School System, the churches committed spiritual violence, "Across the country, Survivors described how school staff demonized, terrorized, and punished them into accepting Christian beliefs."[69] They taught the children that they were inferior, as were the spiritual beliefs of their parents and ancestors.[70] Survivor and Anishinaabe Elder Fred Kelly has said that:

> [T]o take the territorial lands away from a people whose very spirit is so intrinsically connected to Mother Earth was to actually dispossess them of their very soul and being.... They were mortally wounded in mind, body, heart, and spirit that turned them into the walking dead. Recovery would take time, and fortunately they took their sacred traditions underground to be practiced in secret.... I am happy that my ancestors saw fit to bring their sacred beliefs underground when they were banned and persecuted. Because of them and the Creator, my people are alive and in them I have found my answers.[71]

Mohawk scholar Beverly Jacobs points out that systemic patterns of colonial violence and assimilation in the Indian Residential School System impacted thousands of Indigenous Peoples over multiple generations:

> Every Aboriginal person has been affected whether a family member attended residential school or not. When a systemic process is created to destroy a people by erasing a language, a culture and a spirit, every single person is affected. When this system attacked children, the heart of our Nations, the heart of our Mothers and Grandmothers, it attacked every single person.[72]

The TRC found that the Indian Residential School System, "denied First Nations, Inuit, and Métis peoples their spiritual birthright and heritage" and that upholding their right to spiritual self-determination, including the right to practice, develop, and teach their own spiritual and religious traditions, customs, and ceremonies, in accordance with Article 12.1 of the *UN Declaration*, "must be a high priority in the reconciliation process."[73] The TRC's Calls to Action 58–61 focus on church apologies and identify measures that the churches must take to address the legacy and impacts of ongoing spiritual violence.

The spiritual violence committed by Christian churches occurred throughout the lives of the children and continued after their deaths. The forceful imposition of Christian beliefs about death and funerary practices and the prohibition of Indigenous funerary and ceremonial

practices associated with burials and the memorialization of the dead constitute a systemic pattern of genocide committed by the churches and State against the children and their families.

Colonizing Death and Burial Practices through Spiritual Violence

The consistent attack on Indigenous spirituality by churches and government over time targeted Indigenous children in life and continued after their deaths. This can be seen in the forceful imposition of Christian beliefs about death, funerary practices, and ceremonies associated with burials and the memorialization of the dead. Writing about State atrocities relating to the deaths and burials of Indigenous Peoples in Peru, professor of anthropology Isaias Rojas-Perez notes that:

> [T]he religious and political colonization of death constituted a cornerstone in the worldwide expansion of the European colonial project. The zeal of colonizers and missionaries particularly targeted native mortuary practices and beliefs that they considered to be not only savage and barbaric, and as such, intolerable, but also sources of idolatry and superstition as well as revolt and political resistance against the colonial project.[74]

While the historical and political context of colonialism in Peru is different from Canada's, Rojas-Perez's observation on the colonizing of death and burial practices and the ongoing resistance of Indigenous Peoples is relevant to the Canadian context. While Christian burials were the norm at most institutions,[75] some children were buried with no ceremony at all.[76] Children were buried in the absence of family members who were denied the opportunity to mourn and grieve their loved ones in accordance with their own spiritual beliefs, laws, and customary burial and memorialization practices. This continues today as Survivors, Indigenous families, and communities try to trace the missing and disappeared children and locate their burial sites.

Reclaiming Indigenous Spirituality and Death and Burial Practices

As discussed earlier in this Final Report, spirituality is at the heart of Indigenous laws that are transmitted and practised through Sacred ceremonies, protocols, and oral histories. Many participants at the six National Gatherings spoke about the importance of including Indigenous legal principles in search and recovery work. They emphasized the necessity of conducting proper burial ceremonies for the children according to their own funerary and

burial laws so that their Spirits could be at peace. While some Survivors and Indigenous families who are practising Christians may choose to have Christian burial services when they are able to locate a missing or disappeared child's burial site, those who have returned to the spiritual beliefs of their ancestors may want no elements of Christianity included in the reburial and/or memorialization processes. Still others may choose to have a combination of both, weaving elements of Indigenous and Christian spiritual beliefs and practices together.

THE RCMP AND INDIAN RESIDENTIAL SCHOOLS

> When they started taking kids off the land to attend school the RCMP boat would pick us up. There is no doubt that our parents were intimidated by the police into letting us go. They were put in a position where they could not say no. Even though they did not want us to go they were too afraid of the police, too afraid to stand up to the police.
>
> — Jaco Anaviapik, Inuk Survivor[77]

> We couldn't go to the police. We saw them bringing back runaways. We were afraid of the police even though they didn't do anything to us ... a fear of being accused of doing something wrong ... there was no trust.
>
> — Survivor[78]

Survivors' childhood memories of the RCMP run counter to a deeply ingrained myth in Canadian national history that traces back to the origins of Canada's national police—the North-West Mounted Police (NWMP)—established in 1873. For them, the police were the adults who forcibly removed them from their homes and took them to an Indian Residential School, returned those children who subsequently ran away, and later failed to thoroughly investigate accusations of physical and sexual abuse or deaths of children in these institutions. In sharp contrast, generations of Canadians were taught that the "Mounties" were national heroes who brought law, order, and peace to the settling of the prairie west, establishing relationships with Indigenous Peoples, and protecting them from unscrupulous American traders.[79] The reality was quite different. The "Mounties" were dispatched to the North-West Territories by the federal government to pacify Indigenous Peoples who resisted colonization by imposing and enforcing British law. Legal scholar Sidney L. Harring points out that the NWMP, "was a self-contained legal institution organized on a quasi-military model:

"Royal Canadian Mounted Police Constable W. Yakemishin with a young Inuit boy in the Federal Day School at Tuktoyaktuk, Northwest Territories," March 1956 (Library and Archives Canada / e010975685).

Mounties arrested, prosecuted, judged, and jailed offenders under their jurisdiction."[80] The TRC found that, "the Mounted Police was involved in passing legislation, policing, and the judicial system. From the time of their arrival in the West, police were present at all of the Treaty negotiations, serving as a silent reminder of Canada's military potential."[81]

The NWMP and, subsequently, the RCMP worked with the Department of Indian Affairs and church officials to suppress Indigenous resistance through surveillance and control.[82] The police enforced the various laws and policies of the *Indian Act*, including forcibly removing Indigenous children from their homes and taking them to an Indian Residential School. Beginning in 1927, all mounted police officers were appointed as truant officers to return runaway children to the institutions. Parents who did not return their children could be prosecuted for refusing to comply.[83] For many years in the North, the RCMP were the main federal government representatives.[84] The Qikiqtani Truth Commission documented the role of the RCMP in forced relocations of Inuit families and in the killing of qimmit or sled dogs. Police officers also forcibly removed Inuit children from their families, taking them to hostels, Indian Residential Schools, or tuberculosis sanitoria in the South.[85]

"Photograph of RCMP/Police" [RCMP Officer with Indian Residential School Boy Scouts], n.d., file Z SS39 D138 01, Deschâtelets-NDC Archives.

A report commissioned by the RCMP on its role in the Indian Residential School System found that the police, "helped Indian Agents bring children to schools, sometimes forcibly ... searched for and returned truants and fined parents whose children did not go to school ... and did not know of the majority of abuse happening within the schools."[86] In interviews conducted with some police officers, they said that, although they spent some time with the children at the institutions, coaching sports, teaching music, or assisting in other recreational activities, the children never reported any abuse. Some officers said that, "they doubted that students trusted them enough to talk to them."[87] The report pointed out that most Survivors who were interviewed said that, "they learned to fear and not trust the RCMP over the years."[88] The TRC concluded that, "the often-strained relations between Aboriginal people and the police in Canada is directly connected to the history of their experience of policing at residential school."[89] Given this history, the RCMP (and any other police services that participated) must apologize to Survivors and to Indigenous families whose children were never returned home for enforcing State violence upon them, for failing to protect the children, and for failing to properly investigate their deaths.

APPLYING ANTI-COLONIAL CRITERIA TO APOLOGIES

While a full account of the violent history of Canada's relationship with Indigenous Peoples is beyond the scope of this chapter, it is important to understand the weight of this history in relation to the apologies made by the federal government, churches, and RCMP. This broader historical context illustrates how, together, these systems and agents of empire and settler colonialism enforced genocidal laws, policies, and strategies of land dispossession, political, cultural, and spiritual destruction, and forcible child removals to eliminate Indigenous Peoples as sovereign Nations. This provides the necessary background for turning to the apologies themselves—representative examples of church, government, and RCMP apologies as well as several apologies from provinces, universities, and professional bodies. Drawing on Western and Indigenous criteria identified by the UN Special Rapporteur, the TRC, and various scholars, these apologies are analyzed through an anti-colonial lens.

Canada's Apologies

The Statement of Reconciliation and the Apology in the Indian Residential Schools Settlement Agreement

On January 7, 1998, the Honourable Jane Stewart, then minister of Indian Affairs and Northern Development, delivered a "Statement of Reconciliation" in what Matt James describes as a, "weak ... quasi-apology ... offered in a low-key office ceremony."[90] In this statement, Canada "focused primarily on physical and sexual abuse"; however, "it did not describe in detail any of these actions, explain which institutions or policies might have been responsible, acknowledge that the state intended them to happen, or, indeed, 'say sorry' for them." James notes:

> Instead, the 1998 statement took responsibility only for "the tragedy of sexual and physical abuse." Immediately after acknowledging "the role [that the federal government] played in the administration and development of these schools," the minister declared of the abuse, "what you experienced was not your fault and should never have happened.... [W]e are deeply sorry." Stewart also announced a $350 million "healing fund" to support the health needs of abused [S]urvivors.[91]

Canada's subsequent apology in the House of Commons in 2008 addressed some but not all of these shortcomings, thus meeting some additional criteria identified earlier in this chapter. However, several scholars point out that Canada's 2008 apology still failed to acknowledge that the Indian Residential School System was only one element of the overarching settler

colonial goal. The government's goal was to eliminate Indigenous Peoples as distinct peoples within Canada through genocidal processes of forced assimilation, land dispossession, forcible relocation, and the forced removal of children from their families. Indigenous scholars Jeff Corntassel, Chaw-win-is, and T'lakwadzi note that, "the issue of land is treated as a separate issue from that of the residential school, ignoring the fact that the issues [S]urvivors contend with from the residential school era are rooted in the forced removal of entire families and communities from their homelands."[92]

Kahnawà:ke Mohawk activist, writer, and scholar Taiaiake Alfred highlights that, "in the wake of the Indian residential schools apology and the compensation of the Settlement Agreement, it must be said that half-hearted apologies and small monetary payoffs of those remaining individuals who endured abuse in residential schools do not come close to true acknowledgment, much less moral, legal, or political absolution for the much larger crime of dispossession of an entire land mass."[93] Canadian Studies scholar Eva Mackey argues that Canada's apology was carefully worded to limit the scope of wrongdoing that was being acknowledged, attributing the harms not to the broader systemic violence that extends beyond Indian Residential Schools but, rather, to specific incidents of abuse and the misguided attitudes of those involved in operating these institutions:

> It is significant that out of all the interconnected wrongdoings of the Canadian state towards Aboriginal peoples, the establishment of the residential schools became the focus of the apology and the process of reconciliation.... By limiting the apology and the redress to residential schools, the official apology carved out a very small part of a much broader process of cultural genocide that was ... deeply interconnected with the theft of land that was pivotal to building the nation-state.[94]

In a comparative study of the Australian and Canadian apologies, Dominello argues that, "in making apologies states seek to acknowledge and accept responsibility for past wrongs; at the same time, states use apologies as a way of limiting their liability for past injustices."[95] She found both apologies to be, "fatally flawed in failing to address the history of colonization as the source of injustices experienced by Indigenous peoples."[96]

Not only did Canada seek to limit its liability by narrowing the scope of harms acknowledged, but it further narrowed this scope by excluding certain groups of Survivors from the *Indian Residential Schools Settlement Agreement* (*IRSSA*),[97] including Day Scholars and Indian Day School Survivors,[98] Métis Survivors, and Survivors in Newfoundland and Labrador. The TRC heard from many of these Survivors. The TRC found that not only had Survivors from more than one thousand other so-called unrecognized institutions been denied

compensation, but they also felt, "excluded from the apology and from the process of reconciliation."[99] An analysis of representative examples of Canada's post-TRC apologies indicate that this pattern of limiting and exclusion continues.

2017 Newfoundland and Labrador

Survivors of Indian Residential Schools in Newfoundland and Labrador had been excluded from the *IRSSA* and from the 2008 Harper apology because, "the government of Canada at the time had argued that it was not accountable for the boarding schools because they had opened before Newfoundland and Labrador had become a part of Canada."[100] As a result, Survivors were forced to litigate. In 2011, Inuit leader Charlotte Wolfrey, from Rigolet, Labrador, explained, "The truth for us in Labrador has certainly been told over and over and over again.... It pains us, it hurts us, as Labrador people, as Inuit, and as Innu to not be believed. Our truth was not included in the apology or the settlement, and our only recourse is the courts of Canada."[101]

On November 24, 2017, Prime Minister Justin Trudeau apologized to some, but not all, of the Survivors of the residential and boarding schools run by the International Grenfell Association and the Moravian Church in Newfoundland and Labrador.[102] Trudeau made his apology following the federal government's 2016 settlement of litigation with Newfoundland and Labrador Survivors.[103] Although this apology was aimed at Survivors excluded from the earlier *IRSSA*, it ironically created new exclusions. Because it was linked to the settlement of the litigation, it only included those members of the class action that were part of that litigation, therefore excluding Survivors who were placed in the institutions prior to Newfoundland and Labrador joining Confederation in 1949, those who attended these institutions only during the day, and those who did not stay in dormitories.[104] Consequently, 84-year-old Leah Ford, who had been taken to the Makkovik Boarding School from the age of seven, was left out. "I was really disappointed, but I won't cry about it," Ford stated. "They can keep their money."[105] Like many Survivors, Ford experienced abuse at the institution, but her experiences still have not been recognized by Canada (or by the province of Newfoundland and Labrador as discussed later in this chapter).

Due to the partial acknowledgement of the harm perpetrated by the federal government on Innu communities, the Innu Nation refused to accept Trudeau's apology.[106] This harm includes the ongoing impacts of colonial systems within Innu communities, including the intergenerational trauma caused by the Indian Residential School System, the Sixties Scoop, and the significant disruption of family relationships occurring through the child welfare system.[107] The decision not to accept the federal apology was made after a full-day meeting

with leadership from Sheshatsiu and Natuashish, with Survivors and community members in attendance. Survivor Helen Andrew said:

> When we were told to settle here that had a ... devastating effect on our culture.... I believe that the Indian Residential Schools all across Canada is a form of genocide from the government to the Indigenous people. What I am seeing now [is that] the CSSD [the Ministry of Children, Seniors and Social Development] is a continuation of that system because it's doing the same thing in my community.... I think the Prime Minister needs to come to us and listen to us to hear our story and to see what kind of ways we can work together to address this issue.[108]

Canada's Non-Apology to Métis Survivors

> There are many Métis residential school [S]urvivors who continue to go unrecognized, unacknowledged for the harms that they endured during their time at a residential school, a day school, convents. But until that recognition is made and those students and those children, the [S]urvivors of those schools get the recognition that they deserve, we won't see the progress towards reconciliation that we need to in this country.
>
> **— Cassidy Caron, President, Métis National Council**[109]

Métis children were taken to both recognized and unrecognized Indian Residential Schools. Two unrecognized institutions include the Île-à-la-Crosse Indian Residential Boarding School, which operated between the 1820s and the mid-1970s,[110] and the Timber Bay Children's School, which operated between 1952 and 1994 in Saskatchewan. The non-recognition of Île-à-la-Crosse Indian Residential Boarding School has been raised as an issue in the House of Commons for the last two decades. On the day after Prime Minister Stephen Harper's apology to Indian Residential School Survivors on June 11, 2008, Liberal MP Stéphane Dion, then leader of the opposition, asked:

> Mr. Speaker, yesterday leaders in the House formally apologized for the legacy of residential schools. We must now move forward toward truth and reconciliation. Will the Prime Minister give his words weight by, for example, honouring his election promise to compensate the victims of schools who have been left out of the settlement, such as Île-à-la-Crosse in Saskatchewan?[111]

[Île-à-la-Crosse Indian Residential Boarding School] Des bâtisses de l'Île-à-la-Crosse, Corporation archiépiscopale catholique romaine de Keewatin – Le Pas, file 0484, N5181, Société historique de Saint-Boniface.

Over 15 years later, Métis Survivors of the Île-à-la-Crosse Indian Residential Boarding School are still waiting for compensation from Canada and the province of Saskatchewan, which also funded the institution at various times.[112] There has been no apology:

> Survivors have filed a class-action lawsuit after years of denial and squabbling between the federal and provincial governments over which jurisdiction has legal responsibility for Île-à-la-Crosse.[113] In the statement of claim, the plaintiffs note that "Unlike the [S]urvivors of the formally recognized Indian Residential Schools, however, the Survivor Class Members have received no recognition, compensation or apology from those responsible for their experiences at the Île-à-la-Crosse School."[114]

On March 23, 2023, in the House of Commons, New Democratic Party (NDP) MP Blake Desjarlais asked, "Despite the violence, terror and neglect experienced, [S]urvivors have been denied the justice, recognition and compensation they deserve. Instead of breaking the cycle of intergenerational trauma, the Liberals are fighting the [S]urvivors in court. It is shameful. When will the government finally commit to justice for the Île-à-la-Crosse residential school [S]urvivors, before it is too late?" In response, Marc Miller, then minister of Crown-Indigenous Relations, acknowledged that, "these [S]urvivors deserve justice. Unfortunately, the Government of Saskatchewan has not acted up to this date, and it needs to be at the table

with us. These were administered by the Government of Saskatchewan. It needs to be held accountable. Reconciliation is not only the job of the federal government, which is to be held to account, but for all levels of government. We need the Government of Saskatchewan to step up."[115]

On March 30, 2023, NDP Member of the Saskatchewan Legislative Assembly Betty Nippi-Albright presented a petition on behalf of Piapot, Zagimē, and Nekaneet First Nations calling on the government of Saskatchewan, "to recognize the Île-à-la-Crosse and Timber Bay schools as provincially run schools, release the records of these schools, and offer the students a formal apology and compensation for those [S]urvivors."[116] The Federation of Indigenous Sovereign Nations has raised the importance of recognizing the trauma and harm inflicted on children who were sent to Timber Bay Children's School. Chief Bobby Cameron has stated, "There were many horrific experiences within those schools, within those grounds. The children suffered the same abuses, and in some cases even death.... It should not be shuffled off to the side, forgotten or ignored. Those descendants deserve to be compensated, and for those that lost their lives in Timber Bay to be recognized properly."[117]

In its submission to the OSI, the Métis Nation of British Columbia noted that there has been no apology made to Timber Bay or Île-à-la-Crosse Survivors. It made several recommendations, including that the federal government make an admission of guilt and responsibility for, "the institutions and policies that directly and indirectly harmed Métis including but not limited to involuntary adoptions/removal of children from their families, hospitals/sanitoriums, the dispersal of Métis communities, cultural genocide via language loss and cultural practices, etc." It set out several terms of restitution, including for, "an apology from the federal government [which] comes after these [other] steps [of restitution] have been taken. A Métis-specific approach is required when an institution and/or government admits and apologizes for the harms of residential schools."[118] The importance of apology and acknowledgement for Métis Survivors cannot be overstated. At the National Gathering in Toronto, Île-à-la-Crosse Survivor Emilien Janvier said, "Recognize us, we are people and compensate us and say you are sorry.... We would like to get acknowledged that we are people. We want to move on in life.... We want to put this to rest and go to bed without having to think of what happened."[119]

2019 Apologies to the Inuit

Canada made two apologies to the Inuit in 2019: the first was delivered by Prime Minister Trudeau on March 8, 2019,[120] in Iqaluit, Nunavut, and the second in August 2019, by Carolyn Bennett, then minister of Crown-Indigenous Relations and Northern Affairs.[121] Together,

Trudeau's Statement of Apology on Behalf of the Government of Canada to Inuit for the Management of the Tuberculosis Epidemic from the 1940s–1960s and Bennett's Statement of Apology Regarding the Findings of the Qikiqtani Truth Commission expand the scope of harms acknowledged by Canada beyond the abuses of Indian Residential Schools. While both are important, the first apology is particularly relevant to search and recovery work for missing and disappeared Inuit children and their unmarked burials.

The prime minister publicly acknowledged specific wrongs, and, unlike in earlier apologies to Survivors of the Indian Residential School System, he framed them in the context of human rights violations, noting the discrepancy between Canada's position on human rights at the international level versus its actions domestically. He began by saying that, "while Canada was busy adopting the *United Nations Universal Declaration of Human Rights*, it was treating people throughout Inuit Nunangat as inferior, identifying Inuit with numbers instead of names."[122] He then named these violations in more detail, which are outlined below.

On Forced Relocations, Inequitable Health Care, and Failure to Obtain Consent

> While the government was hard at work creating universal health care, it was forcing Inuit into settlements where disease and infection ran rampant. And 70 years ago, while tuberculosis was raging across Canada, the government responded decisively in the South by opening new clinics and training doctors and nurses. But in the North, the government's approach to TB wasn't to show compassion or care, but to separate families and ignore people's rights. It was colonial and it was misguided. It wronged and harmed Inuit. I know that many of you present this morning were touched by this unjust policy and are still grieving the loss of loved ones.... Without their consent, Inuit were screened. Anyone thought to have TB was sent South to cities like Hamilton and Edmonton, for months or years of treatment in a sanatorium where almost no one spoke Inuktitut.[123]

On Removals to Sanitoria, Disappeared Family Members, Deaths, and Unmarked Burials

> It was a grueling journey of thousands of kilometres, on ships, on trains, and on planes—a trip that took days or even weeks. A trip that took lives along the way. And the mothers and fathers, brothers and sisters

> left behind often weren't told where their loved ones had gone, or for how long. When someone passed away during treatment, they were buried in the South. Only sometimes was it in a marked grave, and only sometimes was their family told.... To the people who still don't know what happened to your children, your mothers, your fathers—we are sorry. To the communities that are facing the consequences of this policy and others—we are sorry.[124]

On Colonial Policies of Forced Child Removals, Family Relocation, Land Dispossession, and Denial of Traditional Livelihood

> But the government's management of TB wasn't one bad policy—it was only a piece of the larger history of destructive colonialism.... Inuit children sent to residential schools and federal hostels were forced to learn an alien language. They were neglected and abused.... It was the federal government that decided that families—your families—would be moved off the land. The federal government that decided that Inuit would be exploited to assert Canadian sovereignty in the high arctic. I know that people here today—and across Inuit Nunangat—live with the consequences of these policies, of these years when your communities and your rights were not respected. Because all of this—the forced relocation, the residential schools, the TB policy—it happened at the same time, to the same people, within just a few decades. It happened during the same years when the government identified Inuit with numbers on disks, and when families had entire teams of qimmiit, sled dogs, killed by officials.[125]

Trudeau acknowledged that the government's policy on the management of the tuberculosis epidemic, "wasn't an accident—it was purposeful. It was done even though the Government of Canada knew the toll on Inuit families. It was done when the best interests of communities were not put first."[126]

"Inuit watching the arrival of the C.G.S. 'C.D. Howe' at Pangnirtung," July 1951 (W. Doucette / National Film Board of Canada. Photothèque / Library and Archives Canada / e010692606).

On Paternalistic, Racist, and Discriminatory Government Attitudes and Actions

Trudeau promised:

> to work together to correct the paternalism and colonialism that was visited upon your communities.... We are sorry for the colonial mindset that drove the federal government's actions. The government has apologized to former residential school students and to Inuit who were forced to relocate. But the trauma, passed from generation to generation,

> remains and it runs deep. We know now that what we did was wrong. We know now that we must work to make it right.... Today, we take responsibility for the harm caused by the policies and the actions of the federal government. The racism and discrimination that Inuit faced, was, and always will be, unacceptable.[127]

On Moving from Apology to Action

The prime minister said that, "an apology alone is not enough. We must also promise to do better. And although as a country we can't change what's already done, we can choose what we do next."[128] He continued:

> Today, the federal government is officially launching the Nanilavut Initiative, a truly collaborative effort with Inuit partners, and providing funding to support its work. In Inuktitut, Nanilavut means "let's find them," and that's what this project is about—finding and honouring Inuit who went missing during the TB epidemic, and bringing healing and closure to everyone who was left behind.... Through the Initiative, people will have access to information about what happened to their family members, and we're providing funding for the four regional land claim organizations to support travel for some families who have found where their loved ones are buried. We're also providing money to mark graves and create plaques. Nothing can bring back the voice of a parent or the embrace of a friend, but acknowledging where they were laid to rest is a start in honouring their memory. Because all too often, the wrongs done to Inuit have been forgotten or pushed aside. We can't let that happen again. That's why we're supporting community-led events and memorials, and public education campaigns.[129]

The prime minister then spoke about other government initiatives to eradicate tuberculosis in the North by providing funding to Inuit Tapiriit Kanatami for an Inuit-led plan to eliminate the disease across Inuit Nunangat by 2030 and working through the Inuit-Crown Partnership Committee to address poverty, food insecurity, and inadequate housing because tuberculosis is, "a disease that cannot be cured by medicine alone."[130] He ended the apology by saying that, "moving forward requires us to be willing to admit when we were wrong. To be ready to do real work to make amends. That's why I'm here today. This morning's apology is a promise to you. It's a promise to never forget the harm that was done to Inuit, and to your families. A promise, on behalf of all Canadians, to build a brighter future. And to build

it together."[131] However, there were no specific actions announced for public education or commemoration initiatives to ensure that this happens.

The wording of the apology contains some contradictions. For example, while Trudeau said that the tuberculosis policy, "wasn't an accident—it was purposeful. It was done even though the Government of Canada knew the toll on Inuit families," he also said that, "we know now that what we did was wrong," suggesting that the government at the time did not.[132] This is similar to the wording of earlier government apologies. However, by recognizing that the federal government's actions violated Inuit rights and connecting the tuberculosis policy with other destructive colonial policies, the apology also demonstrates how the apology-making and reparations process in Canada is evolving over time, sometimes in ways that help to counter settler amnesty.

Trudeau's framing of the apology in the context of human rights violations did not go unnoticed. In his response to the apology, Natan Obed, president of Inuit Tapiriit Kanatami, said, "I was emotional about what [the apology] meant, especially to the Inuit who were taken south for treatment.... A lot of people lived with this their whole lives and haven't had a chance to have anyone recognize the violation of their human rights and also the fact that it was wrong."[133] He also emphasized that, while he thought that Trudeau's apology was sincere, "the action that comes after the apology is truly the indication that ... we have come to another place."[134]

The subsequent apology delivered by Bennett was in response to a recommendation of the Qikiqtani Truth Commission and was also the first step in the Qikiqtani Inuit Association's action plan to establish saimaqatigiingniq, "a new relationship, when past opponents get back together, meet in the middle, and are at peace."[135] As Bennett stated, "I am moved by the stories in your testimonies and what you have endured as a result of misguided policies; the breakdown of the relationship between Inuit and qimmiit, the past tuberculosis epidemic, the relocations, the lack of adequate housing, and residential schools."[136] While she acknowledged the harmful impacts of multiple colonial policies made with no consultation with Inuit, these policies are described once again as being "misguided" (just as they had been in earlier apologies) rather than as a violation of Inuit human rights.[137] The reasons for this omission are unclear. In any apology to Indigenous Peoples as part of reparations, such recognition is critical.

Analyzing these apologies against the criteria of the UN Special Rapporteur and the TRC, several points stand out. Since the apology of a prime minister carries more weight than that of a minister, the importance of Trudeau's rights-based language should not be underestimated. It comes closer to meeting the UN Special Rapporteur's criteria in several ways. First, by

providing, "a clear acknowledgment of the nature, scale and duration of the harm inflicted ... [and] specify[ing] clearly whether the harm was inflicted deliberately, with intent, or negligently." Second, in meeting the criteria for admitting collective responsibility for wrongdoing without an, "attempt to justify, explain, rationalize or contextualize the harm." Third, it is a more fulsome truth-telling that acknowledges that these colonial policies were not simply "misguided" but also deliberate actions taken in full knowledge of their potential harms.

Finally, while Bennett's apology made general statements about following it with concrete actions, Trudeau's apology named specific actions that the federal government was implementing. This comes closer to meeting the UN Special Rapporteur's criteria that official apologies must identify other reparative measures, including, "a commitment to provide monetary compensation" through funding initiatives directly related to addressing a specific harm and, "restoration of the rights of victims and/or appropriate commemorations or acts of memorialization." The UN Special Rapporteur points out that, "reparative measures may also include a commitment to fulsomely and effectively pursue justice, truth and information recovery." The Nanilavut Initiative is a critical first step in truth and information recovery efforts, including Inuit search and recovery work relating to missing and disappeared Inuit children and unmarked burials.

STATEMENTS BY THE PRIME MINISTER ON THE MISSING AND DISAPPEARED CHILDREN AND UNMARKED BURIALS

Canada has not yet made an official apology to Indigenous Peoples regarding the missing and disappeared children and unmarked burials. However, beginning with the announcement by Tk̓emlúps te Secwépemc in 2021, Prime Minister Justin Trudeau has issued several statements to the media or in government releases posted on his official website. These statements must be distinguished from official apologies. Their purpose and function are different, so they do not meet the criteria for an official apology. They may be hastily drafted and issued to respond to media pressure in ways that are disrespectful. For example, the prime minister's response to the news about the confirmation of up to 215 potential unmarked burials at the former Kamloops Indian Residential School was issued during a meeting convened to discuss the importance of supporting Black entrepreneurs and business owners and to launch the Black Entrepreneurship Loan Fund. Trudeau said:

> As Prime Minister, I am appalled by the shameful policy that stole Indigenous children from their communities. Our thoughts are with Tk̓emlúps te Secwépemc First Nation, and with all Indigenous

> communities across Canada. Sadly, this is not an exception or an isolated incident. We're not going to hide from that. We have to acknowledge the truth. Residential schools were a reality—a tragedy that existed here, in our country, and we have to own up to it. Kids were taken from their families, returned damaged or not returned at all, with no explanations until this week.... Later this afternoon, I will be talking directly with Ministers Bennett, Miller, and Vandal, and with all Ministers, about the next and further things we need to do to support [S]urvivors and the community. We promised concrete action, and that's how we'll support [S]urvivors, families, and Indigenous peoples. To honour the 215 children who lost their lives at the former Kamloops residential school, as well as residential school [S]urvivors and their families, the flags on federal buildings will fly at half-mast until further notice.[138]

After making this announcement, Trudeau then switched back to focus again on the issue that was the primary purpose of the meeting—the importance of supporting Black entrepreneurs and business owners. Not only was coupling these statements together an ill fit to acknowledge the harm perpetrated on the missing and disappeared children, but it also detracted from the importance of the launch of the Black Entrepreneurship Loan Fund and of supporting Black entrepreneurs in light of Canada's history of racism and discrimination against Black people and communities.

In response to a second announcement on the findings around the former Marieval (Cowessess) Indian Residential School in Saskatchewan on June 24, 2021, Trudeau issued a more respectful statement:

> No child should have ever been taken away from their families and communities, and robbed of their language, culture, and identity. No child should have spent their precious youth subjected to terrible loneliness and abuse. No child should have spent their last moments in a place where they lived in fear, never to see their loved ones again. And no families should have been robbed of the laughter and joy of their children playing, and the pride of watching them grow in their community.
>
> I recognize these findings only deepen the pain that families, [S]urvivors, and all Indigenous peoples and communities are already feeling, and that they reaffirm a truth that they have long known. The hurt and the trauma that you feel is Canada's responsibility to bear, and the

> government will continue to provide Indigenous communities across the country with the funding and resources they need to bring these terrible wrongs to light. While we cannot bring back those who were lost, we can—and we will—tell the truth of these injustices, and we will forever honour their memory.
>
> The findings in Marieval and Kamloops are part of a larger tragedy. They are a shameful reminder of the systemic racism, discrimination, and injustice that Indigenous peoples have faced—and continue to face—in this country. And together, we must acknowledge this truth, learn from our past, and walk the shared path of reconciliation, so we can build a better future.[139]

These statements emphasize the importance of truth finding, recognizing the harms associated with forced child removals, and acknowledging that these harms are Canada's responsibility to bear. However, they do so in passive language that evades full responsibility: instead of plainly stating that Canada removed Indigenous children from their families and communities using State-enforced violence, it indicated that they were, "taken from their families." They suffered abuse, neglect, and loss of language, culture, and identity and, "spent their last moments in a place where they lived in fear, never to see their loved ones again" because the federal government targeted them as part of a deliberate strategy to eliminate Indigenous Peoples.[140] Canada created and enforced genocidal laws and policies of assimilation that violated Indigenous children's and families' inherent, Treaty, constitutional, and human rights.

AN ANALYSIS OF APOLOGIES ISSUED BY THE PROVINCES

A small number of provinces have issued Indian Residential School apologies. Although these apologies often emphasize the limited role of the provinces, many provinces were directly involved in supporting the administration and operation of Indian Residential Schools. For example, in some provinces, provincial and municipal police services tracked down and returned children who ran away,[141] and provincial school inspectors were utilized to inspect the institutions.[142] In several instances, provinces provided financial payments to churches who were operating them.[143]

Manitoba

Manitoba was the first province to issue an apology in 2008, the day after the federal government issued theirs.[144] In this apology, Premier Gary Doer kept a distanced tone as he stated

that, although, "the Province of Manitoba did not establish a residential school system," it also did not challenge the system or the harms it created.[145] Eight years later, in a 2015 apology for the Sixties Scoop, Manitoba Premier Greg Selinger linked Indian Residential Schools to the child welfare system.

Alberta

In 2015, Rachel Notley, the premier of Alberta, delivered a statement to the Alberta legislature that shared similar, distancing language with Manitoba's 2008 apology, regretting that Alberta had not taken a stance against the Indian Residential School System while emphasizing that the province had not created the system.[146]

Ontario

In 2016, Premier Kathleen Wynne made an apology for Indian Residential Schools on the floor of the Legislative Assembly of Ontario. Wynne's apology included phrases that placed the system and the harms it caused in the past, apologizing, "for the policies and practices supported by past Ontario governments and for the harm that they caused" and identifying the impacts of the system as having been "set in motion" by "previous generations."[147] Like her counterparts in Manitoba and Alberta, Wynne apologized, "for the province's silence in the face of deaths and abuses at residential schools" and, "for the fact that the residential schools are only one example of systemic, intergenerational injustices inflicted upon [I]ndigenous communities across Canada."[148]

Newfoundland and Labrador

As already noted, the administrative history of these institutions in Newfoundland and Labrador sets this province apart from its counterparts. Prior to 1949, as the TRC notes:

> Labrador was governed by the British colonial government of Newfoundland and was, in effect, the colony of a colony. The colonial government in St. John's provided almost no services to the residents of Labrador, be they Aboriginal or non-Aboriginal. Until 1949 any services that were provided were delivered by the Protestant International Grenfell Association and the Moravian Brotherhood.[149]

When Newfoundland and Labrador entered Confederation in 1949,[150] Canada and the province agreed that the Inuit in Labrador did not fall under the jurisdiction of the *Indian Act*. The province did not make an effort to actively provide services in Labrador so missionary

organizations continued to establish and administer Indian Residential Schools in Labrador to Inuit and Innu children.[151] Canada provided funding in lesser amounts than it did in other provinces and territories for Indian Residential Schools, and the province administered this funding.[152] Based on this different history, Survivors in Newfoundland and Labrador were excluded from the *IRSSA*.

In September 2023, six years after the federal apology, Premier Andrew Furey made the first of a series of apologies on behalf of the province.[153] Furey's apologies were framed with language that obscures the province's decisions not to provide services to communities in Labrador, which led to missionary organizations doing so. The apology therefore placed the responsibility almost solely with missionary organizations. In Furey's apology to the Inuit, for example, he said, "The Moravian Mission and the International Grenfell Association established schools with dormitories for Indigenous children. Their stated purpose was to educate children primarily from the communities of Spotted Island, Batteau, Seal Island, Black Tickle, Cartwright, Happy Valley-Goose Bay, North West River and other parts of Labrador."[154] The minimization of provincial responsibility continues throughout the apologies in passive phrases such as, "We are sorry—pijâgingilagut—that the Government of Newfoundland and Labrador allowed this to happen and did not step in to protect the children who needed to be protected. We ... neglected our responsibility and duty as a Government."[155] Throughout the apologies, Furey emphasized the role of the church and mission organizations while simultaneously de-emphasizing the role and responsibility of the Newfoundland and Labrador government in administering the federal funding it received for this system.

Inuk Survivor Charlotte Wolfrey, the AngajukKak of Rigolet, accepted Furey's apology, "because we want the pain and the hurting to go away, so that we can try to continue to move on.... This is a moment of recognition and truth. The premier admitted the government of Newfoundland and Labrador's role in the residential school system by saying 'We are sorry,' that the Government of Newfoundland and Labrador allowed this to happen and did not step in to protect the children that needed to be protected.'"[156] In response to Furey's apology in Happy Valley-Goose Bay to Survivors of the Nain Boarding School, Survivor Wally Andersen emphasized the importance of action to follow the apology, "I've heard the apology, I'll see what truth and reconciliation brings, and then we'll know that if this was a true apology.... If we're going to move forward, then what steps are going to be taken to help these people who incurred difficult times?"[157] He also noted that the apology was long overdue as his mother, who was taken to Indian Residential School at age six and who lived until she was 105 years of age, died the year before the apology was given.[158]

CHURCH APOLOGIES

Several church representatives and organizations have issued apologies for the harms of Indian Residential Schools. Again, the meaningfulness of these apologies can only be measured in the actions committed to, and implemented by, the churches afterwards. This analysis highlights that church apologies suffer from many of the shortcomings of government apologies and do not meet either international or Indigenous criteria for apologies.

Roman Catholic Church: The Pope's Apology

> I first asked [the pope] years ago to come to Canada. To apologize to [S]urvivors. In our country. Because that's what they wanted.... Many, many, many hundreds told us, "I just want three words. I want him to come to Canada and to say to my face, 'I'm sorry. I'm sorry for what happened to you as a child."
>
> — Dr. Chief Wilton Littlechild[159]

Catholic church entities operated the majority of Indian Residential Schools across Canada.[160] At the time of the TRC's Final Report in 2015, some Catholic entities had issued statements and apologies that the TRC described as, "a patchwork of apologies or statements of regret that few Survivors or church members may even know exist."[161] Former Commissioner Dr. Chief Wilton Littlechild said:

> During the Commission's hearings, many Survivors told us that they knew that the pope had apologized to Survivors of Catholic-run schools in Ireland. They wondered why no similar apology had been extended to them. They said, "I did not hear the pope say to me, 'I am sorry.' Those words are very important to me ... but he didn't say that to First Nations people."[162]

The TRC noted that, "many Survivors raised the lack of a clear Catholic apology from the Vatican as evidence that the Catholic Church still has not come to terms with its own wrongdoing in residential schools."[163] Having identified the lack of a papal apology as a significant barrier to reconciliation,[164] the TRC issued Call to Action 58:

> We call upon the pope to issue an apology to Survivors, their families, and communities for the Roman Catholic Church's role in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children in Catholic-run residential schools. We call for that

> apology to be similar to the 2010 apology issued to Irish victims of abuse and to occur within one year of the issuing of this final report and to be delivered by the pope in Canada.[165]

For decades up to and years after the TRC issued its Final Report, Survivors and Indigenous leaders advocated for a papal apology:

- In the 1990s, Phil Fontaine, then Grand Chief of the Assembly of Manitoba Chiefs, backed Indigenous calls to recognize the harms created by Catholic-run institutions by publicly disclosing the physical and sexual abuse that he experienced as a child at the Fort Alexander Indian Residential School.[166]
- In 1998, Phil Fontaine, then National Chief of the Assembly of First Nations (AFN), travelled to Rome for an audience with Pope John Paul II and asked for an apology for the Catholic church's part in the Indian Residential School System.[167]
- In 2009, Phil Fontaine travelled to Rome for another private meeting with the pope.[168] In response to Fontaine's request for an apology during this meeting, the pope did not apologize but instead issued a statement.[169]
- In 2018, Perry Bellegarde, then National Chief of the AFN, wrote to the pope requesting an in-person meeting to discuss an apology for harms that the Catholic church committed against Indigenous children at Indian Residential Schools.[170]
- In 2022, Dr. Chief Wilton Littlechild, along with a delegation of 30 Indigenous representatives, attended a meeting with the pope at the Vatican, where they asked the pope to apologize for the Catholic church's role in the Indian Residential School System.[171]

There were various reasons provided over the years for the lack of an apology from the pope, including concerns expressed by many Catholic bishops in Canada that a papal apology would trigger lawsuits against the Catholic church entities;[172] that the pope was taking the position that he could not personally respond to a request for a visit and apology;[173] and that the pope could not visit Canada for the sole purpose of delivering an apology for Indian Residential Schools.[174] Following the Tk̓emlúps te Secwépemc's confirmation of unmarked burials in May 2021, the pope expressed sorrow but did not apologize.[175]

At the March 2022 meeting with Pope Francis, the delegation of 30 First Nation, Inuit, and Métis representatives shared their powerful stories of survival and pressed for the release of

important records, the return of items taken from Indigenous people and communities, the return of lands, funding for healing, and for the repudiation of the Doctrine of Discovery.[176] During the delegation's visit, Okanese Chief Marie-Anne Day Walker-Pelletier, Survivor of the Lebret Indian Residential School, presented the pope with two pairs of hand-crafted moccasins representing the children who were never returned home from Indian Residential Schools. She offered this gift on the mutual understanding that the pope would bring the moccasins back to Canada on his next visit. She hoped that, "when he returns them that he does it with the apology, 'I'm so sorry.' That's what I'm hoping for."[177]

The Papal Apologies in Canada

> What could he possibly say to repair all the damage he's done to generations of our families and our communities? They've destroyed so many lives, and they continue to do it.
>
> — Kathie Dickie, Survivor of Lower Post Indian Residential School[178]

In July 2022, Pope Francis travelled to three different communities across Canada to deliver apologies to Indian Residential School Survivors. He delivered his first apology in Maskwacis, Alberta, where he visited the site of the Ermineskin Indian Residential School and the Ermineskin cemetery. In his apology, he acknowledged the Survivor testimonies and addressed Survivors by saying:

> It is necessary to remember how the policies of assimilation ended up systematically marginalizing the [I]ndigenous peoples; how also through the system of residential schools your languages and cultures were denigrated and suppressed; how children suffered physical, verbal, psychological and spiritual abuse; how they were taken away from their homes at a young age, and how that indelibly affected relationships between parents and children, grandparents and grandchildren.[179]

He also acknowledged the participation of members of the Catholic church in the colonizing of Indigenous lands and the attempted assimilation of Indigenous Peoples. He specifically addressed the harms of the Indian Residential School System when he said:

> Many members of the Church and of religious communities cooperated, not least through their indifference, in projects of cultural destruction and forced assimilation promoted by the governments of that time, which culminated in the system of residential schools.

> Although Christian charity was not absent, and there were many outstanding instances of devotion and care for children, the overall effects of the policies linked to residential schools were catastrophic. What our Christian faith tells us is that this was a disastrous error, incompatible with the Gospel of Jesus Christ.... I humbly beg for forgiveness for the evil committed by so many Christians against the [I]ndigenous peoples.[180]

Importantly, the pope promised to initiate a, "serious investigation into the facts of what took place in the past and to assist the survivors of the residential schools to experience healing from the traumas they suffered."[181] While acknowledging the importance of the papal apologies, responses from Métis organizations emphasized the need for greater acknowledgement of the history of Métis and the Indian Residential School System, particularly given the lack of recognition, acknowledgement, and compensation for harms suffered by Métis Survivors at several Catholic-run institutions, such as Île-à-la-Crosse Residential Boarding School.[182]

The pope delivered his second apology in Iqaluit, Nunavut. There, his apology focused on the importance of relationships and connections:

> I want to tell you how very sorry I am and to ask for forgiveness for the evil perpetrated by not a few Catholics who, in these schools, contributed to the policies of cultural assimilation and enfranchisement. *Mamianak* (I am sorry). I was reminded of the testimony of an elder, who spoke of the beautiful spirit that reigned in [I]ndigenous families before the advent of the residential school system. He compared those days, when grandparents, parents and children were harmoniously together, to springtime, when young birds chirp happily around their mother. But suddenly—he said—the singing stopped: families were broken up, and the little ones were taken away far from home. Winter fell over everything.
>
> Stories like these not only cause us pain; they also create scandal. All the more so, if we compare them with the word of God and its commandment: "Honor your father and your mother, that your days may be long in the land which the Lord your God gives you" (Ex 20:12). That possibility did not exist for many of your families; it vanished when children were separated from their parents and their own nation was perceived as dangerous and foreign.... How evil it is to break the bonds uniting parents and children, to damage our closest relationships, to harm and scandalize the little ones![183]

The pope's apology did not mention specific abuses that had been perpetrated at Catholic-run institutions on Inuit children. In response to the pope's apology, Jean-Charles Piétacho, Survivor and Chief of the Council of Innus of Eukanitshit, said, "I'm not hearing what I wanted to hear, which is really to ask for forgiveness, to apologize on behalf of the Catholic Church.... It's like it's only a few Christians who committed evil. We're once again trivializing the [S]urvivors' situation."[184]

In his third apology in Quebec City, Quebec, the pope notably acknowledged the ongoing nature of settler colonialism in Canada by saying that, "colonization has not ended; in many places it has been transformed, disguised and concealed."[185] He also modified his apology slightly by acknowledging that, "the residential school system ... harmed many [I]ndigenous families by undermining their language, culture and worldview. In that system, promoted by the governmental authorities of the time, which separated many children from their families, different local Catholic institutions played a part."[186] This modification was likely in response to criticisms of his first two apologies that highlighted how he laid the blame on "a few bad apples" rather than acknowledging the institutional responsibility of the Catholic Church for the abuses against Indigenous children.[187] In his apology, he also placed responsibility on "so many Christians" who conformed themselves, "to the conventions of the world rather than to the Gospel."[188]

The addition in his final apology of the recognition that "local Catholic institutions played a part," while not a strong acknowledgement of institutional responsibility, was viewed by some as significant. Phil Fontaine expressed the view that it, "went beyond Francis' original apology ... and [was] the closest he could get to apologizing for the entire Church in Canada."[189] It also demonstrated that the pope was listening and attempted to respond, even if only partially, to the criticisms of Survivors of his first two apologies.

Analysis of the Pope's Apology

> I've waited 50 years for this apology and finally today, I heard it.
>
> — Evelyn Korkmaz, Survivor of St. Anne's Indian Residential School[190]

There were many positive aspects of the pope's apologies, including that he acknowledged the significant harm to Indigenous communities, families, and children caused by the Indian Residential School System; he acknowledged the ongoing harms of colonialism for Indigenous Peoples within Canada; he committed to a full investigation and to providing ongoing

support for Survivors to heal from the resulting trauma. Although many Survivors found the pope's apologies meaningful, there were also significant criticisms, including that the apologies:

- Failed to acknowledge the institutional responsibility of the Catholic church for the harms committed against Indigenous children;
- Failed to mention the rampant sexual abuse of Indigenous children by Catholic priests and nuns;
- Did not focus sufficiently on the mass human rights violations committed against the missing and disappeared children and the existence of unmarked burials;[191] and
- Did not fully address all the harms perpetrated by the Catholic church in the pope's commitments to future action.

Additionally, many Survivors were critical of the sheer length of time it took for the pope to deliver his apology since the delay meant that many Survivors were no longer alive to hear it.[192]

Failure to Acknowledge the Institutional Responsibility of the Catholic Church

Many Survivors and Indigenous leadership were critical that the apology did not acknowledge the Catholic church's responsibility as an institution. The AFN noted that:

> [A]t sites in Maskwacis, Québec, and Iqaluit, Pope Francis delivered penitential speeches to First Nations, Inuit and Métis peoples but stopped short of denouncing the Catholic Church's role in creating systems that spiritually, culturally, emotionally, and physically abused and killed First Nations, Inuit and Métis children.[193]

In its 2023 TRC Report Card, the AFN indicated that, "the pope did not apologize for the Roman Catholic Church as an institution, nor did he acknowledge the Roman Catholic Church's role in abuses suffered at Church-run institutions."[194]

Athabasca Chipewyan scholar Cora Voyageur, Survivor of the Holy Angels Indian Residential School, also pointed out the pope's failure to acknowledge the responsibility of the Catholic church as an institution and, instead, to lay the blame on individual Christians:

> He seemed earnest in his delivery. But I wanted Pope Francis to go further with his apology. The pontiff stated that the abuses were

> committed by "so many Christians." To me, this meant that only individual people perpetrated the "evils" and that the church was unaware. This simply is not true.
>
> As a residential school Survivor, I wanted him to apologize on behalf of the Roman Catholic Church and the system it created (and maintained) that served as the site for the abuses.
>
> A significant aspect was left out—namely, the sexual abuse of children. I was taken aback by that. He talked about the cultural, emotional and physical abuse, but not the sexual abuse that was rampant at residential schools. I wanted that to be acknowledged as part of the apology.[195]

The pope's failure to acknowledge the institutional responsibility of the Catholic church was a significant omission. It also failed to take appropriate responsibility for the rampant sexual abuse of Indigenous children at the institutions by Catholic clergy.

The Omission of Sexual Abuse from the Apologies

The pope omitted any mention of sexual abuse in all his apologies. It is difficult to consider this omission accidental, especially considering that the papal apology to Survivors of Catholic-run institutions in Ireland, specifically referenced in the TRC's Call to Action 58, addressed sexual abuse directly. The pope was in Canada for several days and issued apologies in more than one location. Any omission could have been addressed during, or even after, his visit. His failure to mention sexual abuse is even more difficult to understand given that several previous apologies made in Canada, including the apology issued by the Canadian Council of Catholic Bishops in 2021, mentioned sexual abuse.[196]

Survivors indicated that, without the acknowledgement of, and apology for, the sexual abuse of children, the pope's apology was meaningless. Dorothy Dubrule, Survivor of Île-à-la-Crosse Residential Boarding School, said:

> When the pope came to Edmonton ... I said to myself, now, if I were to travel would I really truly go and see this man? I thought about that for quite a while, and I said, you know what? I wouldn't. I wouldn't. But I did sit at home, and I listened to him on TV. And when he was talking about the abuses that were done to the kids ... in the boarding school or in the residential school, he was talking about psychological, emotional, physical. And I was waiting ... sexual, sexual. He never said it ... and I said to my husband, Louie, I said: 'damn, all of what he says means

> nothing to me.' He did not acknowledge that those ... Catholic priests and nuns that were supposed to be helping these little babies, these little children, he did not say that they were inappropriate, that they were sexually abusing them. Didn't utter those words at all.[197]

There was also no mention of the Catholic church holding known abusers responsible within its own institution or disclosing information about the identities of these abusers to Indigenous communities. As the Anishinabek Nation points out in its submission to the OSI:

> [A]n apology is meaningless if it is not accompanied by actions and accountability.... Future justice is hindered as communities, Survivors, and their families continue to struggle to access records originally held by the Catholic Church and other religious entities and orders. The religious entities have been encouraged to release the names and pastoral assignments of known abusers. The Catholic Church in particular, continues attempts to conceal and protect those known abusers in IRS [Indian Residential Schools], this is deplorable and contradicts their commitment to healing.[198]

The lack of acknowledgement of the rampant sexual abuse that was perpetrated against Indigenous children by members of the Catholic church who were entrusted with their care, and the lack of commitment to deal with known abusers, was a significant omission that renders the apology meaningless to many Survivors.

Lack of Sufficient Focus on the Missing and Disappeared Children and Unmarked Burials

In the year preceding the pope's visit to Canada, Survivors, Indigenous families, and communities leading search and recovery work had made at least 11 public announcements confirming their findings of unmarked burials on former Indian Residential School sites.[199] Eight of these Indian Residential Schools were operated by Catholic entities. The public confirmations relating to the following Catholic-run institutions took place as follows:

- Kamloops Indian Residential School, British Columbia, in May 2021;
- Marieval Indian Residential School, Saskatchewan, in June 2021;
- St. Eugene's Indian Residential School, British Columbia, in June 2021;
- Kuper Island Indian Residential School, British Columbia, in July 2021;

- St. Joseph's Mission Indian Residential School, British Columbia, in January 2022;
- St. Philip's and Fort Pelly Indian Residential Schools, Saskatchewan, in February 2022;
- Sandy Bay Indian Residential School, Manitoba, in May 2022; and
- Fort Alexander Indian Residential School, Manitoba, in June 2022.

Given this context, coupled with the pope's acceptance of the moccasins earlier in 2022, the pope's relatively short mention of the missing and disappeared children and unmarked burials in his first apology was problematic.

The pope only mentioned the missing and disappeared children and unmarked burials in his apology in Maskwacis. While he acknowledged the two pairs of moccasins that he had been given during his meetings with Indigenous delegates in the spring and his responsibility to bring those moccasins home, he stated:

> I was given two pairs of moccasins as a sign of the suffering endured by [I]ndigenous children, particularly those who, unfortunately, never came back from the residential schools. I was asked to return the moccasins when I came to Canada; I brought them, and I will return them at the end of these few words, in which I would like to reflect on this symbol, which over the past few months has kept alive my sense of sorrow, indignation and shame. The memory of those children is indeed painful; it urges us to work to ensure that every child is treated with love, honour and respect. At the same time, those moccasins also speak to us of a path to follow, a journey that we desire to make together. We want to walk together, to pray together and to work together, so that the sufferings of the past can lead to a future of justice, healing and reconciliation.[200]

Near the end of his apology, he returned to the missing and disappeared children and unmarked burials by saying, "On this first step of my journey, I have wanted to make space for memory. Here, today, I am with you to recall the past, to grieve with you, to bow our heads together in silence and to pray before the graves. Let us allow these moments of silence to help us interiorize our pain."[201] The pope then visited the Ermineskin Indian Residential School cemetery and led a silent prayer.[202] Unfortunately, this silence about the missing and disappeared children extended to the apologies themselves. In an interview with *CTV*

News following the pope's apology in Maskwacis, Chief David Monias, of the Pimicikamak Cree Nation, stated that he had hoped that he would have heard, "more about the unmarked graves that we are uncovering all over Canada."[203]

Failure to Address All Harms in the Pope's Commitments to Future Action

The pope's commitments to future action were to fully investigate and provide support to Survivors to heal from the trauma they experienced at Indian Residential Schools. These are both important commitments; however, in his apologies, the pope failed to commit to actions to holistically address the harms perpetrated on Indigenous Peoples within Canada by the Catholic church. Kwakwaka'wakw Survivor Chief Robert Joseph said that, "the pope would have been a lot more forceful if he said we have a plan to implement reconciliation."[204] Similarly, Anishnaabe scholar Niigaan Sinclair indicated that, for the pope's apology, "to have any meaning at all," the Catholic church must make reparations. Sinclair said that the church, "should pay the cash it was legally obligated to hand over under the *Indian Residential Schools Settlement Agreement* but didn't. Then it should return the stolen land on which residential schools were built. It should release any archival documents, relevant records and stolen Indigenous artifacts in its possession. And finally, there must be a massive probe to get abuse in the church under control. Without that, it's basically an empty gesture."[205]

Carol McBride, president of the Native Women's Association of Canada, indicated that actions should have included the release of Indian Residential School records and the return of artifacts. She said, "I just can't understand why they don't want to release those files.... And the same thing goes with the artifacts. Those are our First Nations and Indigenous people's artifacts. Why are they sitting there at the Vatican? Why are they not here?"[206] Others noted the fact that the pope did not respond to the TRC's Call to Action 49 to repudiate the Doctrine of Discovery and terra nullius.[207] This failure is linked with the lack of recognition of Indigenous sovereignty. This was powerfully demonstrated by singer Sipihko-Kiche-Kisik-Iskwew at the first apology in Maskwacis when she stood in front of the pope and sang Ka Kanata. She then issued the following proclamation, "You are hereby served lawful notice. We, the daughters of the Great Spirit on these sovereign tribal lands of Turtle Island, cannot be coerced into any law or treaty that is not the Great Law. We have appointed chiefs on our territory. Govern yourself accordingly."[208]

Evaluating the Papal Apology against International and Indigenous Criteria for Apologies

The result of over three decades of advocacy by Survivors and Indigenous leadership, the apology issued by Pope Francis in Canada in 2022 was historic. For many Survivors, the pope's words of apology were healing, while others viewed them as completely inadequate. Analyzing the apology using the criteria of the UN Special Rapporteur and the TRC's Call to Action 58 reveals the limitations of both the apology and the apology-making process itself. For example, consultation leading up to the apology was sporadic, and communications were problematic.[209] In their meetings with the Canadian Conference of Catholic Bishops and with the pope at the Vatican, Survivors and Indigenous leaders identified specific harms that must be acknowledged and specific actions of redress and restitution that must follow. They emphasized that truth, accountability, and justice was not possible until the Catholic church as an institution took full responsibility for its actions.

Yet, in the apology, there was no recognition of the well-documented sexual abuse that occurred in Catholic-run Indian Residential Schools. While the pope said that there would be a, "serious investigation into the facts of what took place in the past," he offered no particulars.[210] There was no acknowledgement of the Catholic church's complicity in creating the Indian Residential School System or its responsibility for the magnitude of atrocities perpetrated on Indigenous children in Catholic-run Indian Residential Schools. Rather, the focus remained on individual abusers within that system. There were no commitments to release records, return artifacts, or renounce the Doctrine of Discovery. Although the pope told the media afterwards that the harmful actions that he had acknowledged in his apology amounted to genocide,[211] he made no such admission in the official apology itself. Pope Francis's apology fell short of what Survivors, Indigenous families, and communities told Catholic officials was required for the apology to meet their criteria.

APOLOGIES ISSUED BY THE UNITED, ANGLICAN, AND PRESBYTERIAN CHURCHES

As with the apologies covered in this chapter, the apologies issued by other churches that operated Indian Residential Schools in Canada were made due to the advocacy and actions of Survivors and Indigenous leadership. Between 1986 and 1998, as Indigenous people and communities made increasing public demands for accountability and basic fairness from settler societies, the United Church of Canada, the Anglican church, and the Presbyterian church made apologies to Indigenous people for their roles in operating Indian Residential Schools.[212]

United Church of Canada

Since the mid-1980s, the United Church of Canada, which is often considered a leader in the context of reconciliation with Indigenous Peoples, has issued several apologies. The first apology was made as a result of the advocacy of Alberta Billy, a member of the Laichwiltach We Wai kai Nation in British Columbia and a lifelong member of the United Church of Canada. In 1981, she told the Executive General Council that, "the United Church owes the Native peoples of Canada an apology for what you did to them in residential school."[213] When Alberta Billy made this statement, Thelma Davis, from the Six Nations of the Grand River, recalled that the Executive General Council's, "mouths dropped.... But it needed to be said. It got things rolling."[214] Similarly, the first Indigenous moderator of the United Church of Canada, the Very Reverend Stan McKay, from Fisher River Cree Nation, recalled that Billy's statement "blew the meeting away. No one was prepared."[215]

After an information and study document on the apology was prepared by the United Church's Native Ministry Committee (or Native Council),[216] the General Council listened to Survivors' testimonies about their experiences at Indian Residential School, and several Elders were consulted, the General Council made the decision to apologize.[217] The apology, upon the Elders' advice, was given in a tipi. After Elders granted Robert Smith, the United Church's moderator, permission to enter the tipi, he gave the United Church's first apology.[218] The first apology had a number of shortcomings: it did not mention Indian Residential Schools, nor did it name the United Church specifically.[219] Despite its shortcomings, in 1988, the United Church's All Native Circle presented their acknowledgement of the apology.[220] At the acknowledgement, Anishnaabe United Church Minister Alf Dumont (Biidaaban Migizi) cautioned that the apology, "must be lived out if it's to be a real apology."[221] In 2011, on the twenty-fifth anniversary of the 1986 apology, McKay reflected that, "this is a long process.... Institutions don't change easily.... There have been very few changes over the past 85 years."[222]

The United Church of Canada only began the process of developing a second apology after a group of Survivors, including Willie Blackwater, filed a lawsuit against Canada and the United Church seeking compensation for the harm they had endured at the Alberni Indian Residential School.[223] Responding to the news of the lawsuit, the St. Andrew's United Church in Port Alberni started a process of listening to Survivors about their experiences and then issued an apology.[224] The congregation also put forward petitions for an apology on Indian Residential Schools at the General Council in 1997, but because of fear of legal and financial liability, the United Church only issued a statement of regret.[225] Facing criticism from grassroots church members, Moderator Bill Phipps issued the United Church's second apology to

a small group of Survivors in 1998 in the chapel at the United Church of Canada's Toronto office.[226] In this second apology, the United Church identified and apologized for its part in operating the Indian Residential School System, specifically identifying the harms for which the church was apologizing, including the physical, sexual, and mental abuse of children, the cruel and ill-conceived system of assimilation perpetrated on Indigenous Peoples, and the attitudes of racial and spiritual superiority.[227] Despite these apologies, in 2021, McKay indicated that, while the United Church now uses the language of reconciliation, the institution still remains resistant to change.[228]

Anglican Church

The Anglican church has provided three apologies to Indigenous Peoples since the early 1990s. The first apology was developed after a period of listening to Survivors' testimonies, developing a Residential Schools Working Group,[229] discussions about criteria for a meaningful apology,[230] and consultation with church staff and Indigenous representatives.[231] In 1993, Primate Michael Peers delivered an apology for the Anglican Church of Canada's part in the Indian Residential School System to the National Native Convocation, now known as the Sacred Circle, in Minaki, Ontario.[232] Elder Vi Smith acknowledged and accepted the primate's apology on behalf of the Elders and participants at the National Native Convocation the following day.[233]

In 2019, Primate Fred Hiltz of the Anglican church offered "An Apology for Spiritual Harm," which built on the first apology. It included an acknowledgement of the, "cultural and spiritual arrogance towards all Indigenous Peoples" that demonized Indigenous spirituality and caused "intergenerational spiritual harm."[234] In this second apology, Hiltz endorsed the *UN Declaration* and the TRC's Call to Action 60 and pledged to support the healing of spiritual wounds and Indigenous spirituality within the Anglican church.[235]

In the spring of 2022, the Archbishop of Canterbury Justin Welby, head of the Church of England (Anglican), travelled to Canada for five days to issue an apology to Indigenous people.[236] The Archbishop of Canterbury delivered his apology to Survivors in three locations: James Smith Cree Nation in Saskatchewan; Prince Albert, Saskatchewan; and in a private meeting in Toronto with representatives and Survivors from the Six Nations of the Grand River and the Mohawks of the Bay of Quinte.[237] In his apology, he called the abuse that Survivors suffered at Indian Residential Schools "a terrible crime" and acknowledged that those institutions were a, "bit of hell ... built by the Church and in the name of the Church."[238] He acknowledged both the structural and individual harms caused by the Anglican church due to racism and discrimination against Indigenous Peoples. Importantly, he

recognized the human rights violations committed by the church.[239] He also made a commitment to take further action in partnership with Indigenous Peoples to increase understanding of Indigenous spirituality within the whole Anglican church as well as raise Indigenous issues with the United Nations.[240]

The Archbishop of Canterbury's apology had several shortcomings. It was criticized for not being widely publicized,[241] not providing enough opportunity for Survivors to participate,[242] and not providing appropriate time for proper Indigenous protocols relating to the delivery of the apology.[243] Although he acknowledged cultural and spiritual harms, he did not apologize for the specific abuses, including sexual abuse.[244] The apology also did not address the missing and disappeared children and unmarked burials. Finally, the apology was not seen as having sufficient commitments to action.[245]

Notably, the Survivors' Secretariat, which is leading the search and recovery of the missing and disappeared children at the former site of the Mohawk Institute, indicated that Survivors would not participate in the apology unless the Church of England committed to releasing all records held in England and financing Indigenous language revitalization.[246] Survivor Roberta Hill indicated that the documents they are seeking to have returned from England may provide information about the location of the burials of the missing and disappeared children on the former institution's grounds. She said, "Where are they buried?... We haven't seen any markers.... There has to be accountability."[247] In response to questions from media, the Archbishop of Canterbury indicated that he would ensure any Indian Residential School–related records held by the Anglican church in England would be released.[248]

Presbyterian Church

After members of the Presbyterian church listened to the testimonies of Survivors in 1991, a discussion began about the possibility of the church issuing a confession for its role in the Indian Residential School System.[249] The Presbyterian church's decision to approach this as a confession was based in the theological position that wrongdoing is first a sin against God.[250] In 1994, the Presbyterian church's General Assembly again discussed issuing a confession. There were two dissenting votes: one delegate raised concerns over legal liability, while another "argued that one generation cannot confess or apologize for the sins, failures, behaviour, mindset of another generation."[251] The 1994 Assembly did adopt the confession.[252] The confession claims that the actions of some church members were motivated by good intentions. It also evades accepting the church's responsibility for the harms perpetrated. The confession reads, "In a setting of obedience and acquiescence there was opportunity for sexual abuse, and some were so abused."[253] Four months after the General Assembly adopted the confession, George

Vais, the moderator of the General Assembly, presented it to Phil Fontaine, then Grand Chief of the Assembly of Manitoba Chiefs who accepted the confession but did not offer forgiveness to the church.[254]

In 2023, the General Assembly of the Presbyterian church in Canada, "adopted a recommendation from the National Indigenous Ministries Council (NIMC) that the church develop a renewed apology for its role in colonization and in the operation of residential schools, to be presented to the 2024 General Assembly."[255] On June 4, 2024, the General Assembly adopted the "Apology of the Presbyterian Church in Canada for Its Complicity in Colonization and the Residential School System." The church recognized that their apology must be, "set in the context of accountability" and "acknowledged that neither the words 'apology' nor 'sorry' appeared in the 1994 Confession."[256] The church further noted that it, "has learned much about, and understands more deeply now, the harm it caused" and that its 2024 apology "comes out of the church's learning and is a response to that learning."[257] After hearing from Survivors, their families, and communities, the text of the apology was drafted and presented at its 2024 General Assembly for adoption.[258]

The Apology recognizes the inadequacy of its previous Confession. It specifically acknowledges "with grief the many unmarked graves that have been found and will be found" and that, "We remember the children who never made it home. We apologize for the impact of the genocide of colonization, forced assimilation and racism to which we actively contributed."[259] The Apology further states:

> We apologize for taking children from their homes, parents, grandparents and communities. We apologize for traumatizing parents and communities and taking away their rights to protect their children. We honour and respect the languages of the land and apologize for punishing Indigenous students for speaking their traditional languages. We apologize for attempting to eliminate Indigenous identity and Cultural and Spiritual traditions. We apologize for the abuse Indigenous children suffered, including physical, sexual, psychological, emotional and Spiritual abuses. We apologize for the weaponization of food that happened in the schools and for non-consensual experiments with food, nutrition and medical procedures that were conducted on children. We apologize for the lost lives, for children who died while at residential schools—from disease, neglect, suicide, attempts to run away and from violence by teachers, staff and volunteers....[260]

The apology also acknowledges that it did not inform parents when their children died, that it did not return the children's bodies home for burial, and that the children's "burial sites were sometimes unmarked or the markers were not maintained and the record of names was not kept." It further apologizes for the "church's attitude of white superiority, for its assimilating policies and practices, for the racism of treating Indigenous people as less than human and for the ongoing intergenerational effects of our complicity with colonization and the schools that continue to negatively impact families and communities."[261] It concludes with five commitments: to listen and learn from Indigenous people, leaders, Elders, and Knowledge Keepers; to continue the work of reconciliation, responding to the TRC's 94 Calls to Action and the work of reparation; to respect traditional Indigenous spiritual practices; to listen to and tell the truth about the past; and to support Indigenous-led healing and wellness initiatives and be in solidarity with Indigenous people and communities. The church encourages all of its members "to deepen their understanding of the need for reconciliation and decolonization and seek out resources to continue learning how best to live out the Truth and Reconciliation Commission's 94 Calls to Action, especially those aimed at churches, the United Nations Declaration on the Rights of Indigenous People and the church's repudiation of the Doctrine of Discovery."[262]

Evaluating the United, Anglican, and Presbyterian Church Apologies

The history of the apologies made by the United, Anglican, and Presbyterian churches demonstrates how each of these religious institutions sought to first deny, then limit, and, eventually, partially acknowledge their respective responsibility for the harms and human rights violations perpetrated against Indigenous children in the Indian Residential School System. However, they also illustrate how the process of apology making and reparations can change relationships over time as church officials and congregations gain more understanding of Indigenous criteria by working closely with Survivors and Indigenous leaders. This includes the importance of wording, the presentation by a senior official, and the timing—for example, the Anglican church's decision to wait until Survivors and Indigenous church members indicated that they had done the necessary work to prepare for and make an apology. In contrast, the Anglican Archbishop of Canterbury's apology failed to meet these criteria.

Despite initial resistance to hearing the truth about atrocities and fear of legal and financial liability, all three churches to varying degrees developed overarching principles of consultation and transparency with Survivors and Indigenous leaders regarding the wording of the apologies.

They also collaborated with Indigenous church members in addressing internal institutional barriers to apology and identified and implemented concrete reparative actions involving access to archival records and various repatriation and commemoration initiatives. However, despite these actions, in its submission to the OSI, the Assembly of First Nations observed that:

> [U]nmarked burials of community members associated with religious institutions, on and off reserve, have also been an area of concern for our communities. Although apologies have been issued, many religious entities have not truly taken full accountability for their role in attempted assimilation. We see areas where burials associated with churches have fallen into disrepair over the century, so much so that stones have been removed and community members lay in unmarked graves. Despite many attempts to inspire action, access to records and provision of funding has been slow or non-existent.[263]

Finally, much like the pope's apology, none of these apologies—other than the Presbyterian's June 2024 apology, which apologized "for the impact of the genocide of colonization, forced assimilation and racism to which" they "actively contributed"[264]—framed the atrocities perpetrated in the Indian Residential School System as genocidal human rights violations; rather, they remained primarily focused on acknowledging the harms of abuse. Despite the many church apologies, they fail to provide a full public record of truth and accountability for Survivors, Indigenous families, and communities.

RCMP APOLOGY

In May 2004, at the signing of a Public Safety Protocol between the AFN and the RCMP, Giuliano Zaccardelli, the then commissioner of the RCMP, offered a short statement of apology:

> To those of you who suffered tragedies at Residential Schools, we are very sorry for your experience.... Canadians can never forget what happened and they never should. The RCMP is optimistic that we can all work together to learn from this Residential School system experience and ensure that it never happens again.... We—I, as Commissioner of the RCMP—am truly sorry for what role we played in the Residential School system and the abuse that took place in that system.[265]

2014: Apology at the TRC's Alberta National Event

At the TRC's National Event in 2014 in Alberta, Bob Paulson, RCMP Commissioner at the time, delivered a speech that included an apology to Survivors for the RCMP's involvement in the Indian Residential School System. In his speech, Paulson referred to a report that the RCMP had produced in 2011 (discussed earlier in this chapter), identifying what the RCMP saw as its involvement in the system, stating that, "in 2011, the RCMP appeared before this commission and tendered a report that spelled out what we did."[266] The report that Paulson was referring to denied that the RCMP had any knowledge of the abuses perpetrated at the institutions.[267] Referring to the findings of this report, Paulson acknowledged that the RCMP:

> [W]ere the police of jurisdiction in many areas where schools operated. We were expected to respond to requests to enforce the law as it then was, which included transporting children to the schools. Searching for, apprehending, and returning students who ran away from school. Locating families who refused to send their children to school and informing them of their obligations. Another way to understand what we did is how I came to understand what we did.[268]

Paulson then described the RCMP's, and his own part, in police investigations of complaints relating to Indian Residential Schools during the 1990s in British Columbia. He referenced Survivors who had spoken and shared their experiences with him, including that of a Survivor who had been returned to an Indian Residential School by police after attempting to escape because they were being abused there. Paulson's speech continued into a brief and distanced expression of sorrow for, "what has happened to you and the part my organization has played in it," before continuing:

> Regretfully, we can't change the past. We can, however, move forward together and try to heal. The RCMP has learned from the past and is committed to building strong, healthy, and safe aboriginal communities across this country. I want to thank aboriginal communities from far and wide for the collaboration we've enjoyed in many areas of our operations over the years. We are a stronger organization because of it. There remains much work to be done, to be sure. All the people of the RCMP are committed to the cause. In total, there are more than two thousand aboriginal people who are part of today's RCMP work force and we are continually taking steps to engage and promote aboriginal employees.[269]

Commissioner Paulson followed these remarks by encouraging Indigenous people to join the police service.[270] The wording, timing, and delivery of the apologies fail to meet the criteria identified by the UN Special Rapporteur or Indigenous criteria, particularly regarding the need for an apology to name and take responsibility for specific wrongs and to identify specific actions that will be implemented. It is unclear what, if any, consultation with Survivors and Indigenous leaders occurred prior to the apologies.

The RCMP's tentative approach to acknowledging the harms of the Indian Residential School System and the RCMP's role in it has continued. In 2020, the RCMP apologized for a "tweet" that the service had sent out commemorating Orange Shirt Day. The tweet, which featured RCMP staff wearing orange shirts, included the phrase, "honour and remember Indigenous children who were sent away to residential schools."[271] One commenter responded, "'Sent away' COME ON. They were taken, kidnapped, ripped from their families (and) communities."[272] Given the RCMP's long history of complicity in enforcing settler colonial laws and policies of violence and genocide through strategies of land dispossession; political, cultural, and spiritual destruction; and forcible child removals to eliminate Indigenous Peoples as sovereign Nations, the service has yet to be held fully accountable for its actions. To date, at the time of writing this Final Report, no provincial or municipal police service has made an apology for their role in the Indian Residential School System.

The long resistance of Canada, the churches, and the RCMP to making official apologies, particularly as Indian Residential School litigation was ongoing, was due in part to the concern that this would be an admission of legal liability. Anishinaabe Survivor Garnet Angeconeb explained that:

> [A]lthough the 1998 Statement of Reconciliation had an impact on me at the time, the statement was specific to physical and sexual abuse. It was not inclusive and did not look at the broader implications of the policy and how it fit into the government's assimilationist agenda. At the time, everyone was being very careful about what they said because of the fear of lawsuits and what any sort of admission might ultimately cost. But now is the time for us to be honest with each other. We've got to get over that fear of being sued.[273]

Noting that both federal and provincial governments in Canada, "have responded slowly and grudgingly ... to claims by distinct collectivities [such as Indigenous Peoples] ... for reparations on a case-by-case basis," legal scholar Bradford W. Morse observes that:

> [S]ome government officials view the *Statement of Reconciliation,* made in January 1998 by the Honourable Jane Stewart, then Minister of Indian and Northern Affairs, as being a major contributor to the avalanche of class-action lawsuits from residential school Survivors and their families, even though it fell well short of an apology as a result of strenuous pressure from legal counsel within the [federal] Department of Justice.[274]

Just as the Department of Justice Canada provided legal advice to the federal government prior to the 1998 Statement of Reconciliation, it would also have done so prior to the 2008 apology in the House of Commons and all subsequent official apologies from Canada. Between 1986 and 1991, the United Church of Canada, the Anglican church, the Presbyterian church, and the Roman Catholic order of the Oblates of Mary Immaculate also made statements of regret or apologies.[275] In her analysis of apologies made to First Nations by Anglican, Presbyterian, United, and Catholic churches from 1986 to 1998, social psychologist Janet Bavelas concluded that, while the church apologies acknowledged wrongdoing, they avoided accepting responsibility for their actions because this might increase their legal and financial liability.[276] Bavelas noted, however, that the churches' limited approaches to apologies did not prevent extended and costly litigation.[277]

In a media interview in 1997, Survivor Willie Blackwater (who was also the lead plaintiff in *Blackwater v. Plint*)[278] stated that, when two petitions for an apology were presented to the United Church of Canada's General Council for approval, "they were advised by their lawyers that they can't apologize ... [because] it would be a way for the government to ... put all the blame on their church."[279] This concern about being held liable for abuse was shared by the Presbyterian, Anglican, and Roman Catholic churches because such liability would have significant legal and financial repercussions.[280]

The congregation of St. Andrew's United Church in Port Alberni, British Columbia, who, noting that an earlier apology in 1986 did not refer explicitly to Indian Residential Schools, "sent a formal petition to the [United Church] General Council asking that it issue an apology on Residential Schools."[281] In response, the General Council did not issue an apology but, rather, a statement of regret and, "a commitment to entering into a 'journey of repentance.'"[282] Scholar Peter G. Bush notes that the views of, "the Council members who feared that an apology would impact the courts as they decided financial liability in future lawsuits

won the day."[283] Scholar of religious studies and theology Jeremy M. Bergen observes that, while, "in 1997, they took the safer route and offered a statement of repentance ... [a] year later they made a statement of apology in full awareness of the legal and financial risks."[284]

The issue of legal liability was a source of conflict between the institutional and grassroots levels of the United Church. Bush notes that, when the courts found both the Canadian government and the United Church liable in the *Blackwater* case, the United Church decided to appeal, a decision that drew strong criticism from, "the grassroots of the church" during a meeting of the church's General Council Executive in October 1998.[285] However, a number of members of the Executive Council had also visited with members of the St. Andrew's congregation and Survivors of the Alberni Indian Residential School in September of that year. The United Church moderator at the time, "Bill Phipps reported that this group 'would not be denied' in its demand that the Executive of the General Council issue an apology regarding the United Church's involvement in residential schools."[286]

Standing in the chapel at the United Church's Toronto offices, Moderator Phipps issued the United Church's "Apology to Former Students of United Church Indian Residential Schools, and to Their Families and Communities" [287] to a group that included a few quickly gathered Survivors.[288] "The apology grew out of ongoing conversation, but the exact wording was not approved by the Executive. The words came out of Phipps listening to the conversation."[289] This is a powerful example of how the interventions of Survivors had a significant impact on shifting the churches' position on apology.

APOLOGY LEGISLATION

Apology legislation is intended to, "create a 'safe' context for an apology, that is, to remove or minimize the liability incurred by statements of responsibility."[290] Beginning with British Columbia in 2006,[291] several provinces introduced apology legislation as a, "new strategy to promote the early, effective and affordable resolution of disputes."[292] In 2007, the Uniform Law Conference of Canada[293] adopted the *Uniform Apology Act*, which was based on British Columbia's *Apology Act*.[294] Although the federal government participated in the Uniform Law Conference of Canada's working group that produced the *Uniform Apology Act*, there is currently no federal apology legislation.[295] Most of the subsequent apology legislation and provisions across Canada are based on the provisions of the *Uniform Apology Act*, which refers to apologies, "made by or on behalf of a person."[296] This typically will apply to natural persons as well as to government and corporate entities, depending on how a specific provincial Act defines the word "person."[297] Apology legislation, "generally provides that an apology

cannot be admitted as evidence in civil proceedings and be construed as an admission of liability."[298] Lawyer Erin Durant notes that apology legislation can be divided depending on how broadly it protects the apologizer from liability: the first category covers, "expressions of sympathy or regret only," while the second category covers such expressions along with offering, "protection for apologies that are accompanied by admissions or statements of fault."[299]

There is little doubt that legislation made apologies less risky from a legal liability standpoint.[300] Legal scholar John Kleefeld characterizes the BC legislation as, "the first comprehensive legislation in the common law world," adding that, "it is an example of a legislature 'thinking like a human' in an only partly tongue-in-cheek dig at lawyers' advice (at least some lawyers' advice) to their clients to avoid doing what basic morality and ingrained socialization have taught us to do—to say 'I'm sorry; what I did was wrong.'"[301] There is scholarly debate over whether apology legislation is beneficial or detrimental.

The benefits of apology legislation include the increased likelihood that apologies by governments and other institutions will, "be morally communicative to their fullest extent by removing the obstacle of legal and financial liability."[302] Apologies can therefore have a "restorative function,"[303] and, when they are "full and unequivocal," they can have reconciliatory power.[304] This is a significant benefit because as lawyer Claire Truesdale emphasizes, "the powerful and unique social value of apology in healing relationships ... can be sidelined by the threat of legal liability. This social value is one that the law itself, as an adversarial process, cannot replicate."[305] Apologies can also provide, "a political motive for the institution not to repeat actions [that institutions and governments] have publicly admitted were wrong."[306] Apology legislation also leaves open the possibility for victims of wrongdoing to pursue litigation where liability can be determined, and compensation awarded as appropriate.

Apology legislation may render apologies less meaningful because the government or institutions may not be required to follow up in any meaningful way. In poverty lawyer Dugald Christie's view, "the use of an apology without having to pay for the consequences is simply wrong."[307] He argues that, "compensation to victims of government wrongs and breach of duty is not just a matter of morality ... it is also beneficial to society to have the victim rehabilitated and to have government correct its ways."[308] He warns that apology legislation could morally discredit the government and the justice system at large.[309] While the insights as to the benefits and limitations of apology legislation are helpful, in the context of accountability and justice for the missing and disappeared children, apology is an essential form of reparation, regardless of whether apology legislation is in place.

SETTLER AMNESTY, TRUTH-TELLING, AND THE LIMITS OF APOLOGY

In an earlier chapter, this Final Report describes how a systemic pattern of settler amnesty creates a culture of impunity based on faulty assumptions of White European superiority in Canada, thereby evading accountability. Responding to Canada's apology, Oneida scholar Roland Chrisjohn and Cree scholar Tanya Wasacase pinpoint the systemic patterns, strategies, and practices of settler amnesty:

> Harper's government is the ideological, legal, ethical, and political successor to those governments that created residential schools in the first place. These successive governments recruited the churches of Canada to collude in their operation of these schools; maintained the institution for over 100 years regardless of any change in the nominal form of the government; accommodated, rather than investigated; and litigated criminal actions on the part of church and bureaucratic officials; ignored, denied, and then minimized the depredations recounted; and initiated a series of irrelevant temporizing maneuvers (public relations campaigns denigrating Aboriginal claims, public squabbles with churches over relative liability, alternative dispute resolutions, and so on) rather than deal squarely with issues.[310]

Settler amnesty for the atrocities of genocide and mass human rights violations perpetrated against Indigenous Peoples in the Indian Residential School System and associated institutions operates invisibly to limit accountability on both legal and political fronts. Government and church officials first deny any wrongdoing, but, when Indigenous demands for accountability and justice make this impossible, they manage legal liability and political risk by partially acknowledging culpability and limiting the scope of reparations. While there is growing public discourse on the moral obligation of Canada and the churches to support search and recovery work in response to public announcements from Indigenous communities, there is also a small but vocal minority who deny that Canadians bear any responsibility to do so. They claim that the accounts of missing and disappeared children and unmarked burials are either untrue or exaggerated or, in any case, that it is time to forget the past and move on.[311] In their view, Canada has nothing to apologize for.

In tracing the histories of official apologies, it must be acknowledged that Canada, the churches, and the RCMP, to varying degrees, have apologized for enforcing laws and policies of assimilation that removed Indigenous children from their homes and for inflicting

horrendous abuses on the children in the Indian Residential School System. Critiques of these apologies do not negate the fact that this formal recognition of wrongdoing and harm is important to many Survivors, Indigenous families, and communities. The importance of such recognition must be honoured and respected. Yet, as the search and recovery work continues, these apologies are only a partial recognition of the truth. Ongoing violence, atrocities, and harms of genocide and mass human rights violations continue to be targeted at Indigenous Peoples within Canada. Cree author and lawyer Michelle Good explains:

> When we say truth is called for, prayed for, and so desperately needed, we are not just asking for the acknowledgment that the residential schools existed and harmed so many innocent children. The truth that is needed is that this Canadian genocide happened and continues to happen. Only when people understand and admit to the depth of the violence and injustice levelled against Indigenous Peoples will there be an impetus to promote and support structural change ... to accommodate Indigenous jurisdiction and self-determination.... We don't need any more apologies. We need a *mea culpa*, followed by full and proper restitution.[312]

Despite reports from the RCAP, the TRC, and the National Inquiry into Missing and Murdered Indigenous Women and Girls, all of which made comprehensive findings and recommendations on how to acknowledge wrongdoing and provide restitution and reparations, settler resistance to the whole truth about the harm Canada has perpetrated on Indigenous Peoples persists. In an open letter to the prime minister prior to Canada's 2008 apology, Survivor and then AFN National Chief Phil Fontaine set out criteria for the minimum standard the apology must meet. It must:

- End denial of truth and history, raise awareness of the destructive impacts of the Indian Residential School policy, admit that it was wrong, accept responsibility, and provide assurances that it will never happen again;
- Include clear and unequivocal recognition that successive governments systematically enforced racist, discriminatory policies of assimilation that separated children from their families, depriving them of family life, prohibited the use of their own languages and cultures, and taught them that they were inferior;

- Specify that the health care, nutrition, and emotional needs of the children were neglected and that many were subjected to deliberate physical, sexual, and psychological abuse;
- Specify that some children never returned home and that their families had to mourn their passing without knowing where they were buried;
- Acknowledge that Canada ignored Indigenous Peoples' Treaty rights to a good education by providing inferior education that detrimentally affected employment opportunities and livelihoods for generations; and
- Provide assurances that Canada respects our rights as peoples, now and in the future.[313]

These criteria can also be applied to all the official apologies reviewed in this chapter. Some of the criteria are consistent with that of the UN Special Rapporteur:

- An official apology must put the truth on public record, accepting full responsibility with no attempt to qualify or justify harmful actions to evade culpability;
- It must name each specific wrongdoing and specify whether these actions were inflicted deliberately, with intent, or negligently through acts of omission;
- It must provide credible assurances of non-repetition and explain what specific actions will follow the apology to ensure this will happen; and
- Careful attention must be given to the time and place where the apology is delivered as well as the position and credibility of the person delivering the apology.

Other criteria are framed more specifically in the context of the violation of the inherent, Treaty, and human rights of Indigenous Peoples. This includes a recognition of the violence of settler colonialism, the failure to uphold Treaty promises, the mass human rights violations perpetrated on Indigenous Peoples by targeting their children, and assurances that Indigenous people's individual and collective human rights will be upheld now and into the future. While all the apologies, to varying degrees, have met some of the UN Special Rapporteur's criteria, the inclusion of rights-based language is a more recent and welcome development; however, it is inconsistently applied in government apologies.

The pope's apology was a partial admission of culpability, focusing on individual wrongdoing and failing to recognize the Catholic church's responsibility as an institution for its actions relating to the Indian Residential School System. The United, Presbyterian (its first confession), and Anglican churches also took actions to limit their liability and accountability, but working closely with Indigenous members of their congregations, they have also focused on repairing relationships over time through the apology-making process itself. Although the apologies made by the RCMP and some provinces were steps in the right direction, they do not meet many of these criteria. The Presbyterian's most recent apology, in June 2024, is perhaps the closest to fulling the UN Special Rapporteur's criteria.

As Survivors, Indigenous families, and communities continue to search for the missing and disappeared children and their burial sites through a complex maze of institutions linked to the Indian Residential School System, further truths about the extensive scope and reach of these settler colonial institutions are revealed. Settler Canadian society devalues Indigenous lives as ungrievable,[314] denying Indigenous children, their families, and communities the right to humanity and dignity not only in life but also after death. If apologies can be understood as "expressions of accountability," as historian and scholar Michael Marrus argues, then Canada's remain incomplete.[315] When viewed together through an anti-colonial lens and in the context of centuries-old injustices, the history of apology making by federal and provincial governments, churches, and the RCMP is an example of settler amnesty. They are partial acknowledgements based on careful political and legal calculations made in response to the demands of Survivors and Indigenous leadership for accountability and justice. Their overall shortcomings are evident when measured against international principles, guidelines, and criteria for apology that are based on Western political and legal cultures. They fail even more so when measured against Indigenous political and legal criteria.

Applying international and Indigenous criteria to the Canadian context reveals significant gaps in truth-telling. Importantly, the official apologies of the federal government, churches, and the RCMP in Canada relating to the Indian Residential School System have focused on the harmful impacts of abuse and the assimilation policies that resulted in Survivors' loss of culture, language, and family connections. However, these apologies have failed to dislodge the deeply embedded systemic patterns of genocide and practices of settler amnesty. They have failed to challenge the deep-rooted culture of impunity through which settler colonial Canada continues to evade the truth about the missing and disappeared children and unmarked burials. These apologies have failed to fully acknowledge the depths of harms suffered or to establish an accurate public record of the historical injustices and ongoing harms of genocide, colonization, and mass human rights violations that the enforced disappearances

of Indigenous children and the existence of unmarked burials reveal. They remain partial. They aim to limit legal liability.

Recent public confirmations about the children who died in State care, many of whom are buried in unmarked graves, make it clear that these actions constitute genocide and mass human rights violations. As they have done since the earliest colonizers arrived in what is now Canada, Indigenous Peoples continue to resist. They continue to call for apologies and other forms of reparation that meet Indigenous criteria. At all six National Gatherings, Survivors, Indigenous families, and communities from Indigenous Nations across Turtle Island spoke about how they were unable to mourn, bury, and memorialize the missing and disappeared children in accordance with their own Nation's laws. The acts of wrongdoing relating to the missing and disappeared children and unmarked burials have caused ongoing harms, destroyed trust, and damaged both Canada's and the churches' honour and reputation. Canada and the churches not only committed spiritual violence by banning Sacred ceremonies and colonizing Indigenous spiritual beliefs about death, funerary practices, and ceremonies associated with burials and the memorialization of the dead, but they also violated Indigenous laws.

CONCLUSION: FROM APOLOGY TO ANTI-COLONIAL ACTION

> In every region of the country, Survivors and others have sent a strong message, as received by this Commission: for reconciliation to thrive in the coming years, Canada must move from apology to action.
>
> — Truth and Reconciliation Commission of Canada[316]

The TRC understood that reconciliation is multi-dimensional, encompassing political, legal, social, and economic dimensions that must be addressed on both relational and structural terms. Repairing trust is integral to achieving accountability and justice across all four dimensions. Trust building happens at personal, organizational, and institutional levels, which is particularly essential in the context of the search and recovery of the missing and disappeared children and unmarked burials. The TRC emphasized that apologies must be followed by anti-colonial action from governments, churches, and other institutions. Additional forms of reparations include financial redress, legal reform, policy change, commemoration, public education, and rewriting national history. This aligns with Indigenous criteria for apologies: they must include a commitment to act, a plan to implement those actions, and a commitment to non-repetition.

Against the backdrop of Canada's legal and political response to Survivors' demands for accountability and justice, and the slow and limited efforts to implement the TRC's Calls to Action 71–76 on missing children and unmarked burials, it is not surprising that Survivors, Indigenous families, and communities are encountering significant barriers in their search and recovery work. Fulfilling these Calls to Action and then moving beyond them requires constructive collaboration to acknowledge harms, repair trust, and make restitution. To do so effectively requires governments at all levels, churches, the RCMP, and other institutions to establish respectful political, legal, and working relationships with Survivors, Indigenous families, and communities. They must do so in ways that uphold the *UN Declaration* and the principles, protocols, and practices of Indigenous laws.

In March 2023, the Tseshaht First Nation called for Canada, churches, and the RCMP to, "consider an updated apology to AIRS [Alberni Indian Residential School] Survivors, their descendants and Tseshaht First Nation based on these new facts with respect to student deaths, unmarked graves and burials from AIRS ... [and to declare] this a genocide."[317] The call for an updated apology is relevant to all institutions where Indigenous children died in the care of the State and churches. As more truths about the missing and disappeared children and unmarked burials are revealed, Canada, the churches, the RCMP, and all other institutions that supported and/or operated Indian Residential Schools must apologize for failing to treat the missing and disappeared children and their burials with the dignity, respect, and honour they deserve. This must be done with humility and a willingness to listen to and learn from Survivors, Elders, Knowledge Holders, Indigenous families, and communities and demonstrate both commitment and action to ensure this never happens again.

1 Native Women's Association of Canada, Submission to the Office of the Independent Special Interlocutor (OSI), August 31, 2023 (on file with the OSI).

2 Anishinabek Nation, Submission to the OSI, August 31, 2023 (on file with the OSI).

3 Stephen Harper, Prime Minister of Canada, "Statement of Apology to Former Students of Indian Residential Schools," transcript of apology statement delivered at Ottawa, Ontario, June 11, 2008, https://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655.

4 Truth and Reconciliation Commission of Canada (TRC), *Canada's Residential Schools: Missing Children and Unmarked Burials*, vol. 4 (Montreal and Kingston: McGill-Queen's University Press, 2015).

5 Parliament of Canada, *House of Commons Debates (Hansard)*, 39th Parliament, 1st Session, no. 139, April 24, 2007 (Gary Merasty, LPC), https://www.ourcommons.ca/DocumentViewer/en/39-1/house/sitting-139/hansard#OOB-2028125.

6 Parliament of Canada, *House of Commons Debates*, April 24, 2007 (Jim Prentice, CPC).

7 United Nations General Assembly (UNGA), *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*, UNGA Resolution 60.147, Doc. A/RES/60/147, December 16, 2005, 8.

8 UNGA, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Doc. A/74/147, July 12, 2019, 5–6.

9 UNGA, *Promotion of Truth, Justice, Reparation*, 19–21.

10 UNGA, *Promotion of Truth, Justice, Reparation*, 11.

11 UNGA, *Promotion of Truth, Justice, Reparation*, 19–21.

12 UNGA, *Promotion of Truth, Justice, Reparation*, 9, 12, 15, 17. The Special Rapporteur noted that, in some cases, the court ordered that, "the traditions and customs of the [I]ndigenous communities concerned should be respected" (9).

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30 RCAP, *Looking Forward, Looking Back*, 8, cited in TRC, *Reconciliation*, 91.

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37 TRC, *Reconciliation*, 37.

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47 TRC, *Reconciliation*, 88. The TRC's Call to Action 45 was intended to reset the damaged relationship between Indigenous Peoples and the Crown at the highest level by building on the Royal Proclamation of 1763 and the *Treaty of Niagara* of 1764 to reaffirm the Nation-to-Nation relationship in a new Royal Proclamation of Reconciliation (34–38). Call to Action 46 calls on the federal government, the churches, and all parties to the *Indian Residential School Settlement Agreement* to implement a Covenant of Reconciliation. As of November 2023, Canada reports that some progress has been made but neither have been fully implemented. See "Royal Proclamation and Covenant of Reconciliation," Government of Canada, last updated May 16, 2024, https://www.rcaanc-cirnac.gc.ca/eng/1524503097736/1557513982301; *Indian Residential Schools Settlement Agreement* (*IRSSA*), Schedule N, May 8, 2006, reprinted in TRC, *Honouring the Truth*, Appendix 1.

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50 Onondaga Nation, "Oren Lyons Presents at U.N. 5/15/14," news release, May 15, 2014, paras. 10, 12, https://www.onondaganation.org/news/2014/oren-lyons-presents-at-u-n-51514/; see also TRC, *Reconciliation*, 32.

51 ECOSOC, *Study on the Impacts*, para. 2.

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57 ECOSOC, *Study on the Impacts*, para. 5.

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79 On the mythology, see, for example, Daniel Francis, *National Dreams: Myth, Memory, and Canadian History* (Vancouver: Arsenal Pulp Press, 1997), 29–51.

80 Sidney L. Harring, "'There Seemed to Be No Recognized Law': Canadian Law and Prairie First Nations," in *Laws and Societies in the Canadian Prairie West, 1670–1940*, ed. Louis A. Knafla, and Jonathan Swainger (Vancouver: UBC Press, 2005), 94, cited in Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010), 91.

81 TRC, *The History, Part 1*, 112.

82 Keith D. Smith, *Liberalism, Surveillance, and Resistance: Indigenous Communities in Western Canada, 1877–1927* (Edmonton: Athabasca University Press, 2009), 51–91.

83 TRC, *The History, Part 1*, 583; see also TRC, *Canada's Residential Schools: The Legacy*, vol. 5 (Montreal and Kingston: McGill-Queen's University Press, 2015), 186. Note that provincial police forces have also had a role in the Indian Residential School System as jurisdictions sometimes overlap. This was the case in British Columbia where the BC Provincial Police operated from 1858 to 1950 (Smith, *Liberalism, Surveillance, and Resistance*, 82–84). In Ontario, the Ontario Provincial Police were sometimes involved in cases of runaways and deaths (TRC, *The History, Part 2*, 345, 347, 352) and, later, in investigations into physical and sexual abuse, most notably at St. Anne's Indian Residential School in Fort Albany (442, 443). For more on policing, death investigations, and criminal prosecutions, see Volume 2, Part 4, Chapter 12.

84 LeBeuf, *Role of the RCMP*, 37.

85 Qikiqtani Truth Commission (QTC), *Final Report: Achieving Saimaqatigiingniq*, (Iqaluit, NU: Qikiqtani Truth Commission, 2013), https://www.qtcommission.ca/sites/default/files/public/thematic_reports/thematic_reports_english_final_report.pdf.

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87 LeBeuf, *Role of the RCMP*, 147–50.

88 LeBeuf, *Role of the RCMP*, 4.

89 TRC, *The Legacy*, 190.

90 Jane Stewart, Minister of Indian Affairs and Northern Development, "Address by the Honourable Jane Stewart Minister of Indian Affairs and Northern Development on the Occasion of the Unveiling of Gathering Strength—Canada's Aboriginal Action Plan," transcript of address delivered at Ottawa, Ontario, January 7, 1998, https://www.rcaanc-cirnac.gc.ca/eng/1100100015725/1571590271585; Matt James, "Narrative Robustness, Post-Apology Conduct, and Canada's 1998 and 2008 Residential Schools Apologies," in *The Palgrave Handbook of State-Sponsored History after 1945*, ed. Berber Bevernage and Nico Wouters (London: Palgrave Macmillan, 2018), 4, 6.

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92 Jeff Corntassel, Chaw-win-is, and T'lakwadzi, "Indigenous Storytelling, Truth-telling, and Community Approaches to Reconciliation," *English Studies in Canada* 35, no. 1 (March 2009): 146.

93 Taiaiake Alfred, "Restitution Is the Real Pathway to Justice for Indigenous Peoples," in *Response, Responsibility, and Renewal: Canada's Truth and Reconciliation Journey*, ed. Gregory Younging, Jonathan Dewar, and Mike DeGagne (Ottawa: Aboriginal Healing Foundation, 2009), 186.

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95 Francesca Dominello, "Political Apologies and Their Challenges in Achieving Justice for Indigenous Peoples in Australia and Canada," *Oñati Socio-Legal Series* 7, no. 2 (2017): 280.

96 Dominello, "Political Apologies," 280.

97 *IRSSA*.

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99 TRC, *The Legacy*, 216. The TRC's Call to Action 29 addressed this exclusion, calling on, "the federal government to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts." Note that several settlement agreements have since been negotiated.

100 Andrea H. Procter, *A Long Journey: Residential Schools in Labrador and Newfoundland* (St. John's, NL: ISER Books, 2020), 17.

101 Quoted in Procter, *Long Journey*, 17–18.

102 See Justin Trudeau, Prime Minister of Canada, "Remarks by Prime Minister Justin Trudeau to Apologize on Behalf of the Government of Canada to Former Students of the Newfoundland and Labrador Residential Schools," transcript of remarks given at Happy Valley-Goose Bay, Newfoundland, November 24, 2017, https://www.pm.gc.ca/en/news/speeches/2017/11/24/remarks-prime-minister-justin-trudeau-apologize-behalf-government-canada.

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149 TRC, *Canada's Residential Schools: The Inuit and Northern Experience*, vol. 2 (Montreal and Kingston: McGill-Queen's University Press, 2015), 12. The TRC notes that, up to the 1940s, the Moravians were a dominant force in northern Labrador because the British had granted them the right to expel anyone from their extensive mission lands if they did not obey their rules (181). The International Grenfell Association was established to support Protestant missionary and medical aid work in Labrador initially focused on those of Anglo-Saxon descent but shifted in focus to support Indian Residential Schools for Inuit between the 1950s to 1970s (181–82).

150 TRC, *Inuit and Northern Experience*, 12.

151 TRC, *Inuit and Northern Experience*, 180.

152 TRC, *Inuit and Northern Experience*, 182.

153 It is worth noting that there is controversy surrounding Furey's first apology as both the Inuit and Innu Nation, who have recognized constitutionally protected rights, were critical of the government's decision to apologize first to the NunatuKavut, an unrecognized community. See Andrew Furey, Premier of Newfoundland and Labrador, "Statement of Apology on Behalf of the Government of Newfoundland and Labrador to the Former Students of NunatuKavut Who Attended Residential Schools in Newfoundland and Labrador," apology statement, September 29, 2023, https://www.gov.nl.ca/exec/iar/files/23403-Apology-final-12x18-eng.pdf; Alex Kennedy, "N.L. Premier Apologizes to Residential School Survivors in Southern Labrador," *CBC News*, September 29, 2023, https://www.cbc.ca/news/canada/newfoundland-labrador/nl-nunatukavut-residential-school-apology-1.6982648.

154 Furey, "Statement of Apology."

155 Furey, "Statement of Apology."

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CHAPTER 15

Fighting Denialism: Reframing Collective Memory, National History, and Commemoration

> Children taken to Indian [R]esidential [S]chools were removed from their families either by force or by threat.... We didn't know why we were locked up in these institutions or if we would ever get out. Those who died or were gravely ill or injured simply disappeared from our ranks; we were never told what happened to them.... Most attention has been given to the physical and sexual abuses that were common in the schools.... It was not until much later ... that I understood that the government and its agents, the churches, had in fact been intent on killing me as an Indian person. Their aim was to destroy the Indigenous Nations by taking away the children, using the tools of racism, indoctrination, removal, and institutionalization.... Many never found their way home again. Many died trying.... Some individuals say that the term genocide is appropriate only to convey the complete destruction of a race. Ironically, given that we Indigenous Nations have inconveniently survived by the threads of our own spirituality, resilience, and courage, these same individuals used our survival to deny the truths of our history whether or not it is called genocide.
>
> — Theodore Fontaine, Survivor[1]

The late Theodore Fontaine pointed to the bitter irony of having people use the fact that some children managed to survive the violence in the Indian Residential School System to defend these institutions and deny genocide. He recalled that many children disappeared or died, their absence marked only by the silence of government and church officials. From his perspective,

Canada's persistent denial of these truths of history is a denial of its genocidal reality. The Truth and Reconciliation Commission of Canada (TRC) drew a similar conclusion, noting that, "for too long, Canadian governments chose denial over truth, and when confronted with the weight of truth, chose silence. For too long, Canadian governments refused to acknowledge their direct role in creating the [Indian] [R]esidential [S]chool [S]ystem and perpetrating their dark and insidious goal of wiping out Aboriginal identity and culture."[2]

In a comparative study of the TRCs in South Africa and Canada, Rosemary Nagy, an international human rights scholar, defines settler denial in both countries as, "the refusal or inability ... to acknowledge the existence of and their connection to systemic violence.... Settler denial colludes with narrow approaches to truth that isolate acute violence (torture, sexual abuse) from structural violence (apartheid, colonialism) as a whole."[3] This compartmentalized approach to truth characterizes reconciliation as, "a closure on the past despite the fact that in both South Africa and Canada, apartheid and colonial violence are not just memories from the past but also part of ongoing, lived relationships."[4] This is consistent with Fontaine's observation that, in Canada, the primary focus was on addressing the physical and sexual abuse of children that occurred; there was no admission that the high rates of abuse, disappearances, and deaths in these institutions were symptomatic of the structural violence that was endemic within the entire system.

Fontaine concluded that the federal government was, "very careful to exclude the term or even insinuation of genocide," both in its 2008 apology to Survivors and the court-ordered negotiations leading to the *Indian Residential Schools Settlement Agreement* (*IRSSA*) in 2006, "Thus the term *genocide* was not applied to the deliberate, Parliament-sanctioned action to 'kill the Indian in the child,' and the Indian [R]esidential [S]chools policy was portrayed as a well-intentioned though misguided, brief event in history."[5] In 2015, the connection between the violence in Indian Residential Schools and the broader genocidal goals of settler colonialism was made clear in the TRC's Final Report.[6] Based on Survivors' testimonies, data from government and church records, reports, and various other sources, the TRC revealed systemic patterns of relational (victim/perpetrator, colonized/colonizer, people-to-people interactions) and structural (legal/socio-political/institutional/material) violence embedded in the Indian Residential School System.[7]

The TRC drew particular attention to injustices relating to the missing children and unmarked burials. Scholars Oliver Schmidke and Matt James point out that, although, "to have read the TRC report upon its release in 2015 was to have known that former [Indian] [R]esidential [S]chool sites were in all probability the abandoned and anonymous final resting places of thousands of children who had perished in deeply unjust circumstances," the public paid

little attention to this horrendous fact.[8] It was not until 2021 when Tk̓emlúps te Secwépemc and Cowessess First Nations publicly announced that they were conducting their own investigations that, "the resulting evidence of Canadian wrongdoing and Indigenous suffering moved Canadian publics in ways that the TRC report had not."[9] At the National Gathering in Iqaluit in January 2024, Natan Obed, president of Inuit Tapiriit Kanatami, who was in Ottawa when these announcements were made, said that, "you could feel a different level of empathy and understanding in this country of what has happened to Indigenous people in Residential Schools than ever before."[10] Together, these observations illustrate how settler denial—the resistance to admitting the full scope and extent of Canada's violence targeting Indigenous children—shields wrongdoers and protects the public's belief that this country's history is one of fair, just, and benevolent dealings with Indigenous Peoples. Yet, as Obed's reflection suggests, Survivors, Indigenous families, and communities were able to momentarily break through settler denial by speaking directly to Canadians about their search and recovery efforts. Public education is a powerful tool to counter denialism. However, it is also important to understand what denialism is and how it functions in a settler colonial society.

Framed through an anti-colonial settler amnesty lens, the first section of this chapter begins by examining the connections between settler amnesty, impunity, and denialism. It then sets the phenomenon of denialism in the broader context of the international legal principles of the victims' right to truth and the State's duty to remember as essential elements to combating impunity. Denialism can then be understood as a struggle over collective memory, identity, and history. The importance of truth and the impacts of denialism in Canada's settler colonial context is then analyzed, identifying the myths that are utilized by denialists to support their false claims about Indian Residential Schools and the strategies of historical negationism, misinformation, and disinformation used to promote these claims. Next, the urgent need to develop historically literate citizens by reframing collective memory and national history through human rights-oriented education and public commemoration is examined. Critical engagement with the past is essential to combat impunity and prevent the recurrence of genocide and mass human rights violations.

What Does "Reframing" Mean, and How Does It Develop Historically Literate Citizens?

The process of reframing the collective past involves creating new historical narratives that include the knowledge, perspectives, and experiences of groups that have been historically oppressed. The unique histories of Indigenous Peoples, Black

> people, persons of colour, women, and gender diverse persons have been marginalized and misrepresented in Canada's national history. The purpose of reframing the collective past is to create a more inclusive, compassionate, and just future for all members of society.
>
> Historically literate citizens have the education, skills, and training to move beyond polarized, abstract debates over whose truths are authoritatively correct to think more critically about the complex past. They understand how historians interpret and reinterpret history through the method and practice of reframing as well as the importance of considering different perspectives and historical accounts. They understand the ongoing impacts of this history and the need to confront and remedy these injustices today. They examine concrete examples of historical injustice to learn from the past in order to prevent repetition in the present and future.[11]

The second section of this chapter prioritizes the creation of two interrelated legal and policy frameworks: (1) to combat negationism, denialism, and online hate, and (2) to advance public history education and incorporate Indigenous laws, oral histories, and memory practices into commemoration processes, projects, and initiatives. Together, these reparation measures relating to the missing and disappeared children and unmarked burials support Survivors, Indigenous families, and communities, affirming their right to truth, justice, and accountability while also strengthening Canada's capacity to prevent the recurrence of atrocity crimes and mass human rights violations against Indigenous Peoples now and in the future.[12]

SETTLER AMNESTY, IMPUNITY, AND DENIALISM

Denying or limiting truth is a settler amnesty strategy, reinforcing a culture of impunity that celebrates a settler colonial version of Canada's history, resists structural and institutional change, and protects those responsible for the Indian Residential School System by justifying their actions as well-intentioned efforts marred by a small group of individuals who abused the children. Cherokee scholar Daniel Heath and historian Sean Carleton explain how history is manipulated to achieve this goal:

> Embracing truth is all the more difficult for some because many Canadians still associate residential schooling with the positive images church and state officials used to propagandize and promote these institutions as humanitarian projects. Such "positive" framings of residential

> schools justify ongoing colonial policy approaches that continue to harm Indigenous Peoples today.... Residential school denialism is not the outright denial of the Indian Residential School (IRS) system's existence, but rather the rejection or misrepresentation of basic facts about residential schooling to undermine truth and reconciliation efforts.... The end game of denialism is to obscure truth about Canada's IRS system in ways that ultimately protect the status quo as well as guilty parties.[13]

There are several key elements of this explanation that should be emphasized:

- It is not the existence of the Indian Residential School System that is being denied: it is the intent, outcomes, and impacts of that System.
- Denialism relies on rejecting or misrepresenting the well-established facts about the Indian Residential School System. It relies on the techniques of historical research and analysis and falsely presents itself as a correction of the historical record.
- Denialism is not a simple misunderstanding of the facts; whether consciously or unconsciously, denialists are working towards the accomplishment of psychological, practical, or political goals.
- Indian Residential School denialism must be taken seriously because it puts at risk the important work of truth and reconciliation. It should not be dismissed as a harmless fringe phenomenon.

The TRC cautioned that, "today we live in a reality created by the [Indian] [R]esidential [S]chool [S]ystem ... a dark and painful heritage that all Canadians must accept as part of our history."[14] Yet, as this Final Report demonstrates, Canada continues to evade full responsibility for the history of genocidal atrocities and mass human rights violations committed against the missing and disappeared children who died in these institutions.

Post-TRC, many Canadians now understand that the collective memory they share and the national history that they have been taught are distorted. This distortion has marginalized Indigenous Peoples' histories and experiences, enabling profoundly disrespectful and damaging views of Indigenous Peoples to persist in ways that support settler colonial society.[15] It is encouraging that a growing number of Canadians are calling on the federal government to fully disclose its culpability and make comprehensive reparations for the historical and ongoing injustices associated with the missing and disappeared children and unmarked burials.

Yet there is a core group of Canadians who continue to defend the Indian Residential School System. Most recently, they are challenging the veracity of Survivors' oral history accounts of the missing and disappeared children and unmarked burials and discrediting the public confirmations of burial sites made by Indigenous communities. They refuse to believe that Canada has perpetrated genocide against Indigenous Peoples and say that making such claims is an unwarranted slur on Canada's humanitarian reputation.

Denialism exists along a continuum, ranging from what Stó:lo scholar Dylan Robinson defines as a wilful ignorance that enables, "settler Canadians [to] continue to abrogate [evade] their responsibility to understand this history as their own"[16] to those who, "remain aggressively indifferent toward acknowledging the history of colonization upon which their contemporary privilege rests."[17] Denialism is a uniquely non-Indigenous problem, and addressing it effectively requires a multifaceted legal, policy, and public education approach. There is a significant difference between those who lack knowledge but are receptive to unlearning a settler colonial version of history and staunch denialists who actively try to discredit Survivors' truths about Canada's history and harass Indigenous communities who are searching for the missing and disappeared children.

Combating Impunity: The Right to Truth and the Duty to Remember

In determining how to combat settler amnesty, impunity, and denialism in Canada, it is helpful once again to turn to international legal principles for guidance. Legal scholar Louis Joinet's 1997 report to the United Nations (UN) Commission on Human Rights recommended the adoption of the international principles relating to the inalienable right to the truth, the right of victims and families to know what happened, the guarantee of non-repetition, and the right to reparations.[18] Professor Diane Orentlicher updated these principles, and, in February 2005, the UN issued the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, also widely known as the UN Joinet-Orentlicher Principles.[19] Principle 3 on the duty to preserve memory states that:

> A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed

at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

What Is Historical Negationism?

Historical negationism[20] is not recognized as a legitimate form of historical inquiry by academic historians. It is a methodology used to support an argument by falsifying or distorting the historical record for political or ideological purposes in the present. This is done by manipulating, misinterpreting, or omitting evidence and questioning the validity of documents or oral history accounts of an event.

What Is Historical Revisionism?

Historical revisionism is the widely accepted process of reinterpreting and rewriting academic history based on new evidence or by reinterpreting the motives and actions of individuals or groups involved in historical events, for example, through an anti-colonial lens. Those who disagree with these new interpretations argue that historical revisionism is presentist—that is, it judges the past unfairly through the political, cultural, and moral lens of the present. Negationist forms of historical revisionism attempt to discredit new historical evidence or interpretations that contradict more conservative or nationalistic accounts of history using flawed historical methodology.

In 2019, the Inter-American Commission on Human Rights (IACHR) issued the *Principles on Public Policies on Memory in the Americas*, identifying, among other things, the need for States to establish public policies on collective memory to confront negationist revisionism and denialism, "as an important part of efforts to restore and recognize historical truth."[21] The IACHR emphasized the central role of sites of public memory and educational and public history institutions, such as archives and museums, in protecting memory to uphold victims' right to truth as an essential measure to restore their human dignity and prevent the recurrence of mass human rights violations.[22]

In a study on the right to truth, the Office of the UN High Commissioner for Human Rights noted that various international bodies conclude that the right to truth applies not only to individual victims of mass human rights violations but also, more broadly, to society as a

whole.[23] To prevent the recurrence of mass human rights violations, all citizens must know the truth about what happened and why. Joinet had alluded to this idea in his original 1997 report, making the connection between the collective right to know the truth and the State's duty to remember in order to emphasize that:

> The right to know is not simply the right of any individual victim or closely related persons to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is the "duty to remember," which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people's national heritage and as such must be preserved.[24]

From this perspective, the right to truth and the duty to remember human rights violations as part of a nation's collective memory and history are an antidote to denialism. The State has a responsibility both to victims of human rights violations and to the public to educate citizens about these historical injustices. The concept of the duty to remember originated in Europe, particularly in Germany and France after the Second World War. Marloes Van Noorloos, a scholar and expert on hate speech, explains that:

> The duty to remember was originally conceived as an ethical duty of survivors to testify in the name of others and to speak for those who cannot speak anymore, and for the broader society to keep these voices alive.... In this view it is a duty owed to others to do justice through memory. Gradually, the duty to remember developed from an ethical human duty to listen to and re-tell other people's stories to a duty of "perpetrator states" to keep alive the often already dug-up memory of atrocities and to educate the younger generation.[25]

The duty to remember places an ethical duty on those who have witnessed the testimonies of victims of human rights abuses to carry these truths forward with integrity and ensure that future generations learn about them. An earlier chapter in this Final Report focuses on the important role of collective witnessing in the ceremonies, protocols, and practices of Indigenous laws relating to recovering, protecting, and commemorating the missing and disappeared children and unmarked burials. The State has an ethical duty to ensure that Canadians learn about and remember this history not only through education in schools and universities but also in public history institutions and through public commemoration.[26] The principles of the right to truth and the duty to remember are particularly relevant in the context

of the missing and disappeared children and unmarked burials. Survivors, Indigenous families, and communities seek the truth about what happened to their children and where they are buried. Survivors also want to ensure that all Canadians know about and remember these atrocities and human rights violations so that this never happens again. The federal government, church officials, and Canadian citizens have repeated this phrase, "This must never happen again."[27] Yet, without determining the truth, how will those in positions of power today prevent a recurrence?

The Contested Past in Settler Colonial Contexts

In 2021, Fabián Salvioli, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, issued a report on the need for transitional justice measures, including truth and reconciliation commissions, tribunals, and various forms of reparations, to address historical injustices, structural violence, and mass human rights violations committed in colonial contexts. His observations on reparations relating to memorialization and public education are relevant.[28] While acknowledging that several settler colonial countries, including Canada, have begun to address these colonial legacies, he emphasized that, "when the transition processes adopted in these contexts do not seek to reverse the situation of domination still suffered by the colonized peoples, they are bound to fail."[29] Key among his findings is his observation that:

> It is essential that settler States ... conduct public processes of memorializing the rights violations that occurred, the conditions, patterns and responsibilities that led to them, their current impact and the harm suffered by the victims.... In memorialization processes, the participation of victims is of critical importance. Furthermore, while some of these processes may have been undertaken on the initiative of the victims or their families, they should be officially promoted and supported.[30]
>
> Another important measure is the inclusion of information on the legacy of colonialism in curricula and educational material at all levels to ensure that society and future generations are aware of that past. It is also important to protect and ensure access to the cultural heritage of [I]ndigenous or formerly colonized peoples, including their narratives of violence suffered. For communities that have endured and survived gross and systematic human rights violations (genocide, apartheid, crimes against humanity), these experiences are often a

> crucial part of their history, culture and identity. International human rights law obliges States to protect a community's right to its cultural heritage and to ensure that educational materials provide a fair, accurate and informative picture of [I]ndigenous [P]eoples' societies and cultures.[31]

While Salvioli's report confirms the State's responsibility for establishing and implementing these measures, albeit with the full participation of victims, it is important to reiterate once again that, in the Canadian context, commemoration and public education must be led by Indigenous people, not the State. With that in mind, it is instructive to examine the relationship between collective memory, identity, and history more closely.

Collective Memory, History, and Identity

> I never like the phrase, "History is written by the victors." I understand the idea behind it—that those in power will tell and retell stories in whatever ways flatter them best, until those stories harden into something called "history." But just because stories are unwritten for a time, it doesn't mean they'll be unwritten forever. And just because stories don't get written down, it doesn't mean they're ever lost. We carry them in our minds, our hearts, our very bones. We honour them by passing them on, letting them live on in others, too.
>
> **— Alicia Elliott, Tuscarora author**[32]

In thinking about the relationship between collective memory, identity, and history, Alicia Elliott, a Tuscarora writer (Six Nations of the Grand River), highlights how Indigenous oral histories document the political, social, and cultural memory of Indigenous Nations across Turtle Island. She reminds us that history told by those in power is only part of the story. Contrary to what many believe, history is not neutral but inherently political. International historian Margaret MacMillan cautions that history does not always lie safely and quietly in the past, to be explored for interest or pleasure:

> History can be helpful; it can also be very dangerous.... Sometimes we abuse history, creating bad or false histories to justify treating others badly, seizing their land, for example, or killing them.... The past can be used for almost anything you want to do in the present. We abuse it when we create lies about the past or write histories that show only

> one perspective.... That does not mean we should not look to history for understanding, support and help; it does mean that we should do so with care.[33]

She points out that history can be used for purposes that are good or bad—for example, to comfort, to shape identity, to label or diminish opponents, to shame or pressure others, or to create and sustain nations. In this sense, history is as much about the present and the future as it is about the past. Collective memory also has an implicit connection to the future: a shared identity becomes a basis for a vision of a shared future.[34] However, collective memory is not the same as history, and it serves different purposes. History examines multiple perspectives, working to provide an account of the past that is accurate, nuanced, and comprehensive. While collective memory may be informed by history, it lacks its complexity and may or may not accord with the views of contemporary historians. Collective memory is a comprehensible version of the past that reflects and builds the narratives and values of the group. At the national level, these shared memories are an important aspect of how a country understands itself.[35] These memories are embedded in our landscape, our rituals, and our institutions—in our monuments and our heritage markers, our celebration of national or community holidays, our school textbooks, and our shared culture. In academic literature, the shared memories, knowledge, and information that are connected to the identity of a social group are referred to as "collective memory."[36]

At the Vancouver National Gathering in January 2023, Kristin Kozar, executive director of the Indian Residential School History and Dialogue Centre said that, "the ability to create collective memory and collective identity is directly linked to confronting and interpreting a community's own past. Collective memory can include not only written records, but also oral traditions, public commemorations, artifacts, etc."[37] Collective memory is also transmitted from individual to individual through conversations that reinforce both collective remembering and forgetting. In addition to the work of governments, scholars, institutions, and culture creators, individuals themselves have a significant role in the development of a shared identity through conversational acts of remembrance and forgetting. Importantly, these conversational acts are themselves shaped by identity: individuals are less likely to remember events or perspectives that are experienced as a threat to identity. As well, memory formation is enhanced most by conversations between those in the same social group—that is, collective memory formation tends to reflect and reinforce existing social group boundaries.[38] Collective memory connects our personal memories and our ideas of ourselves to a larger narrative of which we feel a part. When people think of themselves as Canadians, they have a sense of what that means, which is partly derived from this collective past.[39]

Collective memory in the context of settler amnesty and impunity involves as much forgetting as it does remembrance, and identity is defined as much by what people choose to forget as well as what they choose to remember, "Amnesty, as institutional forgetting, touches the very roots of the political, and through it, the most profound and deeply concealed relation to a past" that must be denied.[40] In this sense, settler amnesty is a form of, "collective denial, shared forgetting, social amnesia [that] assumes that an entire society can forget, repress, or dissociate itself from its discreditable past record."[41] A tension exists between perpetrators and bystanders who choose to forget and the victims of State violence who are compelled to remember and bear witness.[42] There is an ethical dimension to collective memory that the late feminist philosopher Sue Campbell describes as "relational remembering," which involves a, "set of practices with cognitive, affective, interpersonal, and political dimensions."[43] Consequently, "no simple call to 'remember' ... can leapfrog over the complexities of history, of politics, and of speaking positions."[44] In the context of the need for reparations for the mass human rights violations associated with the Indian Residential School System, "sharing the memory of harm and wrongdoing across pasts that are linked by (and in some sense) a common and toxic history" may help us to critically engage with our history in reparative ways that strengthen accountability, justice, and reconciliation.[45] One way to understand Indian Residential School denialism is as a political struggle over collective memory, identity, and national history. It is a contest not just over the facts of what happened in the Indian Residential School System but also over who Canadians think they are as Canadians.

However, it is problematic to refer to "our" collective past because Canada has never had an inclusive, multi-plural historical narrative. Kwakwaka'wakw lawyer and author Puglaas (Jody Wilson-Raybould, the former Minister of Justice and Attorney General of Canada) points out that while, "our collective national stories are powerful ... [they] have never been truly collective ... they leave some peoples and their experiences out.... Core elements of this story ... come to be taken for granted as foundational to 'our' national story ... but the fact is that the predominant story is also, when it comes to Indigenous Peoples, a myth. And myths need to be dispelled."[46] The celebratory history that Puglaas learned in school, for example, about the English and French as "founding fathers" of Confederation omitted the critical role of Indigenous Peoples in Canada's history, "Indigenous governments—and our laws, jurisdictions, and authorities—were ignored ... the experience of the founding of Canada was ... a deepening of colonization and oppression."[47] As a result, the history she learned from her family and community, "was one of oppression and injustice, of a struggle that is still ongoing. The reality of [these] silos is something that affects all of us—Indigenous and non-Indigenous—and it is destructive. Siloed stories reinforce silos in society."[48]

Puglaas (Jody Wilson-Raybould) recalls that, while the missing and disappeared children and unmarked burials have never been part of Canada's national history:

> In our communities, it has always been known that children never returned from [Indian] [R]esidential [S]chools, that they died there. In various ways, these missing children have always been spoken of, as part of our telling of our history in this country. Sometimes their names would be shared. Sometimes Survivors would identify the place where they knew others were buried. Sometimes stories would be shared of those who never came home. The existence of unmarked graves is but one illustration of how different the predominant story of Canada is for Indigenous Peoples.[49]

Because collective memory is integral to how a group sees itself, it is as much about the present as the past. It is common, for example, for politicians, institutions, and social groups to invoke collective memory as a justification for political action in the present. Collective memory is therefore subject to debate and can be politically motivated.[50] For example, current public debates over statues and institutional names celebrating settler colonizers can be understood as struggles over collective memory. Historian Gavriel Rosenfeld explains that collective memory is often particularly charged where there is, "unmastered history"[51]—that is, a past that, "involves the commission of a historic injustice—an act of war, genocide, or political oppression—that has been remembered differently by, and has caused discord between, the original perpetrators, victims, and their respective descendants."[52] Communities that have been the targets of violence or genocide are deeply impacted by this history and this shared memory: attempts to deny or minimize it are experienced as an attack on the memory of those lost and a continuation of the genocide, thereby disrupting the process of mourning. For perpetrator communities, on the other hand, these painful memories can be experienced as a threat. Communities have a powerful desire to think well of themselves, and this positive identity is affirmed through collective memory. They can therefore turn to denial, not only to evade accountability but also to expunge a "dark past" from collective memory.[53]

Rosenfeld notes that, "because perpetrators are usually reluctant to accept responsibility for the past and prefer to forget it and because victims insist on bearing witness to their suffering and pursuing redress for it, legacies of historic injustice invariably become divisive and

contested."[54] Scholar Roger Simon points out that for Indigenous Peoples, "remembrance of invasion, resistance, and survival [i]s an insurgent critique of the idea that any of the nation-states of the Americas should continue to be informed through narratives that propose a common identity linked within a single, unifying culture and history."[55] As noted above, "unmastered pasts" always form a challenge to collective memory. There are additional challenges where a country's history is founded on mass violence that questions the nation's legitimacy and the ability of its citizens to feel pride in their country. This may incite efforts to construct a fictitious past to legitimate the present.

The settler populations in Canada, the United States, and Australia are examples of this dynamic, whereby celebratory national narratives both create and deny aspects of the colonial past.[56] It has been pointed out that denialism is part of the fundamental logic of settler societies. The implicit goal is to create a post-colonial condition in which colonialism is a thing of the past, settler colonies are "settled," and Indigenous rights and claims are repressed, co-opted, and extinguished.[57] In a settler society, the expression of collective memory and identity cannot help but be politicized. Denial becomes essential to maintaining legitimacy and a positive identity. It is impossible to both acknowledge the realities of settler colonialism and anti-Indigenous racism and to maintain a simplified identity as a country of tolerance, inclusion, and human rights. Accepting the realities of the Indian Residential School System requires a painful rethinking of old assumptions and the development of a new national historical narrative, one that can no longer be centred in what Canadian studies scholar Eva Mackey describes as, "a mythology of [W]hite settler innocence."[58] In the face of this challenge, it is not surprising that individuals may seek refuge in various comforting mythologies and outright denialism. Indeed, sociologist Stanley Cohen argues that denial of wrongdoing always occurs in societies, and, therefore, it is necessary to create the political conditions under which people will choose to change their beliefs, attitudes, and actions rather than continue to deny.[59]

Canada has its own version of a denialist narrative aimed at constructing a comforting myth that characterizes settler Canadians as, "benevolent peacemakers ... who collaborated together in various ways to negotiate treaties and implement Indian policy intended to bestow upon Indigenous people the generous benefits or gifts of peace, order, good government and Western education" in contrast to the violent settlement of the United States.... Canadian society subscribes to the peacemaker myth ... [because] to do otherwise would engender our own collective identity crisis and expose us to the trauma of admitting uncomfortable truths."[60] Rather than confronting the violent realities of colonization, scholars Eve Tuck and K. Wayne Yang, note that Canadians engage in, "settler moves to innocence ... those strategies

or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all.... [These strategies] provide a framework of excuses, distractions, and diversions from [the need for] decolonization."[61]

Elazar Barkan, international and public affairs scholar, points out that historical counter-narratives of injustice and oppression, "dramatically contradict the public's self-perception and necessitate the rewriting of a heroic national history as one that inflicted pain and suffering and even perpetrated crimes."[62] The need to rewrite and remember a national history that acknowledges the harms and human rights violations perpetrated against Indigenous Peoples is accepted by many Canadians. For some, however, it is politically controversial; it fuels denialism in those who reject the truths that are exposed by the victims of genocide and mass human rights violations. As sociologist Keith Kahn-Harris points out, "forms of genocide denialism are not just attempts to overthrow irrefutable historical facts; they are an assault on those who survive genocide, and their descendants."[63] Some denialists object to characterizing Canada as a "perpetrator State," but, as the TRC's Final Report reveals, this accurately describes the actions of the federal government and the churches relating to the missing and disappeared children and unmarked burials.

The Importance of Truth and the Impacts of Denialism

> The more that residential schools are in the headlines, the more backlash we seem to be facing. There are people out there who continue to deny this truth, who don't want to admit that the schools inflicted these harms on Indigenous peoples and that the schools were purposely designed to do that.... These deniers ignore the established facts about residential school history, including the documented reality that most children who died in the schools were never returned to their families. Instead, the deniers called the search for unmarked burials "fake news".... These residential school deniers are not representative of most Canadians. We know this. Denialism is a fringe movement, but it includes individuals with power and influence to be quoted in the media and abroad.
>
> — Survivor Barbara Cameron[64]

The TRC's Final Report emphasized that reconciliation cannot happen without truth. Indigenous Peoples' right to know the truth is foundational, and reconciliation cannot proceed without respecting this right. Acknowledgement of truth and its integration into the

national historical narrative is an essential element of reparations, along with apology, repatriation, commemoration, financial redress, legal and policy reform, and public education.[65] The foundation of mutually respectful relations lies in part in an understanding by Canadians that the history taught to them is a distorted one. This has marginalized Indigenous Peoples' histories and experiences, enabled profoundly disrespectful and damaging views of Indigenous Peoples, and supported assimilationist and destructive policies.[66]

Justice Murray Sinclair, former senator and chair of the TRC, has warned that White supremacy and Indian Residential School denialism pose a significant risk to reconciliation in Canada:

> The people who believe that they have the privilege of holding power and should continue to have that privilege, they're going to push back. They're going to fight against reconciliation. They're the deniers of this story. They're going to say this never happened. That the schools were all about education and the Indians should be thankful that they got an education.[67]

As the Standing Senate Committee on Indigenous Peoples has recognized, "Denialism serves to distract people from the horrific consequences of residential schools, and the realities of missing children, burials and unmarked graves."[68] It enables individuals to turn their eyes from reality towards comforting myths and avoid the hard work of reconciliation. Denialism therefore has risen in tandem with efforts to bring the truth about the Indian Residential School System, and about missing and disappeared children and unmarked graves and burial sites, to the attention of the public. The Canadian Senate has therefore recommended that the federal government take every action necessary to combat its rise.[69]

What Motivates Denialism?

Because Indian Residential School denialism exists along a continuum, it is important to understand the relational dynamics between victims (those who demand accountability and justice), perpetrators (those who defend their actions as well-intentioned), and bystanders (those who remain silent and do nothing in the face of atrocities). Judith Herman, an international expert in the study of individual and collective trauma, explains how perpetrators use denialism to evade accountability. She points out that bystanders must choose whether to act in solidarity with victims or remain uninvolved, making them complicit with the perpetrators:

> When traumatic events are of human design, those who bear witness are caught in the conflict between victim and perpetrator. It is morally impossible to remain neutral in this conflict. It is very tempting to take

> the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear, and speak no evil. *The victim, on the contrary, asks the bystander to share the burden of the pain. The victim demands action, engagement, and remembering....*
>
> In order to escape accountability for his crimes, the perpetrator does everything in his power to promote forgetting. Secrecy and silence are the perpetrator's first line of defense. If secrecy fails, the perpetrator attacks the credibility of his victim. If he cannot silence her absolutely, he tries to make sure that no one listens. To this end, he marshals an impressive array of arguments, from the most blatant denial to the most sophisticated and elegant rationalization.
>
> *After every atrocity one can expect to hear the same predictable apologies: it never happened; the victim lies; the victim exaggerates; the victim brought it on herself; and in any case it is time to forget the past and move on.* The more powerful the perpetrator, the greater is his prerogative to name and define reality, and the more completely his arguments prevail. The perpetrator's arguments prove irresistible when the bystander faces them in isolation. Without a supportive social environment, the bystander usually succumbs to the temptation to look the other way.[70]

In Canada, this relational dynamic between victims, perpetrators, and bystanders is evident in a refusal or hesitancy to fully recognize, value, and affirm the rights, knowledge, perspectives, and experiences of Indigenous Peoples. Herman's description of the psychological aspects of the relationship between victims, perpetrators, and bystanders assists in understanding the various motivations for denialism in the context of the missing and disappeared children and unmarked burials in Canada.

While a complete review of the psychological, reputational, and other motivations for denial is beyond the scope of this Final Report, Kahn-Harris notes that denial becomes denialism when it morphs into political dogma, and, "denialism transforms psychological tendencies for denial into the active construction of new, harmful realities to the detriment of those whose truths are rejected."[71] Sean Carleton points out that Indian Residential School denialism, "can be understood as a common strategy in which colonizers use denialist discourse to legitimize and defend their material power, privilege, and profit," often to, "espouse anti-Indigenous racism" in a way that is, "openly hostile to Indigenous Peoples."[72] Denialism justifies the material benefits enjoyed by non-Indigenous people when recognition of wrongdoing stands in the way of advancing the broader political, social, and economic goals and

interests of Canadian society. Denialism can fuel conflicts between Indigenous communities and governments over issues of jurisdictional control, ownership, and use of land that sometimes leads to violent confrontation.

Recognizing Denialism

Denialists attempt to influence public discourse on the Indian Residential School System, focusing their most recent efforts on challenging the veracity and historical accuracy of accounts relating to the missing and disappeared children and unmarked burials. Notably, denialism is often promoted in the words and actions of prominent leaders, who explicitly or tacitly undermine the testimonies of Indigenous people. Consider the following examples:

- A member of Canada's Senate claims that the report of the TRC has overshadowed the good deeds of well-intentioned Indian Residential School staff. She states, "Let's stop the guilt and blame and find a way to live together and share. Trade your status card for a Canadian citizenship, with a fair and negotiated payout to each Indigenous man, woman and child in Canada, to settle all the outstanding land claims and treaties, and move forward together.... All Canadians are then free to preserve their cultures in their own communities, on their own time, with their own dime."[73]

- A Canadian political scientist and academic publishes a book claiming that the Indian Residential School System was necessary and, on the whole, positive.[74] She describes the reaction to the identification of unmarked burials in Kamloops as a "moral panic" based on "wild accusations."[75]

- A Catholic priest states in his sermons that Indigenous children enjoyed their time at Indian Residential Schools and that they fabricated stories about abuse in order to get settlement money, "If they wanted extra money, for the money that was given to them, they had to lie sometimes. Lie that they were abused sexually and, oop, another $50,000. It's kind of hard if you are poor not to lie." He continues to say that it was night watchmen, not priests, who were responsible for the abuse.[76]

- In a sermon, another Catholic priest claims that, "we are in the presence of lies here in Canada. There were reports stating why these children were dying. They were dying from natural causes and were buried in regular cemeteries, and that's why we're living now in a great lie."[77] He says that he had visited

the former Kamloops Indian Residential School and, without disclosing that he was a priest, asked to see the unmarked graves. His request was denied because the grounds are Sacred and not open to the public. He compares the unmarked burials at former Indian Residential School sites to the Jedwabne pogrom in Poland during the Second World War, in which hundreds of Jews were murdered by Poles, claiming that the massacre in Jedwabne was a lie perpetuated by Jewish people. He says that the accounts of unmarked graves at Indian Residential Schools are also lies, similar to those told about the massacre at Jedwabne, saying, "It's the same lies, my dears."[78]

- An influential political commentator and advisor to a former prime minister built a public profile based on Indian Residential School denialism. He disputes the TRC's findings that children died because of abuse in Indian Residential Schools, saying, "I dispute this as a generalization. I would want to see evidence about individual deaths. Ask me about specific cases and show me the evidence."[79] He publishes a book claiming that, "this is the worst case of fake news in Canadian history, 'numerous good reports' about residential schools were being discounted due to 'wokeism.'"[80]

These are all recent examples of Indian Residential School denialism; it is not, however, a new phenomenon. It has deep roots in Canada's colonialist narratives and in the stories that were propagated when these institutions were operating. It has become more visible and organized following the release of the TRC's Final Report and, more recently, with the investigations of unmarked graves and burials at former Indian Residential School sites. There appears to be a growing and organized campaign to deny or minimize the truth about the Indian Residential School System and, in particular, to dismiss the existence of unmarked burial sites and of missing and disappeared children. This denialism, if unchecked, will become a significant barrier to reconciliation.

Standing Up to Denialists

It is important to note that denialism sometimes has consequences. There have been Indigenous-led responses to denialists and collaborative advocacy and action with Indigenous allies to reject and counter these false claims associated with Indian Residential Schools, specifically, and towards Indigenous Peoples, generally:

- The senator who delivered a lengthy speech urging Canadians to recognize the positive aspects of the Indian Residential School System and used her Senate website as a platform for anti-Indigenous racist letters from the public

was forced to resign.[81] This was accomplished over four years through the combined and concerted efforts of Indigenous Senators Murray Sinclair and Mary Jane McCallum, with the support of four other senators. A coalition of Survivors also lobbied for her removal through a letter-writing campaign to each member of the Senate informing them of the personal impact that the senator's public praise for the institutions had on their lives.[82] Prior to her resignation, the senator was removed as a member of the Conservative Caucus.[83]

- Following the statements of the priest who claimed that Survivors were lying about being abused in Indian Residential Schools to get settlement money, the archdiocese of St. Boniface issued an apology, and the Winnipeg archdiocese prohibited him from delivering sermons or teaching. He was also barred from entering the Indigenous community where he had previously worked for over 20 years and continued to visit.[84] The Chief of the Nation said that this was a necessary response to the harm that his actions caused the community and that community Elders were, "shocked and saddened. It's bringing back a lot of the stories they have to deal with and are continuing to deal with from residential schools."[85]

- The Canadian political scientist and academic who built a public profile based on Indian Residential School denialism was met with fierce resistance from academic, student, and broader communities. Sanctions included losing employment as a tenured professor in part for repeatedly and publicly espousing false assertions that minimized the significant and detrimental impact of Canada's Indian Residential School System.[86] When she was scheduled to speak at a public event at the University of Lethbridge, Indigenous faculty and students led over 700 allies and supporters in song and protest that resulted in the event being cancelled. In a public statement, the university's president said that Indian Residential School denialism has no legitimate place in serious intellectual debate and that he wanted to express his, "sincere appreciation to our community members for conducting themselves in such a peaceful and powerful manner."[87] Noting the many allies standing in solidarity with Indigenous faculty and students, Brittany Lee, Councillor of the Métis Nation, said that, "we believe education should be the means to repair the damage that was done to our people

> via the residential school system. I grew up in Lethbridge where we didn't have any support. And so now in 2023, we have all this support on campus really working towards reconciliation, it's really heartwarming."[88]

Denialism is an ongoing source of harm to the Survivors, families, and communities leading the Sacred work to recover the missing and disappeared children and unmarked burials. Denialism may be countered through public education and advocacy that calls for accountability. While much of this advocacy is Indigenous-led, it is the responsibility of non-Indigenous people in Canada to fight denialism by honouring the truths shared by Survivors, Indigenous families, and communities and to work in solidarity with Indigenous people.

Five Common Denialist Claims About Indian Residential Schools

Throughout its Final Report, the TRC emphasized the need to correct the historical record in relation to the Indian Residential School System and challenge inaccurate beliefs about these institutions commonly held by Canadians. Unfortunately, despite the TRC's influential work, the Office of the Independent Special Interlocutor (OSI) has received a high volume of denialist correspondence in the two years of my Mandate. In reviewing these communications, as well as statements in the public domain, five denialist claims or common myths have been identified, particularly in the context of the missing and disappeared children and unmarked graves or burial sites.[89] It is not the purpose of this Final Report to rebut each of the various claims set out here, as the TRC's Final Report documents at length the historical record of the Indian Residential School System. Rather, the aim is simply to identify the types of myths that are repeatedly promoted to minimize or deny the impacts of the Indian Residential School System and, in particular, the deaths and disappearances of the children.

Myth 1: The Harms of the Indian Residential Schools Have Been Overstated and the Positive Aspects Downplayed

This particular form of denialism has a very long history and was in effect throughout the operation of the Indian Residential Schools, deployed by government and church officials in response to evidence of the System's failures and harmful effects.[90] As Survivors broke the silence about the violence and abuse that they had endured, denialists, including some former Indian Residential School staff, continued to circulate the myth, denying that what Survivors were saying was true.

Bernice Logan and the Association of Former Indian Residential School Workers: Over 30 Years of Denialism without Success

1981 reunion of Shingwauk Survivors, former staff, and family members (Shingwauk Reunion 1981 Fonds, Algoma University Archives).

The first Shingwauk Reunion for Survivors was held at the site of the former Shingwauk Indian Residential School in 1981. The goal of the gathering was to bring Survivors together and to help facilitate healing. It had only been 10 years since the institution had been closed, and former staff and clergy who had worked there joined Survivors for what they thought would be a joyful celebration of Shingwauk's 97-year-old history. When some Survivors disclosed their painful memories of the abuse and neglect that they had suffered there, clergy and former staff were shocked and angry. Many refused to believe what the Survivors told them.[91] Ten years passed before another Gathering was held in 1991. At this second Gathering, more Survivors began to talk openly about their experiences, and, over the years, the Shingwauk Reunion became a source of strength for Survivors who no longer felt alone.[92] They subsequently established the Children of Shingwauk Alumni Association (CSAA).[93] Their courage was met with resistance from many former staff who continued to deny that children suffered any abuses at the Shingwauk Indian Residential School.

The most vocal of these former staff members was Bernice Logan (formerly Bernice Mason). She created an organization called the Association of Former Indian Residential School Workers and self-published *The Teaching Wigwams*—volume 1 was published in 1993 and volume 2 was published in 1995—which celebrated Indian Residential Schools and their staff. The books were based on reports from "successful students" from the early twentieth century and settler observations. Logan used these sources to argue that Indian Residential Schools were beneficial for Indigenous children who would otherwise not have received an education.[94] From her perspective, the Indian Residential Schools functioned as sanctuaries for children who had no schools in their communities, no families, or a very poor home life.[95] She claimed that well-intentioned staff were now the victims of false stories of abuse, saying that, "We gave unconditional love to the Indian children and are so proud of the help we gave them, even though our church continues to demonize us."[96]

Logan's books also include letters she began sending to the CSAA, responding to their *Alumni News* on behalf of former staff and her organization, the Association of Former Indian Residential School Workers.[97] In one such letter, Logan suggested that, "the Children of Shingwauk [should] publicly state that they are grateful for the good work that was done for them."[98] *The Teaching Wigwams* included letters of support for Logan's work from other Shingwauk Indian Residential School staff as well as other former staff members across the country. Many of these letter writers expressed growing frustration with Survivors' allegations. They refused to believe that children had been abused by those responsible for their care.[99]

Logan's extensive letter-writing campaign extended beyond her correspondence to the CSAA. For example, in a letter to the editor of the *Chronicle Herald* on October 11, 2014, she criticized Chris Benjamin, author of *Indian School Road: Legacies of the Shubenacadie Residential School*.[100] She accused him of factual inaccuracies and of misrepresenting the history of the Indian Residential School System, insisting that, "the schools were not a tragedy and those who were able to be educated in them did very well in life."[101] She sent copies of the letter to Bernard Valcourt, then minister of Aboriginal Affairs and Northern Development, several senior church officials, and television journalists as well as to Benjamin's publisher. Benjamin responded to her accusations on his website, posting a copy of Logan's letter and pointing out that, "everything in my book is ascertained from archival records from Indian Affairs or from the many, many [S]urvivors who have gone on record at inquiries or in court or to the media or public in their own

> accounts, at great personal cost."[102] For over three decades, Logan persisted in her belief that Indigenous children benefited from the Indian Residential School System, guided by kind and caring staff who had the best of intentions, thereby perpetuating this foundational myth. This myth persists despite the high number of claims of abuse verified in the Independent Assessment Process as part of the *IRSSA*.[103]

This is the foundational claim that underlies all Indian Residential School denialist myths: that those responsible for establishing and operating the Indian Residential Schools acted with benign intentions to provide an education to Indigenous children that would equip them for the future and that many (if not most) children benefited and were happy at the institutions. This claim has been voiced by a wide range of public figures, including the former Leader of the Opposition Erin O'Toole,[104] journalist Conrad Black,[105] Senator Lynn Beyak,[106] Professor Frances Widdowson,[107] and many others. Proponents of this claim may acknowledge that abuses occurred, but they see these as malfunctions of an essentially well-intentioned and humanitarian system. Widdowson harmfully propagated that:

> Leaving aside the tragedy of incidental sexual abuse, what would have been the result if aboriginal people had not been taught to read and write, to adopt a wider human consciousness, or to develop some degree of contemporary knowledge and disciplines?... Were it not for the educational and socialization efforts provided by the residential schools, aboriginal peoples would be even more marginalized and dysfunctional than they are today.[108]

On a website that has been set up to collect the memories of Indian Residential School staff, the stated goal is to preserve the, "historical records [that] exemplify the warmth, kindness and selfless dedication of the religious men and women who cared for Indian children at these residential schools and missions."[109] This "goal" is supported by the false claim that children at Indian Residential Schools were being "rescued" from a backwards or dysfunctional culture and that Indian Residential Schools, "were established not to rob a people of their culture, as is now wrongly and shamefully asserted. Rather, they were established to save a people whose old culture had already been irretrievably lost."[110] Statements about the positive nature of the Indian Residential Schools are often accompanied by claims that this truth is being deliberately repressed. For example, the *Staff Chronicles* website referenced above states that, "most of these chronicles were sent to the TRC years ago in response

to its requests for records from religious orders across Canada, but the NCTR [National Centre for Truth and Reconciliation] has not digitized them for its archives, and they are thus not available to the general public."[111] Many church entities, however, have placed access restrictions on the records they produced for the TRC and that are now archived with the NCTR.

Myth 2: The Experiences at Indian Residential Schools, Including Deaths, Were Typical for the Time Period

While some denialists claim that deaths at Indian Residential Schools were fabrications, it is a more common claim that Indian Residential School experiences were, "normal for the time." In an analysis of the letters published on then Senator Lynn Beyak's website, Sean Carleton provides several examples of writers who highlight the abuses that existed in settler schools during the same period that Indian Residential Schools operated,[112] which read much like the earlier Canadian political scientists and academics who have already published books that insist that, "charges of 'genocide' have been able to stick because authors ... adopt the sophistry of using modern values to judge actions of the past. Enlightened attitudes against physically assaulting children did not exist because, well into the twentieth century, corporal punishment was believed to 'build character.'"[113] Further, because many children died of causes such as tuberculosis, it is claimed that these were "natural deaths" that were normal for the time period and should therefore not be a cause for concern.[114] This may be accompanied by the claim that tuberculosis was widespread in the Indigenous population and that the children brought tuberculosis to the institutions and spread it there, with the result that these children would have died regardless of the Indian Residential School System:

> The children who died came from reserves with shockingly high tuberculosis death rates. Their deaths were not caused by residential schools. As Dr. Peter Bryce, chief medical examiner, said at the time, the children arrived at the schools already infected, where they infected others. If residential schools had never been built, they would still have died. In short, there is no credible evidence that there was anything sinister about any of the 51 deaths, or any of the 51 burials.[115]

Or some claim that child mortality in general was high during the height of the Indian Residential School System so that the deaths were the same as what non-Indigenous communities experienced at the time.

Myth 3: There Are No Unmarked Burials or Mass Graves at Indian Residential Schools

Many of these denialists emphasize that the term "mass graves" used in the first media reports was inaccurate and that this suggests that concerns have been overblown. These claims, however, downplay the existence of the large numbers of graves and burial sites and of children who were never returned home as something that has "long been known" and is thus not a matter of concern. Instead of attempting to deny the fact or scale of the deaths, this type of claim seeks to minimize or trivialize these deaths. A common claim is that no unmarked graves or burial sites have been found at this point:

> Kimberley [sic] Murray's mandate should be revoked because it is based on an unverified assumption. It states: The Special Interlocutor will work to identify needed measures and recommend a new federal framework to ensure the respectful and culturally appropriate treatment of unmarked graves and burial sites of children associated with former residential schools. To date, not a single verified unmarked grave or burial site of a named child who died at a named residential school has been identified. That is a fact which cannot be disputed.[116]

Similarly, it is claimed that the NCTR's Memorial Register inaccurately lists children as missing and that most children died in hospitals or in accidents in their home communities, "Canadians are being misled into believing there are 'missing' children. They are not 'missing.' Death records establish that for the most part they died in hospitals or in accidents on their home reserves, and that they are buried in Indian reserve cemeteries."[117] This form of denialism significantly overlaps with the fourth set of claims, detailed below, that some or all of the unmarked graves or burial sites are fabrications and that this is essentially a "hoax." The key difference between them is the level of intentionality. Whereas the third myth allows for misunderstandings or misapprehensions and urges that the situation be clarified, the fourth myth envisions a deliberate conspiracy. In theory, this is an important distinction, although, in practice, some denialists who do not explicitly claim a hoax use code words as a strategy to engage in denialism without taking personal responsibility for the harm it causes.

Myth 4: There Is a Conspiracy to Exaggerate Deaths at Indian Residential Schools to Push a Political Agenda and Enrich Indigenous Leadership

At its furthest extreme, denialism alleges that Indigenous communities, with their political, media, and expert allies, are deliberately lying, exaggerating, and misleading the public about non-existent burials and that claims about missing children and unmarked graves are in fact a hoax. This hoax is intended to support a radical Indigenous agenda that will allow (depending on the person making the claim) for the stripping of private property rights, prop up the federal government, illegitimately funnel money to First Nations communities, block resource development, or otherwise undermine the rights of Canadians. This denialist claim relies heavily on an "us versus them" mentality that pits non-Indigenous people—in particular, White Canadians—against Indigenous Peoples. This claim positions Indigenous Peoples as a "threat" to the hard-earned successes of White settlers and obscures the fact that much of this success has been based on colonial violence against Indigenous Peoples.

According to these claimants, no unmarked graves or burial sites have been found at all. What has been detected are "unknown structures," "tree roots and rocks," "septic ditches," or anomalies.[118] The denialists' claim is that the truth has been deliberately suppressed, whether by the OSI, government, media, or some combination of these institutions:

> How about cutting the BS with unsubstantiated grave sites and start by digging up some of those test spots to prove what if anything has actually been buried in those spots. Try using the Kamloops Indian School for starters because there has been a lot of controversy about that situation especially due to greasing native palms and their reluctance to provide any proof.[119]

Similarly, it is claimed that the whereabouts of missing and disappeared children are known and that authorities are deliberately suppressing the truth:

> It is thus clear that as further provincial death records are obtained by private researchers, the claim that there are thousands of missing residential schools students will be revealed for what it is—a myth. At Kimberley [*sic*] Murray's Gatherings, there is a prominently placed empty chair on or near which offerings are placed (see her Progress

> Report to David Lametti). The empty chair is truly symbolic, but not in the way Kimberley [*sic*] Murray claims. It is empty because there really are no missing children.[120]

Myth 5: What Transpired at the Indian Residential Schools Does Not Amount to Genocide

Since the release of the TRC's Final Report, there has been ongoing resistance to the use of the term "genocide" to apply to the Indian Residential Schools. At times, this may arise from the layperson's lack of understanding of a complex and heavily weighted legal term. Importantly, it also arises from a resistance to accepting the truly malevolent intentions and impacts of the Indian Residential School System and integrating these truths into an understanding of how Canada committed atrocities and violated Indigenous Peoples' human rights. It is thus a form of denialism, "Attempting to impose one's culture on others can hardly be called genocide, regardless of how offensive the process is considered. The argument that all cultural change is genocidal defies both definitive and historical fact."[121] Conrad Black has referred to the use of the term "cultural genocide" in the context of Indian Residential Schools as an, "anti-Canadian blood libel," stating that:

> The worst and most dishonest aspect of this cascade of failures has been the evil misuse of the phrase "cultural genocide," which was infamously legitimized by former Supreme Court chief justice Beverley McLachlin, along with reckless references to "colonization" and "survivors," all of which has dragged Canada somewhat under the moral aegis of the United Nations Genocide Convention, which has no earthly application to Canada, even though many of Canada's official policies in regards to its Indigenous people were misconceived and objectively bad and contemptible.[122]

The Canadian Historical Association (CHA) has issued a formal statement on the use of the term "genocide" in the context of the history of violence towards Indigenous Peoples within Canada. The CHA notes that there is broad consensus among historical experts in this area that genocidal intent in Canadian policy towards Indigenous Peoples has been amply established in the historical record. The CHA further states that, "our inability, as a society, to recognize this history for what it is, and the ways that it lives on into the present, has served to perpetuate the violence. It is time for us to break this historical cycle. We encourage Canadians to recognize this history for what it is: genocide."[123]

An Analysis of Denialist Correspondence to the OSI: Denialism Targeting the OSI and Presenters at National Gatherings

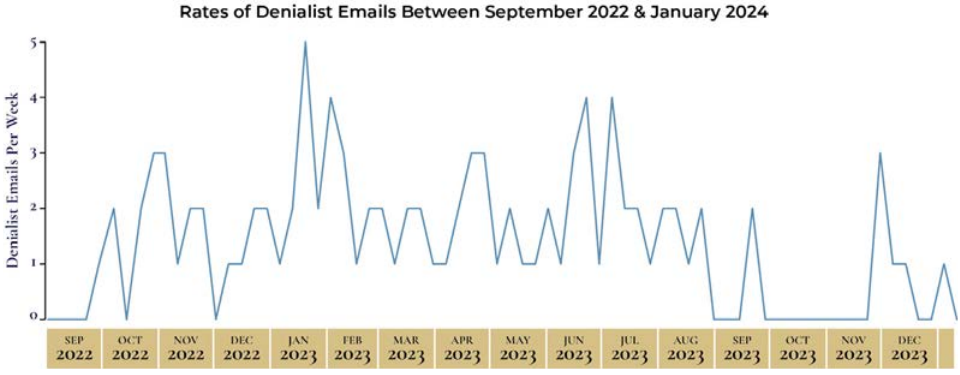
Over the course of my two-year mandate, over one hundred denialist emails were sent to the OSI's general email account. The emails, excluding the numerous attachments, contained over 140 pages of content, and 89 of those emails were written by the same person with ties to a known denialist organization. This person also copied dozens of politicians on the emails. In some cases, presenters at National Gatherings were aggressively targeted by this organization with attempts to use their words to support denialist claims. Indigenous leaders and community representatives were also harassed by this same organization. The emails received used various denialist strategies, including:

- Perpetuating the myth of the mass graves hoax and mischaracterizing public confirmations from those leading search and recovery work as "false claims";
- Attempting to discredit the truths shared by Survivors, Indigenous families, and communities about the existence of unmarked burials using ahistorical and inaccurate "facts";
- Mischaracterizing the words of public reports or Indigenous people or family members to support their false denialist claims;
- Omitting the fact that the unmarked nature of the burials is due to government policies and neglect of Indian Residential School cemeteries and falsely attributing this neglect to Indigenous communities;
- Attacking the credibility of Indigenous leaders, Survivors, families and communities about whether their family members attended Indian Residential Schools, whether children died at the institutions, whether children are buried on sites of the institutions, and whether any families ever searched for their missing and disappeared children;
- Making claims that Survivors, Indigenous families, and communities are sensationalizing or lying about the missing and disappeared children and unmarked burials to get government funding at the expense of "honest taxpayers";

- Defending denialist claims by indicating that they are seeking the truth for the sake of, and to protect, Indigenous people and communities from trauma;
- Indicating that memories of Survivors are "faulty" and that those who were forced to dig graves for other children were instead digging in the "vegetable patch";
- Characterizing gatherings of Survivors of Indian Residential Schools as celebratory events;
- Falsely claiming that no mistreatment of children occurred at Indian Residential Schools and that all children who died are buried within Indigenous cemeteries rather than on the sites of former institutions;
- Relying on information in documentary records about the causes of death of children from accidents or diseases and indicating that the children are therefore not missing despite their families not knowing where their child is buried;
- Indicating the "real history" of Indian Residential Schools is being shared on a denialist website that only includes positive stories about Indian Residential Schools from former staff with many photos of smiling children;
- Mischaracterizing Indian Residential Schools as purely positive because they protected children from "broken" and "nomadic" families and provided children with an education;
- Naming children who succeeded despite the horrific conditions at Indian Residential Schools as proof that the institutions were positive and that Canadians should therefore be proud of these institutions;
- Claiming that all parents whose children were taken to Indian Residential Schools sent them there voluntarily and relying on church handbooks and chronicles to refute the TRC's findings;
- Attacking the credibility of search technicians that conduct ground-penetrating radar (GPR) who reported results that some anomalies are likely to be burials, by indicating that they misread the GPR results and that the anomalies were not burials but rocks, trees, or septic tanks;

- Indicating that Canadians, politicians, church representatives, and other staff at the Indian Residential Schools are being victimized by "fake news of mass graves," "hearsay," and "witch hunts"; and
- Demanding that the graves be exhumed to "prove" that children's burials are present on the sites.

Many of the emails contained personal attacks towards me, as the Independent Special Interlocutor, questioning my ability, competency, and independence from government. These emails frequently claimed that the work completed was outside the parameters of the Mandate and called for the revocation of my appointment. One denialist email contained a personal threat towards me, stating, "Things aren't going to end well for you."



Significant Events

September **2022**	*November* **2022**	*January* **2023**	*February* **2023**	*April* **2023**
• Edmonton National Gathering • Several news articles about denialism	• Progress Update Report released • Several news articles about denialism • Winnipeg National Gathering	• Edmonton Summary Report Released • Public confirmation of unmarked burials at Qu'Appelle IRS (SK) and at St. Mary's IRS (ON) • Vancouver National Gathering	• Public confirmation of unmarked burials at Alberni IRS (BC) • MP Leah Gazan calls for hate speech law to combat denialism	• Public confirmation of unmarked burials at Blue Quills IRS* (AB) and at St. Augustine IRS (BC) • Winnipeg Summary Report released
June **2023**	*July* **2023**	*August* **2023**	*September* **2023**	*November* **2023**
• Interim Report released • Public confirmation of unmarked burials at St. Bruno's IRS (AB) • 15 news articles about denialism	• Senate Standing Committee on Indigenous Peoples releases Interim report • Several opinion articles defending denialism as free speech	• Vancouver Summary Report released • Several news articles defending denialism as free speech • Public confirmation of unmarked burials at Beauval IRS (SK)	• Montreal National Gathering • Public confirmation of unmarked burials at St. Mary's IRS (BC) and Chooutla Indian Residential School (YT) • Several opinion articles defending denialism as free speech	• Toronto Summary Report released • Several news article about denialism • Public announcement by Assembly of Manitoba Chiefs calling for criminalization of denialism

Timeline of denialist emails received by the OSI, from September 2022 to January 2024 (on file with the OSI).

This analysis provides just a snapshot of the denialist attacks experienced during the Mandate, since, in addition to the emails received, there were a significant number of denialist comments on the OSI's social media accounts and on my personal social media accounts, particularly when news articles relating to public confirmations of potential unmarked burials were reposted. As well, many Survivors, Indigenous families, and communities leading search and recovery work have reported an onslaught of denialist correspondence, particularly following public announcements of their archival records and ground searches.

Strategies, Methodology, and Tools of Denialism

Indian Residential School denialism exists across key institutions, including religious institutions, academia, political institutions, and the media. The Canadian Archaeological Association has issued a Joint Statement with other associations expressing concern about the rise of Indian Residential School denialism in media, including instances in the *National Post* and the *New York Post*. In the case of the *New York Post*, the recovery of unmarked graves was framed as "fake news." The Joint Statement highlights that:

> Residential school denialism undermines the tragic loss of innocent Indigenous children. It attempts to mask the horrors that took place at these schools and derail the growing movement by governments and the broader public to redress these harms and their ongoing impact on Indigenous peoples in Canada today. It denies the truth and works against reconciliation.[124]

Unfortunately, there is a media ecosystem developing around Indian Residential School denialism, connected to radical right media. For example, a recent story about an Abbotsford teacher, Jim McMurtry, who was allegedly fired for, "telling the truth about residential schools" has been covered extensively by the *National Post*,[125] the Frontier Centre for Public Policy,[126] the *Dorchester Review*,[127] *Rebel News*,[128] the *Epoch Times*,[129] Gun Owners of Canada,[130] and *Life Site News*[131] as well as by fringe writers such as "WokeWatchCanada."[132] This highlights the ways in which denialist claims are being absorbed into "culture war" narratives that drive political debate between liberal and conservative groups as well as being broadcast beyond Canada. While many of the affected institutions have taken steps to address the cases that have come to public attention, these examples demonstrate that no institution is immune from denialism and that it is not a "fringe phenomenon." It is therefore important to examine the strategies, methodology, and tools used by denialists more closely.

There are certain strategies that denialists frequently employ while trying to discredit and spread inaccurate information. These strategies include denying facts, minimizing and recontextualizing widely accepted information, and reversing the role of the victim and perpetrator in their narratives. This is seen prominently through the dissemination of false narratives relating to the missing and disappeared children and unmarked burials, including online mass grave hoaxing. In addition, denialists often engage in a methodology of historical negationism, commonly misusing photographic and archival evidence to cast doubt on the credibility of Indigenous historical counter-narratives and perpetuate settler colonial collective memory, identity, and national history.

Spreading Denialism: Misinformation and Disinformation

When misinformation and disinformation (especially of the variety that is psychologically, economically, politically, or otherwise useful to denialists) are spread, Survivors are disregarded and disrespected, and tangible harm is done to Indigenous people. This targeted attack on Indigenous people occurs in a broader political and social context. There was no golden age in which civility, objectivity, and social trust ensured that disinformation did not spread. However, many observers have raised the alarm about the contemporary widespread breakdown of agreement not just about the truth but also about how we identify truth. We cannot agree on how to discern truth from falsehood—on what sources of information we can trust and why. Without such agreement, we cannot find a shared reality. And without a shared reality, it is impossible to resolve disputes, solve problems, or even agree on what the problems are. This is what is meant by an "epistemic crisis."[133] This crisis is evident across a wide range of issues—from disinformation about the COVID-19 epidemic or denial of the results of the 2020 American election. This breakdown in a shared reality has led to serious harm to the public and to the institutions on which we rely. Observers point to several interwoven factors underlying this current crisis:

- **Digital media:** digital platforms and the wide societal access to computers, phones, and other devices have made disseminating information—whether true or false—cheaper and easier than ever before. Past forms of gatekeeping have been eliminated, making it difficult to identify or assess the source of any particular piece of information or to create accountability for what is disseminated. Digital media tends to elevate emotion over reason, celebrity over expertise, and instantaneity over careful consideration; these qualities tend to increase engagement and, thus, profit. Hidden algorithms can push users towards more extreme and less reliable content.[134] Trolls and extremist disruptors have taken advantage of these weaknesses to flood digital media

with toxic lies aimed at undermining the digital media ecosystem[135] in a kind of information warfare.[136]

- **Political polarization:** there has been a growing tendency for individuals to sort themselves into separated information spheres, in which they see only information produced by and for their own in-group. There is less and less overlap between the information sources for those on the left and the right. Individuals are decreasingly likely to come into contact with information that would challenge their own worldviews or encourage them to see any benefit in coming into contact with such information.
- **Declining trust in institutions:** institutions such as scholarship, journalism, government, and law are central in maintaining a commitment to the search for, and communication of, shared truth.[137] These types of institutions are central to the "constitution of knowledge" because of their rule-based commitment to systems and processes that support learning.[138] However, as trust in these institutions has declined, their role in adjudicating disputes about shared reality has markedly diminished. The public is less likely to trust or defer to politicians or scientists about facts and are more likely to see media as partisan rather than truth-seeking.
- **Conspiracism:** conspiracy thinking is a very old and widespread habit of mind. Conspiracy theories make claims about how and why hidden and nefarious groups are advancing secret and dangerous agendas. By their nature, they propose a "we" and a "they" and reflect a feeling that uncontrollable forces are taking over our lives. Conspiracism draws on deep cultural myths and frames. Conspiracism has been turbocharged, particularly on the right of the political spectrum, by political polarization, suspicion of government, and a contemporary media landscape polluted by trolling and false information. Many streams of misinformation and disinformation are now shaped by, or connected to, conspiratorial thinking, particularly ideas about a "Deep State," the political conspiracy theory that imagines a clandestine network of non-elected government officials and private entities manipulating government policy to its own ends.[139]

These factors have led to a spread both in misinformation—where false information is unknowingly circulated—and disinformation where false information is knowingly circulated.

Why Intent Matters and Why It Doesn't

While there is a difference of intent between the purposeful creation and distribution of denialism misinformation versus spreading it inadvertently through disinformation, the destructive effects are the same. Beyond its capacity to undermine reconciliation at the societal level, denial of the truth about the harms of Indian Residential Schools has a profound impact on Survivors, Indigenous families, and communities. To be heard and believed, and to have the truth be visible and acknowledged, is a fundamental right and a prerequisite to healing. Some denialists are aggressive and actively disrespectful. Their tactics include the harassment of Survivors, Indigenous families, and communities and trespass onto sites where potential unmarked burials and graves are located, with some denialists coming with shovels.[140] These actions are harmful and traumatizing for individuals and communities who are already living with the direct and intergenerational legacy of trauma and harm.

Denialists deny facts, attack the credibility of victims, and portray victims as oppressive perpetrators while characterizing themselves as victims. This strategy of reversal, doubt, and false moral equivalence creates confusion not only about what the truth is but also whether the truth can be known at all. It also re-victimizes those who have already suffered.[141] The mechanisms for circulating misinformation and disinformation about Indian Residential Schools are broadly similar to those used for other issues, such as anti-vaccine information, climate change denialism, and the QAnon conspiracy theory. Indeed, as was noted above, alarmingly, disinformation and misinformation about Indian Residential Schools increasingly travels within many of the same channels and amongst these same groups.

An additional risk factor for the circulation of misinformation and disinformation about Indian Residential Schools is the long history of harmful and stereotypical coverage of Indigenous people, subjects, and stories in the media. This reinforces public acceptance of stereotypical or inaccurate narratives about Indian Residential Schools, which heightens the importance of ethical, thoughtful, and careful media reporting on issues related to the missing and disappeared children and unmarked graves.

Mass Grave Hoaxing

Denialists use "mass grave hoaxing" to frame their news stories on the recovery of the missing and disappeared children and unmarked burials as a deliberate attempt by Indigenous people, government, and media to unfairly impugn Canada's reputation and to malign and deceive Canadians through false or exaggerated claims. Denialists use a well-known perpetrator strategy to, "deny, attack, and reverse victim and offender roles," reframing victims' accounts of harmful events in ways that limit their own culpability.[142] Denialists challenge the existence of the missing and disappeared children and unmarked burials by disputing facts, attacking the credibility of victims, and portraying Indigenous people as perpetrators of wrongdoing against non-Indigenous people whom they characterize as victims of injustice. This false moral equivalency creates confusion not only about what the truth is but also about whether the truth can be known at all. It also re-victimizes those who have already suffered.[143]

In a 2023 study of media coverage and Indian Residential School denialism, Reid Gerbrandt and Sean Carleton found that:

> In the two years since the Tk̓emlúps te Secwépemc First Nation's 2021 announcement about the location of 215 potential unmarked graves at the former Kamloops Indian Residential School, a number of priests, pundits, and politicians have downplayed and questioned the validity of the findings. Some have declared the news of potential unmarked graves at many former residential school sites across Canada to be a "huge lie." Others insist that mainstream media, the federal government, and First Nations have conspired to create a "hoax" by misrepresenting the news of potential unmarked burials sites as a "mass grave" to shock and guilt Canadians into caring about Indigenous Peoples and reconciliation. Erroneous accounts of "mass graves," which one pundit claims were reported "almost universally," are said to be directly responsible for church burnings in the summer of 2021 and for sending Canadians into "paroxysms of shame, guilt and rage." Despite church and state archival records already confirming the deaths of more than 4,000 Indigenous children at residential schools, many people—in Canada and internationally—are accepting and promoting the "mass grave hoax" narrative, with some even suggesting that the whole thing is a "fake news story."[144]

Gerbrandt and Carleton noted that denialists often selectively choose evidence to support their claims, explaining that, "those spreading the hoax narrative are engaging—intentionally or unintentionally—in a strategy of cherry-picking, of suppressing or distorting evidence to confirm a preconceived position (i.e. the existence of a 'mass grave hoax')."[145] They examined and disproved five denialists' false claims that:

1. Media use of the term "mass graves" was widespread, inaccurate, and deliberately used to create a mass hoax, whereas Gerbrandt and Carleton found that, "93.5% of articles released between May 27 and October 15, 2021 did not contain the words 'mass grave.'"[146] (This highlights the importance of understanding how the terms "unmarked burials" and "mass graves" are defined in international law, as discussed in an earlier chapter of this Final Report).

2. "Media reported that 'the potential unmarked graves definitively contain the remains of children' ... [while] our report reveals that while 35% of the total articles studied contained some inaccuracies, including mistakenly reporting that 'remains had been discovered ... [a]s new details were made available, and the public became more knowledgeable about the story, journalists quickly corrected most inaccuracies in their reporting.'"[147]

3. "Indigenous Nations did not correct the 'mass grave' narrative or the fact that bodies were not discovered at residential school sites on purpose to create a false rage to justify attacks on churches and Christianity.... Our report shows that only 25 articles, or 6.5%, included the words 'mass grave' and just 13 quoted people, Indigenous and non-Indigenous, using those words."[148]

4. Denialists "focused on the fact that Indigenous Nations and media were only using [GPR] technology to locate possible unmarked graves. Also, because GPR [only] detects anomalies, it does not prove that there are bodies underground, nor does it show how these individuals died.... [However, denialists do] not acknowledge the other methods that Indigenous Nations are using to locate and search potential burial sites.... This report shows that some reports contained inaccurate or confusing understandings of the GPR technology and what it is capable of uncovering, but it also revealed how many journalists reported on the many nuances of the technology and how it was being used by search teams as one tool among many."[149]

5. "Denialists often present themselves as the only 'true' reporters that are attempting to challenge the 'mass grave hoax'.... This report shows how many of those promoting the 'mass grave hoax' narrative are not truth-seekers, but rather truth distorters; they are cherry-picking and misrepresenting evidence to bolster backlash claims as a way of attacking and undermining Survivor testimony and shaking public trust in the truth and reconciliation process."[150]

Gerbrandt and Carleton's study provides valuable insights into the strategies, methodologies, and tools used by denialists in the media ecosystem developing around Indian Residential School denialism. In the case of the fired schoolteacher noted earlier, for example, denialists employed these methods to create a flashpoint—a rallying cry for people to support a self-proclaimed truth-teller who they claimed was now being victimized.

Framing Denialists as Victims

Several denialist media sources circulated the story about schoolteacher Jim McMurtry, who was fired from his job in Abbotsford, British Columbia, for saying that the deaths of Indigenous children at the Kamloops Indian Residential School were due primarily to natural causes and that he had seen no evidence that any of them had died from violence. Mass grave hoaxers claimed that McMurtry had been fired for, "telling the truth."[151] They did not dispute the well-documented fact that many Indigenous children at the Kamloops Indian Residential School died of tuberculosis. This is consistent with the TRC's findings that thousands of Indigenous children died from contagious illnesses such as tuberculosis, influenza, and whooping cough.[152]

However, denialists ignored the TRC's findings on the significant role that systemic violence, neglect, and mistreatment had on the high death rates of the children from illnesses and accidents and from trying to escape the institutions.[153] They denigrated and dismissed Survivors' accounts of the violence and deaths. One writer characterized Survivors' testimonies as, "wild stories about children tortured by priests and left in the snow to die," claiming that, "there is no credible evidence that there was anything sinister about any of the 51 deaths, or any of the 51 burials. So, Jim McMurtry told his students the truth. Indigenous children were not tortured by priests and left to die in the snow. They died of natural causes, and were given proper burials."[154] McMurtry himself wrote an opinion piece stating that he was right and that there were, "no graves. No bodies. No murder weapons. No police investigation. No corroborated witness evidence, just hearsay conflating children's ghost stories with distant memory. No historical record or documentation from a parent or tribal leader of a missing

child. No authenticated names of missing persons."[155] By framing their stories in this way, mass grave hoaxers aimed to transform McMurtry into a victim—a casualty of truth—who was punished for attempting to set the historical record straight.

This is just one example of how denialists selectively choose and report certain evidentiary facts, while omitting or discrediting other evidence, including Survivors' testimonies, that contradict their distorted version of the truth.[156] They manipulate the evidence to support false claims and draw faulty conclusions. They made no reference to the TRC's definitive conclusion that Canada's criminal justice system failed to protect Indigenous children from violence and abuse in Indian Residential Schools and made little or no effort to punish those responsible.[157] They did not point out that, according to the TRC, many deaths were never properly investigated because, "the [Indian Affairs] department did not follow its own internal policy for the review of student deaths."[158] Even when coroners' inquests were held into the deaths of runaway children, neither Department of Indian Affairs officials nor coroners' investigations addressed underlying issues of systemic violence and abuse that led to their deaths.[159] There were few criminal investigations or prosecutions for abuse,[160] let alone for the deaths of children. The TRC found that, "it is not possible to quantify the extent to which children were sexually abused at [Indian] [R]esidential [S]chools.... The evidence indicates that ... investigations were limited, [and] complaints by anyone other than school officials were ignored.... Knowledge of the extent of abuse is limited, in part, because the officials in charge of the schools did not want to hear about it, talk about it, or do anything about it."[161] It is equally probable that these same officials would have been even more reluctant to hear about, talk about, or do anything about, investigating the deaths of Indigenous children who died in their care.

Historical Negationism

The strategies of denialism, including mass grave hoaxing, described above are examples of historical negationism. Recent revisionist historical scholarship relating to Indian Residential School history is based on new evidence, including Survivors' oral history testimonies, which, as the TRC noted, must be given equal weight to archival records and greater voice in correcting the historical record.[162] However, as historian Mario Ranalletti points out, "negationism is limited to distorting available information and knowledge in order to earn the position of truth-possessor in the struggle ... [to represent] the past. Negationists do not revise; rather, they invalidate and discredit—with purely ideological arguments—the testimonies of ... victims."[163] Mass grave hoaxers dismiss Survivors' testimonies about the missing and disappeared children and unmarked burials by disrespectfully challenging their memories as nothing more than, "hearsay conflating children's ghost stories with distant memory." In

doing so, they position Survivors as, "unreliable rememberers"[164] in order to tap into a deeply ingrained settler stereotype that Indigenous people are prone to, "irrational discontent" and "malicious ingratitude" that makes them "untrustworthy."[165] At the Montreal National Gathering in September 2023, Ashley Henrickson, of Know History, pointed out that:

> Archival documents and official records are often considered the "truth" in legal proceedings, while oral histories have been discarded. But these documents are skewed to the perspective of administrators and government officials. We know that the oral history testimony of Survivors and family knowledge is more accurate than the records. And records alone will leave us with an incomplete understanding of the truth.[166]

Denialists' arguments that Survivors' oral history testimonies are unreliable evidentiary sources runs counter to human rights scholarship documenting how, across the globe, victims', "life narratives have become one of the most potent vehicles for advancing human rights claims."[167] Kay Schaffer and Sidonie Smith, academics and authors, point out that, "stories enlisted within and attached to a human rights framework are particular kinds of stories—strong, emotive stories often chronicling degradation, brutalization, exploitation, and physical violence ... [that] invite an ethical response from listeners and readers."[168] Denialists do just the opposite.

Denialism and historical negationism are not unique to Canada but can be found wherever communities struggle to confront painful history, whether it is Argentina's "Dirty War," the Spanish Civil War, the Holodomor, the activities of the Ku Klux Klan in the United States, or a multitude of other examples. The most notable example of historical negationism is genocide denialism and, in particular, Holocaust denialism. However, historical negationism can be found in a wide range of political contexts across many countries, where a history characterized by trauma and violence continues to shape the present day. It is essential to understand that practitioners of historical negationism begin by identifying their political or ideological goal. They then work backwards to develop arguments and propose "evidence" to support this goal. In the case of Indian Residential School denialism, the goal is maintaining settler impunity and protecting perpetrators, denying genocide, and maintaining the settler colonial status quo. Epistemologist Melanie Albanian notes that, "genocide deniers repeatedly call for others to engage in objective research and source criticism, while claiming that anyone supporting what deniers call the 'genocide claim' is engaging in the politicization of history and incapable of conducting research that is empirically grounded. By that, they neglect or

misinterpret all evidence that had indeed been taken into account by these historians and genocide scholars."[169]

Historical negationism applies the standard techniques of academic historical research, presentation, and quotation incorrectly to distort or falsify the historical record and deceive the public. Essentially, the negationist begins with the desired outcome of study and then produces their sources. Rather than engaging in the standard processes of reviewing the existing bibliography, assessing sources, and reviewing available documentation, negationists focus on distorting the available information.[170] This can include techniques such as:

- Suppression of parts of quotations from original documents;
- Presentation of forged documents as genuine;
- Invention of spurious reasons for distrusting genuine documents;
- Attributing conclusions to sources that do not actually support those conclusions;
- Deliberately presenting only the highest or lowest possible statistical figures from a range; and
- Mistranslating sources from other languages and inventing quotations, incidents, or events for which there is no historical evidence.[171]

The arguments of historical negationists are based on a kind of "universal suspicion," in which factual arguments become pointless. In this way, it is akin to conspiracy thinking. Every historical fact put forward to support the truth is countered by ever more elaborate deflections, workarounds, remote scenarios, or counter-factuals. The implicit argument is based on the radical impossibility of "proving" anything in objective, factual terms.[172]

The methodologies of historical negationism listed above are evident in the arguments of Indian Residential School denialists, who, in addition to discrediting Survivors' oral history testimonies, have selectively quoted, for example, from the report of the former chief medical officer for the Department of Indian Affairs, Dr. Peter Henderson Bryce, which was published in 1922 and exposed the horrendous living conditions and high rates of children's deaths in Indian Residential Schools, in order to support conclusions that directly oppose those of Bryce himself.[173] They use archival photos of Indian Residential Schools without acknowledging their contexts. They misrepresent the technology of GPR and selectively present statistics about mortality rates at Indian Residential Schools to minimize or trivialize the deaths of children at these institutions.

Use of Photographs in Indian Residential School Denialism

Many of the photographs of children at Indian Residential Schools that still exist in church and government archives tell a different story than the testimonies of Survivors—the living witnesses—and that their families remember. These images of children playing sports, in the school band, on field trips, attending special events, being given special toys or clothing, or sitting attentively in classrooms are comforting images meant to depict a happy, healthy childhood in well-run institutions overseen by caring staff. Denialists use these photographs and images as historical evidence to back their claims. For example, photographs of sports teams are frequently used because many Canadians have fond childhood memories of participating in the excitement of friendly team competition and enjoying the friendship of teammates. Janice Forsyth, a kinesiologist and historian of sport and Indigenous studies, explains that this creates a "false equivalency" where, "individuals seeing the photos could form their own conclusions about Indigenous residential schooling and life simply by superimposing their own educational experiences onto the images."[174]

In considering how denialists use these photographs, one must think critically about why the images were created and by whom as well as their intended audience. Forsyth pointed out that, "sports photos also played a strategic role in shaping public views of [Indian] [R]esidential [S]chools and the [S]ystem."[175] In a study of a photograph taken of the Sioux Lookout Black Hawks, an Indian Residential School boys' hockey team in 1951 by a National Film Board of Canada photographer, Forsyth and Alexandra Giancarlo noted the subtle messages encoded in the image. It is a carefully staged "before" and "after" photograph; against the backdrop of a mural of a "stoic Indian" standing by a waterfall, the boys, "in gleaming hockey jackets that would be the envy of any young male player, and neatly trimmed hair ... were a sharp contrast to the mural behind them":

> This image draws attention to sports and recreation as lesser-known avenues for assimilation within the [Indian] [R]esidential [S]chool [S]ystem. The boys were in the middle of a whirlwind tour that took them from the deprived environment of their isolated northern Ontario residential school to Ottawa and Toronto for three exhibition games, meetings with church and government dignitaries, and visits to key cultural attractions. In media interviews, the boys' coaches and chaperones stated that the tour was a reward for the students' hard work and sportsmanship throughout the season. Yet archival documents,

> and images like this, show that presenting a rosy image of the [Indian] [R]esidential [S]chool [S]ystem to the Canadian public was also top of mind.[176]

Boys' hockey team, Sioux Lookout School, 1951 (taken from Missionary Society of the Church of England in Canada Fonds, General Synod Archives, Anglican Church).

Forsyth and Giancarlo have established a project titled Crossing the Red Line to work with living former Black Hawks to add context to these famous images through their own words.[177] This highlights the importance of analyzing this, and many similar "before" and "after" photographs taken throughout the history of the Indian Residential School System that span well over a century through an anti-colonial lens.

Carol Williams, director of the Centre for Oral History and Tradition at the University of Lethbridge, notes the similarity of photographs across Indian Residential Schools; images that, "affirm the bureaucratic belief that the discipline of Indigenous youth was critical to assimilation."[178] They convey the regimented nature of the children's lives—for example, "students do not casually walk to school; they are instructed to march in military formation."[179] While

few of the images that exist were the children's perspective, Krista McCracken, researcher and curator of the Shingwauk Residential Schools Centre in Sault Ste. Marie, Ontario, noted that they have a unique collection of photographs from the Spanish institution that, "included a photo lab and a photography club, where students learned how to use cameras and developed their own film. This means that some of the photographs we hold in the archives were taken by [Indian] [R]esidential [S]chool students and they tend to be vastly different than the posed photographs that are common from the [Indian] [R]esidential [S]chool era."[180] Most photographs taken at these institutions were not candid shots; they were staged for the purposes described above.[181]

EMERGING PRACTICE: ETHICAL ARCHIVAL APPROACH TO INDIAN RESIDENTIAL SCHOOL PHOTOGRAPH COLLECTIONS

The Indian Residential Schools History and Dialogue Centre (IRSHDC) is one of the few institutions that posts a disclaimer about photographs within their digital collections.[182] All archives should provide information and educational resources to inform viewers about the historical context and purposes for which the photographs were taken. The IRSHDC has the following statement on every photograph containing the images of the children at Indian Residential Schools:

> Photographs have multiple meanings and can serve various purposes. Residential school photographs were sometimes taken by teachers, staff, and clergy, and occasionally by students and their families. More frequently, however, government or church personnel took the photographs, with a view of gaining support for the schools. The photographs were staged to depict the assimilation of Indigenous children into settler colonial society, their conversion to Christianity, and the "effectiveness" of the government's "citizenship" project to "take the Indian out of the child." These photographs are of students but not by them or for them.
>
> Nevertheless, for Survivors and their families, some of the official photographs are still valued as they represent hard-won achievements in adverse circumstances. Official photographs may be the

only photographs available to Survivors of their childhood and their friends, and for families they represent a means to search for, or connect with, family members. To learn more about Survivors' perspectives on the schools, see the Legacy of Hope's "Our Stories, Our Strength" video collection[183] and the hearings from the Truth and Reconciliation Commission.[184]

If you are a former student and would like to comment on a photograph either in writing or as an audio/video recording, please contact us.[185]

When looking at the images that remain in today's archives, it is also important to keep in mind that these collections were carefully curated by those who donated them—often former staff, clergy, and government officials or departments. Rather than accepting these images at face value, especially when used as historical evidence by denialists, it is essential to consider the relationship between the photographs, archival records, and Survivors' testimonies and to ask critical questions about who took them, and, most importantly, why?[186] Doing so reveals the significant gap between the idealized myth of benevolent assimilation promoted to the public by government and church officials, and, more recently, by denialists, and the lived realities of Indigenous children in the Indian Residential School System. Understanding the strategies, methodology, and tools that denialists use to distort the history and ongoing legacy of the Indian Residential School System and cast doubt on the veracity of Survivors' testimonies and historical records relating to the missing and disappeared children and unmarked burials is a critical first step in countering these harms.

Developing Historically Literate Citizens

> [T]here is an urgent need in Canada to develop historically literate citizens who understand why and how the past is relevant to their own lives and the future of the country.
>
> — TRC's Final Report[187]

With the rise of denialism relating to the missing and disappeared children and unmarked burials, the need to develop historically literate citizens is more urgent than ever. As noted earlier in this chapter, creating a more truthful and inclusive national history to counter the denialism of settler amnesty and impunity requires acknowledging that genocide and

mass human rights violations against Indigenous Peoples are part of Canada's history. The aim is to ensure that this national narrative reflects the facts of history and to encourage growth, learning, and critical reflection on our collective past. Métis scholar Tricia Logan notes that:

> Omissions in national history become omissions in national identity, which itself is formed from national memory.... There is a struggle to determine who and what is worth remembering. Canada, a country with oft-recounted histories of Indigenous origins and colonial legacies, still maintains a memory block in terms of the atrocities it committed in order to build the Canadian state.... Integrating colonial genocide into revised histories of Canadian nation-building narratives has the potential to generate a new understanding of genocide in Canada and move away from inherited colonial mythologies.[188]

There is a long practice linking history to the development of national identity. However, this has most often been a history, "invoking a glorious past which articulates a mythic unity ... [rather than] a past ... replete with atrocities that are shameful and divisive."[189] Governments have an important and ever-growing role in shaping and preserving collective memory, identity, and national history[190] through both informal and formal education about a nation's past, including:

- Civic celebrations and commemorations, such as public holidays and days of remembrance;
- Designating and preserving "sites of memory," such as heritage sites, archives, cemeteries, and museums;
- Funding cultural productions, such as Canada's "Heritage Minutes";
- Developing and overseeing educational curricula; and
- Funding scholarly research.

While schools, colleges and universities provide formal history education, collective memory expressed through popular history also has a profound influence on citizens' understanding of national history. Cultural productions, including films, television, books, music, the arts, and mass media can provide a single, widely accepted public narrative of a historical event. Social media platforms and search engines, with their access to vast information, influential algorithms, and ability to create communities of belief, now significantly shape how ideas about the past are formed, shared, and maintained.[191]

Many countries have established truth commissions as a means of understanding and accepting an unjust past.[192] As transitional justice mechanisms, such commissions can work to transform the "memory of offence" into a kind of catharsis to build a shared and unifying vision of the future.[193] Truth commissions have an important role in reframing and recreating a new collective memory.[194] The work of the TRC in Canada can be understood as an effort to build a new collective memory for Canadians, thereby transforming Canadian identity and history. The TRC concluded that, "Reshaping national history is a public process, one that happens through discussion, sharing, and commemoration. As Canadians gather in public spaces to share their memories, beliefs, and ideas about the past with others, our collective understanding of the present and future is formed."[195] The TRC's Calls to Action emphasized a collective responsibility to understand and accept the truth of the Indian Residential School System as a foundation for the work of reconciliation. Everyone has a role in reframing collective memory, identity, and national history, including academia, public history institutions, community organizations, educators, media, and citizens. The Calls to Action addressed citizenship education, heritage and commemoration frameworks, museum and archival policies, educational curricula, and human rights-oriented history education and skills training for public servants and in professions such as education, medicine, legal, social work, and journalism.

Building on the TRC's Calls to Action

Public History Education

> Canadians have a right to know, and Canadians have a duty to know what happened to us at Indian Residential School ... it is not only Indigenous history, it is Canadian history.
>
> — Inuk Elder Piita Irniq, Survivor[196]

The spread of Indian Residential School denialism reinforces the importance of fully and immediately implementing the TRC's Calls to Action 62 and 63 on public history education related to the Indian Residential School System, Treaties, and Indigenous Peoples' contributions to Canada. In addition, educational curricula for schools, colleges, and universities should include resources for addressing denialist myths, and educators should be provided with training to assist them in responding to denialism when it arises in their classrooms. Unfortunately, while some action has been taken since the TRC issued these Calls to Action, progress has been too slow.[197] The Council of Ministers of Education (CMEC) has identified

Indigenous education as a priority in its Strategic Plan and 2023–2027 Indigenous Education Plan.[198] The CMEC made concrete commitments to revise Kindergarten to Grade 12 curriculum in every province and territory, and multiple initiatives are underway.[199] While some governments have launched initiatives to reform curriculum for Kindergarten to Grade 12, not all have done so, and not all such initiatives are complete.[200] In addition to fulfilling the TRC's Calls to Action on educating Canadians about the history and ongoing legacy of the Indian Residential School System, age-appropriate curricula relating to the missing and disappeared children and unmarked burials should be developed.

While memory laws, such as those enacted in Europe that create a legal duty to remember, can ensure that silenced histories become part of the national historical consciousness, legislation can also have unexpected consequences. As discussed later in this chapter, those who oppose these laws may push for counter-legislation. For example, public education legislation and policy may be introduced to ensure that school curriculum continues to teach old versions of national history that emphasize the "positive" aspects of colonization while minimizing or denying the truths that have been purposefully silenced in the national narrative.[201] Curriculum initially developed in response to the TRC's Calls to Action has been a source of ongoing controversy for the last six years in Alberta, pitting the provincial government against educators over what students should be taught about Indian Residential School history and when.[202]

In 2023, the Standing Senate Committee on Indigenous Peoples' Interim Report emphasized the importance of public history education to counter denialism relating to the missing and disappeared children and unmarked burials. The Committee concluded that, "denialism serves to distract people from the horrific consequences of residential schools, and the realities of missing children, burials and unmarked graves. The committee is of the view that education and advocacy can effectively combat denialism."[203] Human rights-oriented public history education can help to ensure the non-repetition of genocide, atrocities, and mass human rights violations. All Canadians should learn about the missing and disappeared children and unmarked burials as part of the history and ongoing legacy of the Indian Residential School System and associated institutions. This can be done through curricula development in schools, colleges and universities, and programs, exhibits, and educational materials developed in public history institutions such as museums, historic sites, archives, and libraries.

Role and Responsibility of Historians in Fighting Denialism

The TRC was clear that, "without truth, justice, and healing, there can be no genuine reconciliation."[204] The problem, the TRC explained, is that, "too many Canadians know little or nothing about the deep historical roots" of settler colonialism in Canada generally and genocidal policies such as the Indian Residential School System specifically.[205] They point out that, "this lack of historical knowledge has serious consequences.... In government circles, it makes for poor policy decisions. In the public realm, it reinforces racist attitudes and fuels civic distrust between Indigenous Peoples and non-Indigenous Canadians."[206] As a result, the TRC urged for the development of "historically literate citizens" who, through additional education about the Indian Residential School System and Indigenous-settler relations, can then use their greater historical awareness to effectively support healing, justice, and reconciliation.[207] Indeed, as the TRC noted, "history plays an important role in reconciliation: to build for the future, Canadians must look to, and learn from the past."[208]

One problem is that those engaging in Indian Residential School denialism understand the important role that truth-telling about the past has on social change. If establishing the truth is, as the TRC contended, the precondition for healing, justice, and reconciliation, then denialists seek to deliberately divert attention away from the truths about the horrors of Indian Residential Schools. They attack those advocating for Canadians to learn these truths and shake public confidence in the truths of Survivors. This is why denialists become obsessed with debating certain aspects about the past despite often demanding that Indigenous Peoples and Survivors "just get over it." Since the release of the TRC's Final Report, denialists feel that they have lost control of the narrative and, as a reactionary strategy, seek to distort, downplay, and discredit established historical truths to try and regain control. In this way, denialism can be understood as a backlash against growing historical literacy about the Indian Residential School System among the Canadian population.

To inoculate the citizenry against the spread of denialism, historians have important roles and responsibilities in facilitating further learning about the history of Indian Residential Schools and settler colonialism generally. Most obviously, historians have continued to research and publish new studies about different aspects of the Indian Residential School System and its connections to other colonial policies, including the Indian Day School System and the Sixties Scoop.[209] New knowledge stemming from such studies further substantiates Survivors' testimonies and deepen public understanding about the System's many facets.[210] Historians have

also contributed to facilitating further truth-telling, including teaching new courses on the history and ongoing impacts of Indian Residential Schools; negotiating with church and State bodies to gain access to new records and documents; installing public-facing museum and art displays; completing historical and archival research for those leading search and recovery work; supporting efforts to decolonize data sovereignty and the interpretation and management of primary source records; and advocating for public commemorations related to Indian Residential Schools. In these ways and more, historians—in their different capacities—are taking up the responsibility of respecting the truths and experiences of Survivors and combining this with careful research to share new knowledge with the public in respectful, accessible, and impactful ways.

It must also be acknowledged, however, that some historians have, intentionally or not, also supported the rise of denialism. Though there is a consensus amongst historians concerning the harms of the Indian Residential School System and settler colonialism, a consensus does not mean complete unanimity.[211] There are a handful of historians—some with no subject expertise on Indian Residential Schools—who have entered public debate to advance or support denialism. Their motivations for publishing in illegitimate sources, signing on to disingenuous public letters, and putting forward debunked argumentation that serves to downplay the harms of these institutions are unclear. Regardless, the effect is that, by engaging in denialism or associating with those scholars and outlets seeking to monetize misinformation about the past and trade in anti-Indigenous racism, these historians lend their legitimacy to denialism and contribute to the muddying of public knowledge about Indian Residential Schools. This directly undermines healing, justice, and reconciliation.

Over time, as more people learn how to identify and confront Indian Residential School denialism—as part of the work to become historically literate citizens—denialism will become untenable within the historical profession. In the meantime, historians committed to truth and evidence-based argumentation must continue to challenge the denialism amongst their ranks and work to help Canadians understand Survivor truths and the complex history of the Indian Residential School System as well as its ongoing legacy. Dealing with denialists must not be the sole purview of historians; in helping to create "historically literate citizens," they can make an important contribution to putting truth before reconciliation.

Anishinabek Nation: Fighting Denialism with Comprehensive Public Education

In a written submission to the OSI, the Anishinabek Nation described the destructive impacts of denialism on Survivors, Indigenous families, and communities, calling for comprehensive public education to combat denialists:

> The continual announcements are challenging and triggering for First Nations, Survivors and their families. Hateful denialism and attempts to disprove and devalue the violence associated with Indian Residential Schools is an entirely unnecessary burden. This denialism has placed doubt in the public view and has paved the way for outright racism. It is becoming evident that this growing behaviour is becoming worse. Denialists seem to justify their degradation of First Nations peoples and label Residential School Survivors as liars. Tasked with the difficult work of searching and uncovering ancestors, First Nations are also forced to respond to these denialists. They have to prepare Survivors for slanderous allegations and triggering attempts to disprove their experiences and minimize crimes.
>
> It is obvious that we need to develop a comprehensive public education plan for Canadians. Public education resources that inform on the reality of Indian Residential Schools must be developed with thorough input from Indigenous Peoples. In addition, it is critical that a shift is made where this education is not framed as, "Indigenous History" and instead incorporated as a central piece to any education surrounding colonization within Canadian politics and civil studies. Understanding how Canada, as a successor state, was not "founded" but colonized at the expense of Indigenous nations is a critical truth everyone needs to understand in today's society.
>
> If we mandate immediate and intentional educational campaigns in all educational institutions, we have a potential to foster a future population where denialism is non-existent. We need compassionate and informed individuals who will be the employees, decision makers, and policy creators within governments, churches, and educational institutions. Of course, there is also a need for corporate stakeholders, landowners, developers, and municipalities, to receive this education as

> well. The reality is, they need to be aware of the potential of unmarked burials on their land and adhere and respect consultation with local First Nations and respect subsequent protocols.[212]

Memorialization and Commemoration

The ongoing process of reframing collective memory and rewriting national history also happens more informally through acts of memorialization and commemoration. The TRC issued several Calls to Action (79–82) on commemoration that must be implemented in collaboration with Survivors and Indigenous communities and organizations.[213] While an in-depth examination of Canada's progress on implementing these Calls to Action is beyond the scope of this Final Report, it is important to acknowledge the work that has been done. In response to Call to Action 80, the federal government passed legislation in June 2021 to establish a National Day for Truth and Reconciliation as a federal statutory day, and the first National Day for Truth and Reconciliation was held on September 30, 2021.[214] However, progress on implementing other Calls to Action relating to commemoration has been slow. For example, Call to Action 81 called for the federal government to commission and install an Indian Residential Schools National Monument in Ottawa to honour Survivors and all the children who were never returned home. In 2021, the federal government announced $20 million in funding to build the monument, and, in 2023, the Survivor-led Steering Committee announced that the monument will be placed on the west side of Parliament Hill in Ottawa in a highly visible location. A process to select the monument design is underway.[215] Call to Action 82, which calls on provincial and territorial governments to install an Indian Residential Schools Monument in each capital city, has been even slower and more sporadic. In 2014, Manitoba installed a monument in Winnipeg near the Canadian Museum for Human Rights located at The Forks historic site.[216] A monument was installed on the waterfront in Whitehorse, Yukon, by the territorial government in 2018.[217] In 2022, Saskatchewan unveiled a monument on the grounds of Government House in Regina.[218] In Ontario, the Shoe Memorial, a permanent display created as part of the Gathering Place exhibit was housed at the legislature in 2022.[219] Alberta unveiled a monument and memorial garden on the grounds of the provincial legislature in Edmonton in 2023.[220] In 2024, the Legislative Assembly of British Columbia announced that, as part of its Reconciliation Action Plan, a monument and a memorial garden will be built on the grounds of the provincial legislature.[221]

The TRC's Call to Action 79 called for the federal government to amend the *Historic Sites and Monuments Act* to include First Nations, Inuit, and Métis representation on the

Historic Sites and Monuments Board and Secretariat; to revise the policies of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada's national heritage and history; and to develop and implement a national heritage plan and strategy for commemorating Indian Residential School sites.[222] In response, the federal government allocated funding to Parks Canada to commemorate the history and legacy of Indian Residential Schools and tabled Bill C-23, *Historic Places of Canada Act*, in Parliament in 2022, but, at the time of writing this Final Report, it has not yet become legislation.[223]

In the interim, in 2019, Parks Canada began implementing a *Framework for History and Commemoration*, setting out the strategic priorities, principles, policies, and practices for a national historic sites systems plan, including a commitment to implementing Call to Action 79 in its work to support reconciliation.[224] In 2023–2024, Parks Canada committed to several actions on Indian Residential School commemoration, including:

- Working with Indian Residential School Survivor communities that have nominated, or are interested in nominating, a former Indian Residential School site for consideration as a national historic site;
- Reviewing up to 25 existing designations associated with Indian Residential School history in the National Program of Historical Commemoration by 2025; and
- Providing financial support to organizations committed to advancing the commemoration of Indian Residential Schools, including to the NCTR to support community-level commemorations and gatherings across the country.[225]

While these commitments are encouraging, as noted elsewhere in this Final Report, Survivors, Indigenous families, and communities have identified many barriers that they are encountering to access commemoration funding and have expressed concerns about its short-term nature.

Acknowledging that existing national heritage designations of persons, places, and events whose legacies are often controversial, the *Framework for History and Commemoration* commits to reviewing these designations, including those that commemorate people involved in the Indian Residential School System.[226] In 2020, the federal government announced that the Indian Residential School System is now designated as a national historic event under the National Program of Historical Commemoration.[227] Four former Indian Residential Schools have now been designated as national historic sites: the former Portage La Prairie

Indian Residential School in Manitoba in 2020, the former Shubenacadie Indian Residential School in Nova Scotia in 2020, the former Shingwauk Indian Residential School in Ontario in 2021, and the former Muscowequan Indian Residential School in Saskatchewan in 2021.[228] Schubenacadie is the only one of the four sites that currently has a Historic Sites and Monuments Board of Canada memorial plaque. Part of the inscription notes that, "this place is witness to the children who died here, the resilience of survivors and descendants, and those who fight for restitution and justice."[229] It should be noted that having Indian Residential School sites designated as a national historic site does not necessarily mean that there will be memorials or commemorations to the missing and disappeared children or unmarked burials or that the lands where they are located will be protected.[230] Designation as a National Historic Site does not, "affect ownership of the site or provide protection against destruction."[231] Rather, this designation is "honorific" and "commemorative."[232]

Emerging Practices: Commemorating Individuals and Their Unmarked Burial Sites

Indigenous communities across the country are developing commemoration processes, strategies, and initiatives to memorialize the missing and disappeared children and unmarked burials. Building on the promising practices of existing initiatives can support these efforts.

The Nanilavut Initiative: "Let's Find Them"

The Inuvialuit Regional Corporation's Nanilavut Initiative, led by the Nanilavut Project Team, is helping Inuit families find information on loved ones who were sent away during the tuberculosis epidemic of the 1940s to 1960s. Nanilavut means, "let's find them" in Inuktitut. People of all ages were taken to sanatoria by the government and never returned. Part of the work of the Nanilavut Initiative is to trace the transfers of each missing and disappeared loved one, including Inuit children at Indian Residential Schools and Federal Hostels. At the Winnipeg National Gathering, Rebecca Blake, who is Inuvialuit and an ordained Anglican deacon, told participants about how she and several family members travelled to Edmonton in August 2022 to participate in public and private commemoration ceremonies arranged by the Nanilavut Project Team.[233] Family members were able to visit the burial sites of their loved ones and conduct Remembrance and Celebration of Life Ceremonies. As they visited the burial sites, they found that some of the burials were unmarked; some were in segregated sections of cemeteries only for Indigenous people, which were often too small for the number of people buried there; some were buried in graves with other people because the government would not pay for individual burials; and one grave was even in a ditch next to a busy highway.[234]

Several family members spoke to the media about their relatives who had died at the Charles Camsell Hospital in Edmonton, Alberta, and were buried in the Indigenous section of the St. Albert Municipal Cemetery.[235] Peggy Day, whose infant brother died at the hospital during the tuberculosis epidemic, said, "All I can think of is my mother, and how empty her arms must have felt" but that finding and marking his grave gave her a sense of closure.[236] James Harry said that his mother, after losing her two-year-old son (his brother Philip), had, "probably been carrying it around her whole life that her son passed away.... At least now we have a place where ... we can go."[237] For the families whose questions about what happened to their loved ones have finally been answered, this was a journey of truth-finding, remembering, and healing.

The Last Post Fund: Finding and Memorializing Indigenous Veterans

The Last Post Fund, a national non-profit organization mandated to deliver the Veterans Affairs Canada Funeral and Burial Program, established an Indigenous Veterans Initiative in 2019 to support reconciliation.[238] The aim is to ensure that the graves of all Indigenous war veterans have headstones or memorial markers and that their burial sites are properly maintained. Working with Indigenous families and communities across Canada, the initiative has two components: (1) to provide grave markers to Indigenous veterans deceased for over five years and lying in unmarked graves and (2) to add traditional names of Indigenous veterans to existing military grave markers.[239] During the First and Second World Wars, thousands of First Nations, Inuit, and Métis men and women, many of whom came from the Indian Residential School System, enlisted, or were enlisted, in the military service.[240]

Albert Mountain Horse was born on the Blood Reserve (Blackfoot territory in what is now Alberta) on December 26, 1893. His traditional name Kukutosi-poota (Flying Star) was changed to Albert Mountain Horse when he was sent to the St. Paul Indian Residential School, where he was placed in the Cadet Corps.[241] From there, he was sent to a military training camp in Calgary, became a Cadet Instructor, and passed the examination to become a militia lieutenant. When the First World War broke out, he volunteered for the Canadian Expeditionary Force in September 1914 and was sent oversees with the 10th Infantry Battalion. In 1915, he survived the Second Battle of Ypres but was exposed to a chlorine gas attack during the fighting. He would be gassed two more times. Because of his exposure to these chlorine gas attacks, Albert Mountain Horse developed pneumonia and was returned to Canada to convalesce. His lungs weakened, he developed tuberculosis, and died on November 19, 1915, shortly after he landed in Quebec.[242] Albert Mountain Horse's remains were returned to his home community where he received a war hero's funeral with military honours. Many members of his community followed his funeral procession on horseback,

Kukutosi-poota (Flying Star), Albert Mountain Horse (Missionary Society of the Church of England in Canada Fonds, General Synod Archives, Anglican Church).

and dignitaries and townspeople from Macleod attended in record numbers. His war record and information about his burial place are listed on the Canadian Virtual War Memorial and in records of the Commonwealth War Graves Commission.[243]

The cemetery where Albert Mountain Horse was buried is near the original site of the St. Paul's Indian Residential School that was part of the St. Paul's Anglican Mission. Between 1924 and 1925, Canada moved the St. Paul's Indian Residential School to land on the Blood Reserve; the mission and Indian Residential School buildings that were at the first mission site were either moved or abandoned.[244] In 1955, the cemetery was already in poor condition, and the Blood Band Council asked the Anglican church to clean up and fence the cemetery.[245] In 1974, visitors to the cemetery reported that it was neglected and overgrown.[246] On November 7, 2022, the day before National Indigenous Veterans Day in Canada, Glenn Miller, a local military historian and veteran working with the Last Post Fund, accompanied the Kainai 2384 and Fort Macleod 2309 Royal Canadian Army Cadet Corps as they cleared the area around Albert Mountain Horse's grave in the overgrown cemetery, making the headstone visible once again.[247] On Remembrance Day, the Kainai Nation also held ceremonies and a pow wow to mark the occasion. In a media interview, Blair Many Fingers, whose ancestor Dave Mills was one of the Kainai and Siksika recruits of the 191st Battalion, said that, "it is good to see a non-Indigenous ally, like Glenn, helping people find their connection to their ancestors who were veterans and contributed to the war effort."[248]

Sharing Information and Expertise

At all the OSI National Gatherings, participants spoke about the importance of creating opportunities for sharing information and drawing on the expertise of others. The Nanilavut Initiative and the Last Post Fund's Indigenous Veterans Initiative are emerging practices of memorialization and commemoration that work with families and communities to find their relatives so that they can be remembered and honoured. In doing so, they often find connections to the Indian Residential School System. The Commonwealth War Graves Commission, as a world leader in commemoration, has extensive expertise in creating database tracing systems, conducting exhumations and identifications, and establishing commemoration policies, programs, and processes. The Commission may provide policy, program, and technical expertise to Survivors, Indigenous families, and communities conducting search and recovery work.

International Models and Designations of Commemoration

Much of the work to commemorate the missing and disappeared children and unmarked burials is done at national, regional, municipal, and community levels. However, there are also international organizations that designate historical sites of memory that should be considered. Internationally recognized designations of former Indian Residential School cemeteries and burial sites as memorial sites of truth and conscience can afford additional protections and would affirm their importance to Canada and the world.

UNESCO Designations

Pursuant to Article 1 of the *Constitution of the United Nations Educational, Scientific and Cultural Organization*, its purpose is to, "contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations."[249] The UN Educational, Scientific and Cultural Organization's (UNESCO) mandate is supported by a network of national commissions, including the Canadian Commission for UNESCO, which is responsible for protecting Canada's documentary heritage through the Canada Memory of the World Register. UNESCO is responsible for the International Memory of the World Register.[250] Only two rare documentary and photograph archival collections related to Indian Residential Schools are currently inscribed in the Canada Memory of the World Register: the Shingwauk

Residential Schools Centre and the NCTR were both inscribed in 2019.[251] The NCTR was subsequently also inscribed in the International Memory of the World Register in 2023.[252] As more archival records relating to the missing and disappeared children and unmarked burials are gathered by Indigenous communities and others, more collections may be inscribed in these Registers.

UNESCO is also mandated under the *Convention for the Protection of the World Cultural and Natural Heritage* (*World Heritage Convention*) to preserve and protect the priceless and irreplaceable cultural and natural heritage of each Nation and of humanity as a whole, including properties or sites of historical and cultural significance.[253] The UNESCO World Heritage Committee is mandated under the *Operational Guidelines for the Implementation of the World Heritage Convention*,[254] to assess all applications for a site to be designated and inscribed on the World Heritage List using established criteria.[255] There are currently no cemeteries or unmarked burial sites at former Indian Residential Schools or associated institutions protected on UNESCO's World Heritage List. It should be noted that the nomination process for designation is long and complex and requires the federal government's support. The federal government would have to nominate these sites on a tentative list submitted to UNESCO for consideration by the World Heritage Committee.[256] The federal government is responsible for ensuring the protection of the World Heritage site and must submit periodic reports to UNESCO on the condition of designated sites.[257] Parks Canada has full or shared responsibilities for 12 of Canada's 19 World Heritage Sites on the UNESCO World Heritage List.[258]

Designating and inscribing the buildings, cemeteries, and unmarked burial sites at former Indian Residential Schools or associated institutions on the UNESCO World Heritage List would signify to Canada and the world the importance of recovering, protecting, and commemorating these sites of truth for Survivors, Indigenous families, and communities and for humanity at large. Such designations could also provide additional measures under international law to protect the sites from desecration and destruction. However, the desire to protect these sites must also be balanced with upholding the rights of Indigenous communities that might decide to conduct exhumations either now or in the future. This is consistent with human rights-based provisions of the *Operational Guidelines for the Implementation of the World Heritage Convention* that pertain to Indigenous Peoples. During the nomination process, the federal government must demonstrate Indigenous Peoples', "effective and inclusive participation ... in the nomination process ... to enable them to have a shared responsibility with the State Party in the maintenance of the property ... [and must ensure that] the free, prior and informed consent of [I]ndigenous [P]eoples has been obtained, through, inter alia, making the nominations publicly available in appropriate languages and public consultations and hearings."[259]

In addition, the federal government should make resources available for Indigenous Peoples to conduct the necessary research relating to:

> the identification, management, and monitoring of World Heritage properties ... [and] support scientific studies and research methodologies, including ... traditional and [I]ndigenous knowledge held by local communities and [I]ndigenous [P]eoples, with all necessary consent ... [to demonstrate] the contribution that the conservation and management of World Heritage properties, their buffer zones and wider setting make to sustainable development, such as in conflict prevention and resolution, including, where relevant, by drawing on traditional ways of dispute resolution that may exist within communities.[260]

This suggests that Indigenous laws could have a central role in negotiations and resolving disputes with the federal government in the nomination process. In the Canadian Commission for UNESCO's 2021–2026 Strategic Plan,[261] implementing the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) to support truth and reconciliation is a priority, consistent with UNESCO's *Policy on Engaging with Indigenous Peoples*.[262] Among other actions, the Commission will, "support efforts to decolonize knowledge and uphold Indigenous knowledge systems."[263] International and Canadian UNESCO policies and strategic priorities provide openings for Indigenous-led efforts to have Indian Residential School buildings, cemeteries, and burial sites inscribed and designated as World Heritage sites.

International Coalition of Sites of Conscience

As a consultative body to the UN Economic and Social Council, the International Coalition of Sites of Conscience (ICSC) is a transnational non-profit network of place-based memorial sites of atrocities and mass human rights violations that are, "dedicated to transforming places that preserve the past into spaces that promote civic action."[264] Sites of Conscience are committed to truth sharing through historically accurate information, education, and dialogue that invites participants to reflect on, and think critically about, the past. Through the active participation of victims and Survivors, these memorial sites as, "living spaces for peace education" aim to develop historically literate citizens who can help to ensure that such atrocities never happen again.[265] Yasmin Sooka, former commissioner for the South African Truth and Reconciliation Commission and the Sierra Leone Truth and Reconciliation Commission notes that:

> in commemorations, in the establishment of memory sites and in the recovery of archives, there is usually a political struggle between the

> forces that call for remembering and those calling for forgetting and oblivion. What is important is to build a space for dialogue. We face a challenge in using memory and our sites to build bridges between people but also to raise issues of social justice. When we construct sites we should also remember that this is when the conversation really begins ... [so that] societies can move from memory to action.[266]

Two former Indian Residential School sites are currently members of the ICSC.[267] The Shingwauk Residential Schools Centre in Ontario, "presents over 110 years of history of the Shingwauk Indian Industrial Residential Schools within the larger context of colonialism, truth telling, and reconciliation in Canada" to educate the public.[268] The National Indigenous Residential Schools Museum of Canada on the former site of the Portage Indian Residential School in Manitoba[269] creates a memorial to honour Survivors, their families, and communities that is, "dedicated to educating the public and documenting the history of the Residential School era, but it is also to showcase ... Indigenous culture, past and present. It is a place where history and culture meet.... It is a safe place of unity to come together to explore and learn about history."[270]

Both Survivor-centred, trauma-informed Sites of Conscience do important work to educate all Canadians about the broader impacts of the Indian Residential School System and Indigenous resistance and resilience through a specific memorial site. However, there are currently no Sites of Conscience in Canada that frame the Indian Residential School cemeteries and burial sites of the missing and disappeared children as sites of atrocity, genocide, and mass human rights violations. The ICSC, which has over 350 Sites of Conscience in 65 countries, provides training and educational resources, including toolkits, workshops, and webinar series as well as project support funding to assist those who are interested in establishing a Site of Conscience.[271]

Strategic Considerations for International Designations

In 2018, the World Heritage Committee asked the World Heritage Centre to commission an independent study on how memorial sites associated with recent conflicts and other negative and divisive memories might relate to the purpose and scope of the *World Heritage Convention*.[272] Olwen Beazley and Christina Cameron, the study's authors, made several key findings on the purpose and function of historic sites, museums, and memorial sites as symbolic reparation measures that can recognize victims and Survivors, fulfill the State's duty to remember, and advance reconciliation.[273] These may assist Survivors, Indigenous communities, organizations, and leadership in making strategic decisions about whether to pursue international

designations for cemeteries and unmarked burial sites at former Indian Residential Schools and associated institutions and about what type of designation best suits their particular circumstances. Importantly, they point out that:

> While some sites of memory can also be Sites of Conscience, not all Sites of Conscience are sites of memory.... [These sites of negative and divisive memory] commemorate the victims of human atrocities, the dispossessed and the dead ... places associated with slavery, colonial domination, forced labour, oppressive regimes, internment and atrocity.... These sites often have a dual purpose, as a private/sacred space for mourning and quiet reflection, and a public/educative space for education and potential reform of humanity at large to prevent further atrocities.... [In addition, Sites of Conscience make] a conscious effort to connect past to present and memory to action ... [through] public dialogue programs that seek to activate the sites' historical perspective by connecting them with issues we face today and by asking visitors to consider what role they might play in addressing these issues.[274]

The authors note that, for a site of memory to meet the criteria for an ICSC designation, the memorial must function as a site of reparation and the memorialization process itself must involve truth seeking and accountability so that all participants can understand and come to terms with their divisive history in constructive ways that advance reconciliation.[275] This is consistent with what Survivors, Indigenous families, and communities as well as various experts have said at the National Gatherings: the process is as important as the outcome.

While there may never be societal consensus about a divisive past, Beazley and Cameron conclude that non-repetition of atrocities and mass human rights violations, "can be achieved if civil society and governments coalesce around a shared vision for a rights-based future ... it is not enough for sites of memory just to exist and elicit memories. They must also engage new generations in human rights discourses to prevent further atrocities and, in doing so, sites of memory may also become Sites of Conscience."[276] For this reason, if the process to prepare a nomination for inclusion on the World Heritage List is to meet the criteria of the *Operational Guidelines for the Implementation of the World Heritage Convention,* the authors note that, "it would be highly advantageous for sites associated with recent conflicts and other negative and divisive memories to have implemented a memorialization initiative.... Existing programs with strong potential to meet these needs may include UNESCO Memory of the World and the International Coalition of Sites of Conscience [that] could be a beneficial precursor to any World Heritage nomination."[277]

Commemoration: Acts of Resistance, Acts of Reparation

People can learn about the past by participating in the memorialization and commemoration of historical events and injustices. However, public discourse on commemorations is inherently political and often contentious. Lisa Moore, a public policy manager at the UN, notes that, at sites of atrocity, the politics of commemoration drive, "the impetus to memorialize, in whose interest memorials are constructed, and how memorials may fulfill multiple and competing purposes as a form of symbolic justice or reparations to the victims, an instrument for reconciliation, a mechanism for nation-building and political legitimacy, and a pedagogical tool to inculcate the preventative lessons of 'never again.'"[278]

Within Canada, these sites of atrocity exist in cemeteries and unmarked burial grounds at former Indian Residential Schools and associated institutions across the country. Duncan McCue, Anishinaabe journalist and author, notes that:

> The Truth and Reconciliation Commission made recommendations about ... [commemoration], but I think last summer really brought to the fore the fact that every community where there is a school needs and wants to have some kind of memorial, some kind of marker, some kind of place that they can say: "our children came here, and they didn't come home. They died here, or they died shortly after they left this place."[279]

As Survivors, Indigenous families, and communities are locating and recovering the missing and disappeared children, they are mourning and memorializing them in accordance with Indigenous laws, ceremonies, protocols, and spiritual practices. Indigenous-led commemoration restores human dignity to the children and protects their burial places as commemorative sites of truth and conscience for all Canadians. National public commemorations enable Indigenous and non-Indigenous people to remember the children together, exposing the unvarnished truth about Canada's history in the process. For Indigenous people, commemorations are healing acts of collective remembrance, self-determination, and anti-colonial resistance; for non-Indigenous people, they are anti-colonial acts of truth recognition and reparation.

While the TRC's Calls to Action on commemoration focused primarily on governments, they also highlighted many of the Survivor-driven, Indigenous-led commemorations that took place across the country over the course of its mandate.[280] The TRC concluded that:

> Unlike more conventional state commemorations, which have tended to reinforce Canada's story as told through colonial eyes, [Indian] [R]esidential [S]chool commemorative projects challenged and recast

> public memory and national history.... The scope, breadth, and creativity of the projects was truly impressive. Projects included traditional and virtual quilts, monuments and memorials, traditional medicine gardens, totem pole and canoe carving, oral history, community ceremonies and feasts, land-based culture and language camps, cemetery restoration, film and digital storytelling, commemorative walking trails, and theatre or dance productions.[281]

There are many monuments to Survivors and all of the children who were sent to Indian Residential Schools or to a specific institution. However, more recently, Survivors, Indigenous families, and communities are leading efforts—some within their own families and communities and some in collaboration with others—to memorialize and commemorate the missing and disappeared children and unmarked burials.

The National Day for Truth and Reconciliation (Orange Shirt Day), which is held every year on September 30, has become a day to honour Survivors, remember the missing and disappeared children who were never returned home, and break the silence about the existence of unmarked burials. A simple search of the Internet reveals hundreds of events across the country.[282] People gather at grassroots memorial sites, schools hold ceremonies and engage students in commemorative activities, and museums, archives, libraries, and art galleries have commemorative exhibits and host information and dialogue sessions. It is not possible to highlight all these public commemorations; however, the following representative examples focus specifically on memorializing the missing and disappeared children and unmarked burials.

Muskowekwan Historical Site (Muscowequan Indian Residential School)

In June 2021, community members from Muskowekwan First Nation held a memorial ceremony, laying out 35 pairs of moccasins on the steps of the former Muscowequan Indian Residential School to honour the children who were never returned home to their families from this institution.[283] In 2018 and 2019, Survivors, Indigenous families, and communities began working with Dr. Kisha Supernant (Métis/Papaschase/British), from the Institute of Prairie and Indigenous Archaeology, and a team from the University of Alberta and the University of Saskatchewan to search for the 35 children identified in archival records who died and may be buried on the former site of the institution.[284] A ceremony for the children's Spirits was held at the time.[285] The community plans to continue search and recovery efforts at the site where unmarked burials and human remains had previously been found during construction in 1992.[286] A few years after the institution closed in 1997, Survivors decided

that they wanted the building to be preserved. Cynthia Desjarlais grew up hearing from her grandmother and others in the community that there were children buried on the site. She explained that, "an actual physical structure that people could see and touch or walk through serves as a better, more visceral reminder of what went on behind the walls of residential schools.... It's history and if we don't preserve it, then our young people will be forgetting it.... [Survivors said to] leave it standing because it's proof these places existed and what our First Nations people went through."[287]

In 2021, working with Muskowekwan First Nation, Parks Canada designated the former Muscowequan Indian Residential School buildings and grounds a national historic site. In its description of the designation, Parks Canada notes that, "unmarked graves were discovered behind the school building and this area has since been delineated as a graveyard. Official recognition refers to the building and surrounding grounds of the former Muscowequan Indian Residential School."[288] It also notes that, "this building has been saved from demolition by Muscowequan IRS [S]urvivors and community members who see the school as an important witness to the history of residential schools, and wish to repurpose the site into a place of commemoration, healing, cultural learning, and as a site of memory for all Canadians."[289] In 2022, Muskowewkan First Nation received a National Trust for Canada Governors' Award in recognition of, "the community-led effort behind designation of the last standing Saskatchewan [Indian] [R]esidential [S]chool building as a National Historic Site, ... [and] ongoing efforts toward its rehabilitation as a [S]ite of [C]onscience."[290] Renamed the Muskowekwan Historical Site, information posted on its website notes that, "there are multiple unmarked and unidentified graves located around the former school building, and commemoration of the graves of children who never made it home, is a very important component of this project. The work in locating the unmarked graves began in 2018 and continues with the guidance, support and consultation of community."[291]

Shingwauk Indian Residential School

Most of the monuments on the grounds of the former Shingwauk Indian Residential School—now designated a national heritage site—were created by Survivors and their families. Some of these monuments commemorate the children buried at Shingwauk, while others honour the children who were never returned home from Indian Residential Schools or associated institutions. While some of the children's names could not be found in archival records, the Children of Shingwauk Alumni Association (CSAA) ensures that all the children are remembered and honoured. The Shingwauk Reunions, which, as previously noted, began in 1981, are also a form of commemoration, and ceremonies are always held in the cemetery. After the

first reunion, Survivors, with support from the Anglican church, installed a memorial in the cemetery because many of the children's grave markers no longer existed. Only the stone grave markers of staff, clergy, and their children remained.[292] Commemoration of burials on the Shingwauk site include a cemetery register and memorial cairn, which was dedicated in 1988.[293]

In 2012, the CSAA dedicated a plaque to the lands and cemetery as a national memorial to Survivors from any Indian Residential School on Turtle Island.[294] It also honours the missing and disappeared children, acknowledging that their memories live on in the Survivors and their families.[295] Installed in front of the Shingwauk Hall building, the plaque is surrounded by the Seven Grandfather Teachings in Anishinaabemowin and English.[296] In the same year, a commemorative bench was placed in the cemetery engraved for "Students Remembering Students."[297] To honour the resilience of Survivors, there is now a permanent exhibition space called Reclaiming Shingwauk Hall located in the main hallway and auditorium of the Shingwauk Hall building, established to document the history of the Shingwauk Indian Residential School and educate people about the lives of the children who were sent there, both those who survived and those who did not.[298]

While there is no federal plaque on the site to commemorate the national historic site, there are bronze plaques administered by the Ontario Heritage Trust. The original Ontario Heritage plaque, installed in 1977, was replaced in 2022 after the outdated language on it provoked controversy and it was vandalized in 2021. While the original plaque praised the work of the founding principal, Edward Francis Wilson, the new plaques, written in Swampy Cree and Anishinaabemowin, in addition to English and French, were informed by the voices of Shingwauk Survivors and their families.[299] A background history report from the Ontario Heritage Trust includes information about the unmarked burials on the site and recognizes the advocacy and resilience of the CSAA.[300] For more than 40 years, Survivors and their families have led the efforts to honour and remember the children who died at the Shingwauk Indian Residential School, and all other Indigenous children who were never returned home to their families and communities.

Small, Empty Shoes: Grassroots-Led Memorials

In May 2021, right after the announcement of 215 potential unmarked graves at the former site of the Kamloops Indian Residential School, Haida artist Tamara Bell placed 215 pairs of shoes on the south side of the Vancouver Art Gallery. The memorial became a place where people gathered to remember the children, grieve, heal, and learn.[301] The children's shoes became a powerful symbol of loss, mourning, and commemoration.

Memorial for the missing and disappeared children at Vancouver Art Gallery (Office of the Independent Special Interlocutor).

Over the summer and fall of 2021, other memorials of little shoes, toys, artworks, and other offerings in honour and memory of the missing and disappeared children emerged in communities across the country, as well as in the United States and Europe, on the steps of churches and city buildings and in other public places where people gather.[302] These memorials were a compelling focal point for commemorations of the first National Day for Truth and Reconciliation on September 30, 2021.[303] The memorial on the south side of the Vancouver Art Gallery is now gone. It was removed just shortly before its two-year anniversary in May 2023.[304] In contrast, a similar grassroots memorial at the Centennial Flame on Parliament Hill in Ottawa was removed in October 2021, although the federal government had originally hoped to remove it in August before the September federal election.[305]

Michael Swan, "Arrival: Residential School Survivors, Their Children and Grandchildren Walked from Saskatchewan to Ottawa," *Flickr*, August 22, 2021, https://www.flickr.com/photos/mmmswan/51396615444/in/photostream/ (used under terms of licence, full attribution, and no derivatives; licensor does not endorse the OSI or the purpose of this photo's use).

While, in both cases, there was no consensus on whether the memorials should be removed and, if so, how this should be done, the federal government in Ottawa and the municipal government in Vancouver were advised that local Indigenous communities must lead the process. When government officials in Ottawa asked the Tk̓emlúps te Secwépemc and Cowessess First Nations what should be done with the memorial on Parliament Hill, they

were told that the, "removal of the memorial should be directed by the Algonquin Anishinabeg First Nation on whose traditional territory Parliament Hill sits.... Sacred items would be entrusted to Algonquin Anishinabeg Elders ... [and] others would be donated, kept for educational purposes or disposed of in line with the City of Ottawa's guidelines."[306] The City of Vancouver, acknowledging its initial failure to follow Indigenous cultural protocols, consulted the xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), and səlilwətaɬ (Tsleil-Waututh) Nations who said that the memorial should come down. This decision was, "according to their spiritual beliefs, cultural protocols, and teachings [that] as long as the memorial remains, the spirits of the children will remain tethered to the items placed on the steps and cannot move on."[307] The Vancouver Art Gallery and city staff worked with Bell and the volunteers who were caring for the memorial to remove the memorial respectfully, and then worked collaboratively with xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), and səlilwətaɬ (Tsleil-Waututh) Nations to create a more permanent memorial in accordance with their protocols.[308]

Some memorials appeared at churches across the country. For example, in June 2021, over four hundred pairs of children's shoes were placed in front of the Francis Xavier Mission Catholic Church in Kahnawà:ke Mohawk Territory. Jessica Oesterreich, who helped to organize the memorial, said that it was a symbolic act to, "remind the church, this is what happened, you are responsible for it on some level."[309] Survivor Kakaionstha Deer said that, when she saw the shoe memorial in Vancouver, "it just hit me right in my heart.... We're mourning for them because nobody mourned for them.... We honour them by remembering them. We're bringing it out in the open to let all of Canada know what happened to them."[310] The memorial was later removed after a ceremony was held to release the small shoes from their responsibility of representing the missing and disappeared Indigenous children. Those who had made these memorial offerings were invited to retrieve them if they wished.[311]

Regina Indian Industrial School Cemetery: Commemorative Orange Feathers

In 2017, the cemetery at the Regina Indian Industrial School was designated as a heritage site by the province of Saskatchewan. Two years later, the federal government transferred the land to the Regina Indian Industrial School Commemorative Association, a non-profit organization.[312] For over a decade, the Regina Indian Industrial School Commemorative Association has been working to protect the cemetery. In September 2021, just prior to the first National Day for Truth and Reconciliation, the Pasqua First Nation and Pro Metal Industries (owned by Pasqua First Nation), donated 38 orange permanent markers shaped as feathers to be placed by families on the potential graves of children where GPR searchers have found anomalies.[313]

Grave marker donation, September 27, 2021 (the Regina Indian Industrial School Commemorative Association).

Regina Indian Industrial School cemetery (Office of the Independent Special Interlocutor).

Sarah Longman, who works with the Regina Indian Industrial School Commemorative Association, said that, "when you see the number of markers out there, and how they ... are situated ... it's almost [a] haunting image to see them spread out through the white picket fence."[314] She explained that, "we found we're not done our work and even though we're 10 years into it, when we work with our First Nations communities, we always tell them this is a long journey."[315] Pasqua First Nation Chief Matthew Peigan said that, "we want to help remember and in placing these grave markers I believe for decades we will continue to remember."[316] Mark Brown, Pro Metal president, said that, "these children can never be forgotten. We need to have a ... reminder for everybody that there is actually a child buried here from the residential school system."[317]

"Monument": Indian Residential School Memorial Totem Pole: Kwakwaka'wakw Artist Stanley C. Hunt

On June 21, 2023, National Indigenous Peoples Day, a memorial totem pole entitled "Monument," which honours and remembers the children who died at Indian Residential Schools, arrived at Canada Place in downtown Vancouver. The memorial pole began its journey in Port Hardy and then travelled to First Nations communities across British Columbia where ceremonies were held. Master Carver Stanley C. Hunt, a Kwakwaka'wakw artist, began carving the memorial pole shortly after the Tk̓emlúps te Secwépemc First Nation confirmed the potential existence of unmarked burials at the former Kamloops Indian Residential School. He said that he carved the memorial pole for the children because, "they needed to have a voice. They needed to become what they might have become without this happening to them."[318] Hunt explained what the various symbols on the memorial pole monument represent:

> The monument tells the truth about a time in our history that was dark. The monument identifies all the participants. The monument is black washed to mark that dark history. Orange to mark every child does matter. I did not write the history of Canada. I am marking a time in our history and to give our children a voice. The raven is cradling the seed of life in his beak. This raven has been created to help call our children's spirit's home. This raven will help us find and to identify the children. Through research and through DNA, my hope is to name all the children that are found. How would we ever

know what these children could have become, if they were able to live a long and prosperous life?[319]

In 2024, "Monument" will be unveiled at its permanent home at the Canadian Museum of History in Gatineau, Quebec, on the unceded territory of the Algonquin. Caroline Dromaguet, the president and chief executive officer of the Canadian Museum of History, said that having the monument in the museum will give it, "new opportunities to spark national conversations related to reconciliation and the residential school system. We hope that visitors will not only be moved by the monument's rich symbolism, but also be inspired to engage in thoughtful discussion and reflection around a difficult chapter in this country's evolving story."[320] Hunt said that, "I am honored to have this monument stand in the Canadian Museum of History. One hundred years from now, 500 years from now, the Indian Residential School Memorial Monument will be standing and still telling this story."[321]

Children's Sacred Forest: Beechwood Cemetery, Ottawa

On September 30, 2023, the National Day for Truth and Reconciliation, the Beechwood Cemetery, in collaboration with the First Nations Child and Family Caring Society and the Assembly of Seven Generations, a non-profit Indigenous youth organization, unveiled the Children's Sacred Forest on the cemetery grounds. The monument features three large boulders with a trilingual central plaque with an inscription reading, "This sacred forest, and the stone commemorating it, are as enduring as our love for thousands of First Nations, Métis and Inuit children who never made it home from Canada's 'Indian Residential Schools' between the 1870's and the 1990's."[322] The boulders are surrounded by a small forest of seven dwarf pine trees that will never grow taller than the height of a child.[323] The memorial overlooks the gravesite of Dr. Peter Henderson Bryce, whose report, *The Story of a National Crime, Being an Appeal for Justice to the Indians of Canada*, exposed the horrendous living conditions and high rates of children's deaths in Indian Residential Schools.[324] The day of the unveiling was marked with ceremonies, and a trail of placards inscribed with the TRC's 94 Calls to Action were placed along the pathway between Bryce's grave and the Children's Sacred Forest.

The Children's Sacred Forest is part of the Beechwood Cemetery's longer-term commitment to fostering reconciliation by providing a more truthful account of the history of the Indian Residential School System by more accurately representing the life histories of prominent

Canadians who had a role in these institutions. The Beechwood Cemetery, dating from the 1870s, was designated a National Historic Site of Canada in 2001.[325] In 2014, the Beechwood Cemetery and its foundation, the First Nations Child and Family Caring Society and Kairos Canada began collaborating to establish the "Reconciling History" public education program. As part of their efforts, the Beechwood Cemetery placed a Great Canadian Plaque at Bryce's gravesite in 2015 to honour his role in exposing truths of the Indian Residential School System.[326] The Great Canadian Plaque marking the grave of Duncan Campbell Scott, former deputy superintendent of the Department of Indian Affairs for over half a century, who was instrumental in establishing the Indian Residential School System, was also revised to reflect his role in these institutions more accurately.[327] While these are important aspects of the history and ongoing legacy of the Indian Residential School System, the creation of the Children's Sacred Forest brings the children's presence into the cemetery so that they too can be remembered, mourned, and honoured.

Project of Heart

The Project of Heart is an arts-based initiative that combines commemoration, public history education, and social justice action.[328] Participants engage in a process that begins with learning the history, identifying Indigenous communities located in the area where an Indian Residential School operated, and creating an artistic gesture of reconciliation such as commemorative wooden tiles, feather wreaths, songs, or videos that commemorate the Indigenous children who died in the Indian Residential School. Respecting cultural protocols, participants then invite a Survivor to visit their classroom or group to share their experiences and engage in an age-appropriate dialogue. Participants then identify a social justice action with which they can follow up on. Finally, they are encouraged to share their projects and experiences with others.[329]

Thousands of students and other participants of all ages and backgrounds across Canada have taken Project of Heart workshops in schools, museums, art galleries, and various other settings. For example, in July 2023, the Canadian Museum for Human Rights in Winnipeg hosted a Project of Heart event for all ages focused on engaging with empathy. Participants created a commemorative wooden tile in memory of a child who died at an Indian Residential School.[330] In 2021, as part of the National Day for Truth and Reconciliation, the Beechwood Cemetery in Ottawa created a Project of Heart Memory Labyrinth from fifty-seven thousand tiles made by children and youth from across Canada to remember and honour the children who died at Indian Residential Schools and to educate participants about, "the historical and contemporary truths of First Nations, Métis, and Inuit peoples and their relationship with Canada."[331]

CREATING A FRAMEWORK TO FIGHT DENIALISM AND DECOLONIZE PUBLIC HISTORY EDUCATION AND COMMEMORATION

While the anti-colonial reframing of collective memory and national history through public education and commemoration are essential forms of reparations, so too is legal and policy reform. In this section, legal and policy approaches to two interrelated priorities are examined: (1) combating negationism, denialism, and online hate through online regulation and hate crimes legislation, and (2) building a legal and policy framework for human-rights oriented, anti-colonial public history education and commemoration. Consistent with its commitment to implementing the *UN Declaration*, Canada has a responsibility to uphold Article 15:

- Article 15.1: Indigenous [P]eoples have the right to dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information; and
- Article 15.2: States shall take effective measures, in consultation and cooperation with the [I]ndigenous [P]eoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations between [I]ndigenous [P]eoples and all other segments of society.

The federal government's *UN Declaration on the Rights of Indigenous Peoples Act Action Plan* (2023–2028) identifies both elements of Article 15 as priorities in broad terms.[332] While the Action Plan makes no specific reference to the missing and disappeared children and unmarked burials, it commits to, "support the ongoing work of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools and act upon her recommendations."[333]

Priority 1: Combating Negationism, Denialism, and Online Hate

Combating the spread of misinformation and disinformation is a society-wide and ongoing challenge. Many sectors are struggling with the effects of a polluted media landscape that not only allows, but also encourages, falsehood and polarization to flourish. This is a challenge for all institutions: there are no easy answers, and approaches are still evolving and being tested. Targeted responses to misinformation and disinformation in the context of Indian Residential Schools can effectively focus on two areas:

1. Regulating online providers to create better mechanisms to promptly remove denialist materials once they are identified and reduce their spread; and

2. Developing and resourcing an ongoing and comprehensive communications strategy that can identify sources of disinformation, common myths, and falsehoods and develop collaborative relationships and materials to build knowledge and understanding.

These are complementary approaches that set the foundation on which regulation and communication can be built. For online regulation to be meaningful, there must be the capacity to identify disinformation and to use the available legal tools for addressing it. While online regulation can speed the removal of disinformation, a proactive communications strategy can ensure that accurate information about the missing and disappeared children and unmarked burials is available and effectively shared and that sources of disinformation are identified and addressed.

The Internet has not only radically changed the context for the dissemination of negationism and denialism, but it has also transformed the context for the application and enforcement of the law. The key legal regimes for addressing nefarious online content—defamation law and hate laws—were both largely developed in the pre-Internet era, based on assumptions that are now antiquated about how we communicate, who has legal responsibility for monitoring communications, and how the law can be enforced. Communication is increasingly transnational: issues, news, and information that would once have been considered local are now instantaneously communicated around the world to a network of individuals with shared interests but perhaps little stake in, or understanding of, the community affected.

As a result, issues of jurisdiction are more complex, and problems associated with conflicting laws are more common. Communication can be anonymous, with speakers or publishers increasingly difficult to track. Barriers to entry are low, so that almost anyone can be a publisher and can publish anything. Assumptions about the public interest role of media therefore appear increasingly shaky, and checks and balances are often non-existent. Not only is there little in the way of incentives to speak or publish responsibly, but holding individuals and organizations legally responsible is challenging.[334] Certainly, online platforms and the Internet are, "being used to spread hate, and to radicalize, recruit and incite people to hate."[335] Online communications, with their broad reach and easy access, are seen as central to the rise of hate and hate-fueled discrimination. Hateful ideas are being validated and normalized online. The dissemination of Indian Residential School denialism is an example of these hateful ideas.

Online hate, including Indian Residential School denialism, has real-life consequences. At National Gatherings, Survivors and Indigenous leaders have described how their communities

are targeted by a wave of online hatred and harassment after making public announcements about their search and recovery efforts. This is retraumatizing for Survivors and has serious impacts on the health and well-being of the whole community, which can overwhelm community health-care resources. Communities may be targeted by trespassers, some of whom arrive bearing shovels with the intention of disturbing burial sites.[336] Although the major online platforms have internal policies and processes regarding hateful conduct and hate speech, it is widely acknowledged that serious problems remain and that these platforms do not consistently flag and remove hate speech in a timely and effective manner. For example, there are no clear mechanisms for addressing the websites that have sprung up for the purpose of propagating denialist versions of the history of Indian Residential Schools. These gaps in the regulatory environment affect many communities that are targeted by hate and negationism. Representatives of several communities have advocated for the federal government to create a regulatory framework for online platforms, effectively setting rules for how such platforms manage hateful content.[337] There are examples of such regulatory frameworks emerging in other jurisdictions to address this growing problem.

Europe's Evolving Regulatory Framework

In 2002, to address the proliferation of negationist sites on the Internet, the Council of Europe's Committee of Ministers adopted the *Additional Protocol to the Convention on Cybercrime Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems*.[338] The Protocol requires participating States to criminalize the diffusion of racist and xenophobic material, threats, and insults through computer systems. Article 6 specifically covers the denial of the Holocaust and genocides recognized as such by international courts set up since 1945 by international legal instruments:

> Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.[339]

Article 6 makes provision for parties to restrict the application of legislative measures to statements made with the intent to incite hatred, discrimination, or violence against any individual or group of individuals, based on race, colour, descent, or national or ethnic origin as well as religion if used as a pretext for any of these factors.

The EU's 2008 *Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law* identified the following criminal offences for member States to address:

- The public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin;
- The above-mentioned offence when carried out by the public dissemination or distribution of tracts, pictures, or other material;
- Publicly condoning, denying, or grossly trivializing crimes of genocide, crimes against humanity, and war crimes as defined in the *Statute of the International Criminal Court* (Articles 6, 7, and 8) and crimes defined in Article 6 of the *Charter of the International Military Tribunal*, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or a member of such a group; and
- Instigating, aiding, or abetting in the commission of the above offences is also punishable.[340]

Since its inception, the 2008 *Framework Decision* has been met with considerable resistance in several countries. Sébastien Ledoux, historian, points out that, "the entire body of European legislative provisions to establish a common memory are coming up against national/regional resistance. National parliaments refuse to integrate the 2008 *Framework Decision* into their penal code."[341] In Germany, laws for the protection of memory are, as might be expected, extensive:

- Whoever publicly or in a meeting approves of, denies, or downplays an act of genocide committed under the rule of National Socialism in a manner that is suitable to disturb the public peace is subject to imprisonment for up to five years or a fine.
- The public disturbance of public peace through the approval, glorification, or justification of the tyranny and arbitrary rule of National Socialism in

a manner that violates the dignity of the victims has committed a crime subject to punishment.

- The *Criminal Code* prohibits the dissemination, production, stocking, import, or export of propaganda material, the content of which is intended to further the activities of a former National Socialist organization.
- The *Assembly* Act, which enables authorities to prohibit or restrict open air assemblies in case of threats to public security or public order, explicitly permits the prohibition or restriction of assemblies that are set to take place at, "a memorial of historically outstanding, supra-regional significance, commemorating the victims" of the National Socialist regime, provided that the dignity of the victims will likely be disturbed.
- As of the fall of 2022, a legal reform was under consideration in the German Parliament to criminalize the condoning, denial, and gross trivialization of genocide, crimes against humanity, and war crimes directed against national, racial, religious, or ethnic groups, parts of the population, or members of these groups, wherever the statement is likely to incite hatred or violence against these persons and disturb public peace.[342]

As a further step, in 2016, the European Commission entered into a *Code of Conduct on Countering Illegal Hate Speech Online* with a number of Internet platforms. The Code now covers Facebook, Twitter (now X), YouTube, Snapchat, LinkedIn, Microsoft, TikTok, Twitch, and other platforms. The Code includes commitments to:

- Have in place Rules or Community Guidelines clarifying that they prohibit the promotion of incitement to violence and hateful conduct;
- Have in place clear and effective processes to review notifications regarding illegal hate speech on their services so they can remove or disable access to such content;
- Review the majority of valid notifications for removal of illegal hate speech in less than 24 hours and remove or disable access to such content, if necessary;
- Educate and raise awareness with their users about the types of content not permitted under their rules and community guidelines;
- Provide regular training to their staff on current societal developments and to exchange views on the potential for further improvement;

- Intensify cooperation between themselves and other platforms and social media companies to enhance best practice sharing; and
- Assess, with the European Commission, the public commitments in the code of conduct on a regular basis, including their impact.

The implementation of the Code of Conduct is regularly evaluated through a monitoring exercise conducted across the EU, using a commonly agreed methodology.[343]

Building on this work, the EU has recently passed the *Digital Services Act* (*DSA*), which came into force in January 2024.[344] The *DSA* will regulate a wide array of online intermediaries and platforms, including online marketplaces, social media sites, content-sharing platforms, and app stores. The *DSA* aims to address several regulatory gaps and challenges with respect to digital services, including the misuse of online services by manipulative algorithmic systems to amplify the spread of disinformation and other types of harms. The *DSA* sets out clear due diligence obligations for online platforms and other online intermediaries; enables users to flag illegal content; provides clear means for contesting content moderation practices both through the platform and through non-court mechanisms; and creates measures for cooperation with trusted specialist flaggers and competent authorities.[345] The ambitious and comprehensive approach to online regulation in the EU warrants consideration as the Canadian federal government develops its own regulatory framework.

Canada's Current Legal Framework

Canada's hate laws resemble those found in other jurisdictions. The Canadian legal framework for protecting collective memory includes the hate crimes provisions under the *Criminal Code*, provisions under some provincial human rights statutes, and defamation law.[346] The provisions of the *Canadian Charter of Rights and Freedoms* ensures a careful balancing between the rights to freedom of expression and the rights of historically oppressed groups.

Criminal Law

The most significant Canadian law for protecting memory can be found in the hate crime provisions in sections 318 and 319 of the *Criminal Code.* These provisions establish as crimes:

- Advocating genocide;
- Inciting hatred against any identifiable group by communicating statements in any public place, where such incitement is likely to lead to a breach of the peace;

- Wilfully promoting hatred against any identifiable group by communicating statements other than in private conversation; and
- Wilfully promoting anti-Semitism by communicating statements, other than in private conversation, that condone, deny, or downplay the Holocaust.[347]

Human Rights Statutes

There are currently provisions in several provincial and territorial human rights statutes that prohibit the publication of material that is likely to expose groups protected under human rights statutes to hatred or contempt. This includes provisions in British Columbia,[348] Alberta,[349] Saskatchewan,[350] and the Northwest Territories.[351] Prior to its repeal in 2013, the *Canadian Human Rights Act* (*CHRA*) made it a discriminatory practice for a person or group of persons acting in concert to communicate by means of the Internet, "any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination."[352] Section 13 of the *CHRA* was, and remains, controversial with some organizations arguing that it impinged on freedom of expression and was improperly used. Others argue that a civil remedy for hate speech is necessary as relying only on the criminal law creates an unduly high standard.[353]

Defamation Law

Defamation law has been receiving attention as a potential legal mechanism for addressing disinformation due to a string of high-profile lawsuits in the United States. These include E. Jean Carroll's successful lawsuit against former President Donald Trump,[354] the major settlement in the Dominion Voting System defamation case against Fox News,[355] and the successful claim by relatives of the Sandy Hook mass shooting victims against Alex Jones and his InfoWars website.[356] In all these cases, the plaintiffs were able to use defamation law to hold to account wealthy and powerful purveyors of conspiracist or politicized disinformation.

However, defamation law is a double-edged sword and has just as frequently been used to attempt to silence historians. Perhaps the best-known example is the case of *Irving v. Lipstadt and Penguin Books.*[357] In this case, Holocaust denier David Irving launched a defamation case against historian Deborah Lipstadt and her publisher about her 1993 book *Denying the Holocaust: The Growing Assault on Truth and Memory.*[358] In the end, Irving was unsuccessful.

Following a lengthy and highly publicized trial, the judge ruled that Lipstadt's criticisms were justified and ordered Irving to pay costs. Despite this success, opinion remains divided about the impact of the *Irving* case. Some applauded the success of the trial in stripping away the veneer of respectability from David Irving, enabling historians themselves to repel an attack on historical truth and educating people on the facts of the Holocaust. Others were concerned by the heavy cost of defending the libel claim and the significant impact on the defendant, Deborah Lipstadt, as well as the opportunity provided to Irving to spread his lies to an international audience.[359] The history of the use of defamation laws to promote and protect truth, therefore, has some significant built-in limitations.[360]

Canadian Charter of Rights and Freedoms

Canada has a robust and well-developed framework for managing the tensions between freedom of expression and protection of the rights of historically oppressed groups, most significantly through the provisions of the *Charter*. In particular, section 2(b) protects, "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." Broadly speaking, laws that restrict hate speech have been found to violate *Charter* guarantees of freedom of expression but have been saved under section 1 of the *Charter*. The seminal case of *R. v. Keegstra* dealt with a teacher who communicated anti-Semitic ideas to his students and who was consequently charged under the *Criminal Code*.[361] The majority of the Supreme Court of Canada found that communications that wilfully promote hatred are forms of expressive communication and are therefore protected expression under the *Charter*. However, limitations on this speech are justified in a free and democratic society under section 1, given their real harm both to the targeted individuals and to society at large and the importance of protecting the values that allow for participation by all in society. Chief Justice Brian Dickson, writing for the majority of the court, emphasized that:

> The state should not be the sole arbiter of truth, but neither should we overplay the view that rationality will overcome all falsehoods in the unregulated marketplace of ideas. There is very little chance that statements intended to promote hatred against an identifiable group are true, or that their vision of society will lead to a better world. To portray such statements as crucial to truth and the betterment of the political and social milieu is therefore misguided.[362]

In its 2013 decision in *Saskatchewan (Human Rights Commission) v. Whatcott*, the Supreme Court of Canada articulated three "prescriptions" for legislative provisions prohibiting hate speech:

1. Courts must apply the hate speech prohibitions objectively. The question courts must ask is whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred.

2. The legislative term "hatred" or "hatred or contempt" must be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification." This filters out expression that, while repugnant and offensive, does not incite the level of abhorrence, delegitimization, and rejection that risks causing discrimination or other harmful effects.

3. The analysis must be focused on the effect of the expression at issue—namely, whether it is likely to expose the targeted person or group to hatred by others. The repugnancy of the ideas being expressed is not sufficient to justify restricting the expression, and whether or not the author of the expression intended to incite hatred or discriminatory treatment is irrelevant. The key is to determine the likely effect of the expression on its targeted group.[363]

Canada's Efforts to Reform Legislation to Regulate Online Hate

In Canada, frequently targeted groups, such as Indigenous, Black, and gender diverse people, as well as Muslim and Jewish communities, point out that Canada's current legal framework for hate crimes is inadequate to the task of constraining the rising tide of online hate. This includes concerns that the current legal framework is not being applied effectively due to the lack of focus, expertise, and resources within the legal system. Online hate often goes unreported because victims are reluctant to approach the police. There is limited data about the extent and nature of online hate because there are no effective tracking mechanisms to do so. In 2019, the House of Commons Committee on Justice and Human Rights released a report titled *Taking Action to End Online Hate*, which was based on broad consultations. It recommended a comprehensive approach to tackling online hate, including:

- Funding training for justice workers on online hate;

- Developing materials and best practices for collecting data and combating online hate;
- Addressing the gap in data collection respecting experiences of hate incidences and hate crimes;
- Implementing the 2018 recommendations of the Standing Committee on Canadian Heritage for tracking online hate;
- Working with territorial and provincial governments, as well as community organizations that combat hate, to strengthen public education and develop best practice models for combating online hate;
- Formulating a statutory definition of "hate" or "hatred" that is consistent with Supreme Court of Canada jurisprudence and that acknowledges the range of groups that are disproportionately targeted by hate speech;
- Developing a working group comprised of relevant stakeholders[364] to establish a civil remedy for those who assert that their human rights have been violated under the *CHRA*, irrespective of whether that violation happens online, in person, or in print format;
- Establishing requirements for online platforms and Internet service providers to monitor and address incidents of hate speech and to remove all posts that would constitute online hatred in a timely manner; and
- Encouraging online platforms to provide optional mechanisms to authenticate contributors and digitally sign content and coupling this with visual indicators signifying that the given user or content is authenticated and provide users with options for filtering non-signed or non-authenticated content.[365]

In response, in 2021, the government tabled Bill C-36, which aimed to:

- Amend the *Criminal Code* to create a recognizance to keep the peace relating to hate propaganda and hate crime and to make related amendments to the *Youth Criminal Justice Act*;[366]
- Amend the *Criminal Code* to define "hatred" for the purposes of section 319; and

- Amend the *CHRA* to provide that it is a discriminatory practice to communicate, or cause to be communicated, hate speech by means of the Internet or other means of telecommunication in a context in which the hate speech is likely to foment detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination.[367]

Bill C-36 "died on the Order Paper" and has not been reintroduced.[368]

The federal government also pursued responses to online hate that do not involve legislative reform. In March 2022, the Canadian Race Relations Foundation and the Chiefs of Police National Roundtable created a Task Force on Hate Crimes. This Task Force was created to focus on increasing awareness of the scope, nature, and impact of hate crimes across Canada and to create national standards to better support targeted communities across the country. The standards would address police training, effective engagement with victims and communities, and how to support hate crime units across the country.[369] The federal government also committed to the creation of a National Action Plan on Combatting Hate. Consultations towards this Action Plan were launched in the spring of 2022. On January 24, 2024, noting the rise in hate-related incidents in Canada, the Canadian Labour Congress called for the immediate release of the National Action Plan on Combatting Hate.[370] The federal government updated its fact sheet on the Action Plan on June 21, 2024, but the National Action Plan had not yet been released.[371]

Indian Residential School Denialism: The Need for Criminal and Civil Sanctions

In February 2023, Member of Parliament Leah Gazan (New Democratic Party, Winnipeg Centre) proposed introducing a Bill to amend the hate crimes provisions of the *Criminal Code* to specify that denying the genocidal nature of Indian Residential Schools and making false allegations about them would constitute a form of hate speech.[372] This would create a parallel provision to the current section 319.2, which creates as an offence the wilful promotion of anti-Semitism by condoning, denying, or downplaying the Holocaust and thereby clarify the application of the *Criminal Code* to Indian Residential School denialism. At the time of writing this Final Report, no such Bill had yet been introduced in the House of Commons. On February 26, 2024, Bill C-63, an *Act to Enact the Online Harms Act*, was tabled in the House of Commons. The proposed legislation would create a new Digital Safety Commission and a Digital Safety Ombudsperson and make changes to the *Criminal Code* and the *CHRA*.[373]

Through its efforts to update the existing legal framework for online hate, the federal government has acknowledged that the status quo is ineffective for addressing the combination of a rising tide of hatred and the complexities of the online environment. However, as Bill C-63 currently stands, it makes no provisions to address the very real harms associated with the growing levels of denialism associated with Indian Residential Schools, including its most recent manifestation associated with the missing and disappeared children and unmarked burials. My Interim Report identified the need for legal mechanisms to address denialism, including implementing criminal and civil sanctions, and urged the federal government to take concrete action on this issue,[374] and I have made public statements to this effect.[375]

Union of BC Indian Chiefs Reject Residential School Denialism

During the Union of BC Indian Chiefs (UBCIC) Council, which took place on Stó:lō Territory in June 2024, a resolution was unanimously passed as an upfront rejection of denialism and a direct call to, "all levels of government and the public to:

- Uphold the testimony of those with lived experience who survived and witnessed crimes and human rights violations at Residential Schools, along with the findings of experts, and the documentation of physical and archival evidence captured by the Truth and Reconciliation Commission and by subsequent investigations by First Nations and partners at former Residential Schools sites across Canada;
- Implement the Truth and Reconciliation Commissions' 94 Calls to Action;
- Advance policies that acknowledge and take responsibility for the history and harmful legacy of Residential Schools; and
- Support healing for survivors."[376]

UBCIC Resolution 2024–33 on the Rejection of Residential School Denialism, "was created in response to the distribution of a denialist publication by the mayor of Quesnel [British Columbia] and his wife. The Resolution reads that this publication represents 'the deeply troubling trend of Residential School racist denialism

and any unwillingness to accept historical fact and the work of experts.'"[377] It notes that the "UBCIC Council categorically rejects any and all Residential School racist denialism and ardent dissemination of racist misinformation put forward by the authors ... and perpetuated by members of the public and elected officials."[378] The UBCIC Council is standing with, "[S]urvivors and intergenerational [S]urvivors of Residential Schools and their families, as well as the children who never made it home and all those who are harmed by the actions of those involved with the production and distribution of the book."[379]

UBCIC Resolution 2024-33 uses the example of public discrediting of Holocaust denialism and Articles 7(2), 8(1), and 8(2) of the *UN Declaration* to support legal action on the part of both provincial and federal governments against Indian Residential School denialism. UBCIC Resolution 2024-33 affirms Resolution 2021-29 on Demanding Justice and Accountability for the Missing and Unidentified Children of Residential Schools, which, "calls on the government of Canada and B.C. to commit to sustainable long-term funding to support continued work by all affected First Nations to locate and identify missing children and unmarked graves at former Residential School across Canada" and to "work in collaboration with First Nations to counter and address Residential School racist denialism in B.C., including by developing targeted education campaigns to counter denialism in the public and public sector."[380]

Despite public outcry and demonstrations from community members, the mayor of Quesnel has refused to step down after publicly supporting this denialist publication.[381] The mayor will continue to serve because in Quesnel, "there is no formal mechanism to force elected officials to resign," and the mayor will, "continue to chair council meetings."[382] The UBCIC is waiting on action from Minister of Justice and Attorney General Arif Virani, Minister of Crown-Indigenous Relations Gary Anadansangaree, Minister of Indigenous Services Canada Patty Hajdu, and BC Minister of Indigenous Relations and Reconciliation Murray Rankin. Survivors, intergenerational Survivors, their families, and their allies want to see action taken to hold these denialists accountable, many of whom are using their connections and influence to discredit living witnesses and documentation that clearly shows crimes against the children occurred.

Striking a Legal Balance: Protecting Survivors' Collective Memory versus Freedom of Expression

Laws that prosecute verbal assaults on the individual and collective dignity of victims and Survivors of atrocity crimes and mass human rights violations and their descendants or that symbolically declare such actions to be morally wrong exist in many democratic societies, including Canada. Such laws are accepted as minimal and necessary infringements on freedoms.[383] Laws that aim to protect the collective memory of victims of violence, denialism, and hatred can serve several functions, including:

- **Combating all forms of hatred:** negationism has frequently been understood as an expression of anti-Semitism in the case of the Holocaust or of racism and hatred in the case of other forms of denialism, including Indian Residential School denialism. Laws are an important tool in combating these destructive forms of hatred.
- **Protecting the honour and the memory of victims and Survivors:** this is an increasingly important function as atrocities pass from living memory to the intergenerational collective memory of descendants, families, and communities and across broader society.
- **Symbolically stating the values of the society:** this should be done in the form of commitments to respect fundamental human rights and the rejection of hatred and intolerance.
- **Preserving social peace and order:** this needs to be based on the understanding that the spread of hatred and intolerance is corrosive to the body politic, undermining the cohesion of society and its capacity to collaborate and flourish.
- **Preventing the recurrence of genocide and mass human rights violations:** laws aim to prevent the legitimization of past crimes that may allow future repetitions.
- **Deterring negationists:** this must be done through the invocation of sanctions or financial penalties.[384]

Laws penalizing negationism and denialism must attempt to strike a careful balance and respond to their local political and historical context. The question is not whether anti-negationist laws are justified generally but, rather, whether any particular law is justified based on its circumstances, goals, and design.[385] Because laws designed to protect historical memory restrict, to a greater or lesser degree, what can be said about the past, they exist in tension with protections for freedom of expression. A report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression notes that:

> The limitation of hate speech seems to demand a reconciliation of two sets of values: democratic society's requirements to allow open debate and individual autonomy and development with the also compelling obligation to prevent attacks on vulnerable communities and ensure the equal and non-discriminatory participation of all individuals in public life.[386]

The correct balance between these two commitments remains a source of debate. Some scholars and legal experts argue, for example, that prosecuting hate simply provides a platform for haters to further promote their message, depicting themselves as free-speech martyrs. In this way, they may gain sympathy and attract a wider audience so that the effects of prosecution may be counterproductive.[387] Some argue that criminalizing negationism infringes so deeply on democratic values that it undermines the very commitment to human dignity that it seeks to uphold.[388]

In contrast, others point out that negationism is not simply a statement or expression but, rather, a harmful act. For example, genocide denial can contribute to genocidal violence. It is a deliberate and direct attack on a targeted group, intended to undermine their understanding of their own history and their connection to broader society.[389] In addition, laws criminalizing negationism are not penalizing a particular interpretation of history or upholding a single authoritative version; rather, they address the deliberate falsification of history in service to a political or ideological agenda informed by hatred and/or discrimination. Judgments about negationism are not imposing a view of history; rather, they are based on established historic facts and, therefore, are no more problematic, for example, than judgments in a claim of defamation.[390]

Priority 2: Legal and Policy Framework—An Indigenous-Led, Anti-colonial Commemoration Law

History, Politics, Memory Laws, and Truth Commissions

> Public narratives about past violence shift over time, in response to political events and changes in the political atmosphere. The official narrative of what occurred can change according to the state's political agenda; when the public narrative is, or moves toward, one of denial of past atrocities, it deprives the victims and their families of their right to truth and justice.
>
> — Global Initiative for Justice Truth and Reconciliation, *Mapping Commemorative Cultures*[391]

Much of the debate over Canada's proposed hate crime legislation, some of which focuses on Indian Residential School denialism,[392] mirrors the controversial nature of human rights-oriented memory laws that originated in Western Europe in the 1990s to counter Holocaust denial, which then spread to Eastern Europe in the 2000s. During this same time period, Spain and several other European countries enacted memory laws to address war crimes and atrocities associated with civil wars and fascist regimes that are vigorously opposed by some individuals.[393] Similarly, in Canada, where supporters of such legislation argue that these are necessary mechanisms for accountability and justice for victims of hate and mass human rights violations, opponents claim that they infringe on citizens' rights to freedom of expression.[394] Critics of memory laws raise concerns that State legal intervention in collective memory oversteps the appropriate boundaries of law,[395] risks disrupting the collective dialogue and engagement that creates and sustains shared memory and values,[396] and perhaps even risks undermining democratic norms.[397]

Importantly, while memory laws may include measures to protect collective memory against historical negationism and the spread of hatred towards targeted groups, they can also be much broader in scope. There may be legal provisions for tracing and identifying missing and disappeared victims and conducting exhumations and protecting cemeteries and other sites of memorialization. Legislation may also include symbolic forms of reparations such as regulating educational curricula, establishing dedicated public history institutions such as archives and museums, and creating national days of commemoration.[398] Commemorative laws set rules of public conduct for these events or at memorial sites. In so doing, they also

reflect and shape the narrative of the past that is being commemorated.[399] By invoking collective memory in preambles to legislation, memory can be used to justify or clarify the law.[400] In Canada, for example, the legislation enabling the National Day for Truth and Reconciliation states that its purpose is to respond to the TRC's Calls to Action, including, "to honour First Nations, Inuit and Métis Survivors and their families and communities and to ensure that public commemoration of the history and the legacy of residential schools remains a vital component of the reconciliation process."[401]

Scholars Elazar Barkan and Ariella Lang note the inevitable political tensions that arise around memory laws that were, "initially inspired by the desire to offer historical clarification and even justice to victims ... [versus those that were] an attempt to repress demands for redress and whitewash mass atrocities."[402] Historical memory laws that prohibit or penalize the dissemination of false information about a particular event are politically controversial. In a survey of these laws in various countries, Barkan and Lang found that human rights-oriented memory laws introduced under pluralist liberal governments are like, "the canary in the proverbial coalmine," foreshadowing the rise of populist, right-wing governments with a more conservative nationalistic political agenda.[403] Gavriel Rosenfeld sums up these political differences:

> The liberal approach to remembrance tends to be self-critical and seeks to confront painful episodes from the national past in order to affirm universal values, such as freedom, equality, and justice; it typically accepts responsibility and makes amends for the past in order to reconcile perpetrators with victims and achieve national healing; finally, it is generally pluralistic in nature and accepts the existence of diverse historical perspectives. By contrast, the conservative approach to remembrance generally affirms triumphalistic versions of the past that sustain national pride, honor, and virtue; it typically avoids fully confronting, and accepting guilt for, past misdeeds in the name of fostering a putative sense of national unity; finally, it tends to be monolithic in orientation and less tolerant of dissenting historical viewpoints.[404]

Broadly speaking, memory laws sanction the State's official historical narrative, and, as such, they frame a political vision of history that justifies a particular national identity that the ruling government wants to convey to the public.[405]

The Politics of Commemoration: Spain's Historical Memory Laws

Following its transition to democracy, Spain passed two laws addressing the memory of the Civil War and the Franco dictatorship. While an extensive review of these memory laws is beyond the scope of this Final Report, it is nevertheless instructive to examine how they are subject to the country's shifting political environment. Both laws were enacted by liberalist left-wing governments and fiercely opposed by nationalist right-wing parties, who rolled back their provisions when they took power.[406] Spain's historical memory laws were enacted decades after the *Amnesty Law* was passed in 1977.[407] This law guaranteed legal impunity for perpetrators of atrocities and repressive measures during the Spanish Civil War and the Franco regime and laid the foundation for collective amnesia about this violent past through "the "Pacto del Olvido" (or Pact of Forgetting).[408] As there was no formal transition to democracy, there was a continuity in the laws and institutions between Francoist and democratic Spain. Street names and monuments from the Franco era remain common. The legal culture contains elements of both the old and the new Spain.[409]

The 2007 *Historical Memory Law* recognized victims' right to moral reparation and the need to promote a democratic society; removed public symbols and prohibited public gatherings that glorified the Civil War or the Franco regime; established the Historical Memory Documentary Centre and General Archive of the Civil War; provided for State assistance in tracing, identifying, and exhuming those victims of Francoist repression whose remains are still missing, and granted temporary access to public and private lands to conduct searches; granted Spanish nationality to surviving members of the International Brigades; created a time-limited right of return and renewal of citizenship to those who left Spain during the Franco regime for political or economic reasons and to their descendants; and provided some financial and medical aid for victims and descendants of the Civil War and the Francoist State.[410] However, this national law was ineffective, partly because the conservative government in office for many years opposed it, and their policies made many parts of the law either inapplicable or ineffective. For example, funding support for exhumations was eliminated.[411] This was followed by a wave of regional laws aimed at protecting graves, identifying victims, supporting relatives, and removing Francoist monuments.[412]

Building on the 2007 law, the *Democratic Memory Law (Ley de Memoria Democrática)* was passed in 2022, with provisions for educating students about the history of the dictatorship; public commemorations; establishing a Prosecutor's Office, creating a registry of victims of the dictatorship who were in unmarked graves, and establishing the State DNA Bank of Victims of War and Dictatorship; and offering Spanish citizenship for descendants of Spanish exiles who were born before 1985.[413] However, scholars and political analysts note that this law still falls short of what is needed to foster understanding and strengthen accountability for the atrocities of the Civil War and the Francoist State. Not only have there been political and institutional barriers to implementing the law,[414] but the legislation focuses primarily on symbolic and non-monetary reparations rather than accountability.[415] Neither the 2007 and 2022 laws repealed the 1977 *Amnesty Law* that continues to shield perpetrators from prosecution.[416] While the memory laws provide some reparations to victims through the provision of aid and the return of nationality to descendants, and provide some relief for families and communities through attempts to locate victims, there are no mechanisms for identifying perpetrators, let alone holding them accountable.[417]

The symbolic commemorative elements of memory laws have been described as the "long route" to upholding memory because these types of laws invite a cultural process of constructive dialogue and moral reflection and the development of a shared, civic conscience.[418] Emanuela Fronza, legal studies scholar, points out that, whereas commemorative memory law, "serves as a public invitation that says '*we need to remember*' ... laws punishing negationist behaviour ... imposes the imperative, 'we need to remember in a certain way.'"[419] Law can never be truly neutral about the past. Governments, in fact, must make decisions about the minimum content of school curricula, broadcasting rules, or funding for museums, all areas that will involve some depiction of the past. The question then is more about the nature or the extent of legal intervention in collective memory and what form that legal mechanism will take.

While European countries have established memory laws to confront historical injustices, in Latin American countries, truth commissions and various public inquiries are the norm. Barkan and Lang note that, "even if formal memory laws have not been legislated, informal structures analogous to memory laws have become part of the political fabric of the country. Sometimes linked to the development of memory laws in Spain, historical memory in Latin American countries has rarely culminated in the passage of memory laws—not, at least, in

the conventional sense."[420] The history of truth and reconciliation commissions established in the 1990s in Argentina, Guatemala, El Salvador, Peru, and elsewhere in Latin and Central America predate Spain's 2007 *Historical Memory Law*. These human rights-oriented truth and reconciliation commissions, unlike European memory laws, provided opportunities for victims' testimonies to enter public discourse and challenged national historical narratives that had previously excluded them. The inclusion of victim-centred testimonies in truth commission reports placed the emphasis on, "memory as an assertion of truth, as a means to expose human rights abuses, and as a means to achieve justice."[421] Similarly, in Canada, the TRC gave great weight to Survivors' testimonies in its Final Report, and my Mandate as the Independent Special Interlocutor makes the knowledge, perspectives, and experiences of Survivors, Indigenous families, and communities central to this work.

Survivors Karen Andrews, Wilbert Papik, and Charlene Belleau share their experiences at the National Gathering in Vancouver, British Columbia, on January 17, 2023 (Office of the Independent Special Interlocutor).

The Role of Memory Activism

The impetus for human rights-based memory laws and truth commissions is the rise of "memory activism" through which victims and Survivors of State violence and their supporters organize, "the strategic commemoration of a contested past outside state channels to influence public debate and policy."[422] They may be large or small in scale, and short

or long in duration, with varying degrees of institutional support.[423] Memory activism can take many forms, such as the preservation of unrecognized sites of memory, the creation of independently funded museums, marches or re-enactments, digital campaigns, or grassroots memorials.[424] Métis scholar Tricia Logan notes that, in Canada, "[Indigenous] memory activism may bolster decolonization in [public] memory institutions," such as museums, archives, libraries, and art galleries.[425] Equally important, memorialization at the grassroots level can be an important mechanism for transmitting and building collective memory relating to Indian Residential Schools, in general, and the missing and disappeared children and unmarked burials, in particular.

The aims of memory activism are diverse and can include demands for various forms of concrete reparation measures aimed at preventing the repetition of mass human rights violations. Successful memory activism bears the promise of a more equitable social order.[426] Memory is increasingly seen as a driver of social change. However, as German scholar Aleida Assmann points out, "memory activism can be both a catalyst of transformation or an obstacle for reform.... The environment of memory activism always reflects and impinges on social conflicts."[427] That is, memory fuels both reactionary and radical politics. For example, "in the North American context, the most longstanding memory activists are those who built and defend Confederate monuments, who foster a sense of heritage, who re-enact battles, and who perform multicultural belonging to the American/Canadian nation."[428] While the techniques of memory activism reflect their local nature and the need to respond to specific historical contexts, memory activists sometimes draw transnational inspiration from other countries. In Spain, memory activists attached photos of their disappeared family members who were murdered under the Franco regime to the fence of the Spanish Parliament, under captions reading "desaparecidos" (disappeared). They drew their inspiration from the Mothers and Grandmothers of the Plaza de Mayo in Argentina, whose political protests sustain the memory of the "desaparecidos," holding the government to account for these crimes.[429] While international examples of the relational dynamics between memory activism and memory laws are instructive, developing anti-colonial memory laws as part of reparations relating to the missing and disappeared children and unmarked burials must take Indigenous legal memory into account.

Anti-colonial Memory Activism and Indigenous Legal Memory

> Still today, there are those who deny the stories of residential schools, of abuse and neglect and racism. Even though residential school denialism is in the minority, it is nonetheless present. Denialism takes the form of attacks – online,

> through the media and through the desecration of burial sites. These attacks are attempts to control the story of Indigenous Peoples. Despite those that refuse to accept these realities, or maybe because of it, our voices got louder and louder.
>
> — the Right Honourable Mary Simon, Governor General[430]

As previously noted, UN Special Rapporteur Fabián Salvioli's comprehensive study documents how Indigenous Peoples across the globe have been disproportionately targeted by governments, police, and the military as part of an ongoing colonial process of genocide aimed at eliminating them as distinct sovereign Peoples and seizing their lands.[431] In the Canadian context, Logan notes that, "[memory] activism is a mode and a methodology utilized by First Nations, Métis, and Inuit peoples to assert rights, defend territories and define or redefine their 'memory landscape.' ... Memory is inherently tied to land and territory, defense of the land and responsibilities we have towards the land is also a defense of memory and a body of knowledge."[432] Indigenous communities have always engaged in decolonizing memory practices through the intergenerational transmission of laws, oral histories, protocols, and ceremonies that protect those aspects of history that have been suppressed in the State's historical and legal records.[433]

As discussed in an earlier chapter, Indigenous collective memory as a body of knowledge is embedded in Indigenous laws. The significance and accuracy of Indigenous oral histories and legal traditions is now recognized by the Canadian courts, and the TRC concluded that implementing Indigenous laws is essential to reconciliation in Canadian society. As Yurok/Karuk scholar Kerri J. Malloy points out:

> The understanding of Indigenous memory systems was no longer merely a connection to the past. It was now recognized outside the Indigenous community as a conduit of expertise in Indigenous history, diplomacy, scientific understanding, and legal systems that had been shaped since time immemorial. Indigenous activism had been employed to unsettle the settler colonial way of knowing through Indigenous knowledge systems. Indigenous legal scholars and practitioners had broken through settler colonial jurisprudence to create an Indigenous space of memory activism to counter [the] erasure of Indigenous rights it long supported.... These legal victories have been a driving force in the surge of Indigenous activism in response to erasure, environmental degradation, climate change, Missing and Murdered Indigenous Women [and Girls], and reparations for historical wrongs. They

> contextualize these issues with the historical actions and processes that served to subjugate Indigenous people divesting them of their legal and human rights and push settler colonial states to reevaluate their past.[434]

Most importantly, this reframing must recognize, respect, and incorporate Indigenous truths—counter-narratives that correct the historical record, including the testimonies of Survivors. They hold unique knowledge as living witnesses to the children who disappeared or died in the Indian Residential School System and the sites where potential unmarked burials might exist. Memory laws that are respectful of Indigenous legal memory have the transformative potential to decolonize and reframe collective memory, national history, and commemoration to counter settler amnesty, impunity, and denialism, strengthen truth, accountability, and justice, and advance reconciliation. Creating a commemoration law relating to the missing and disappeared children and unmarked burials cannot be based on Canadian law alone; Indigenous laws must inform the legislative process.

The Commemoration Process Is as Important as the Outcome

At the Edmonton National Gathering in September 2022, Dr. Chief Wilton Littlechild spoke about the importance of memorialization, noting that, as Canadians across the country began to hear Survivors' accounts of the missing and disappeared children and unmarked burials, "the children were heard to be saying, 'They're finally hearing us. They're finally seeing us.' So that's why it's important to commemorate."[435] The public commemorations highlighted in this chapter illustrate the power of Indigenous acts of remembering, mourning, healing, truth-sharing, and resistance; they call Canada to account for the missing and disappeared children and unmarked burials in highly visible ways that demand an ethical response. Not surprisingly, memorials are often politically controversial. Public commemorations invite Canadians to confront and acknowledge hidden truths and make reparations to prevent similar atrocities from recurring. While many are doing so, others object to reframing settler colonial collective memory and national history in this way. This is why the commemoration process itself has a critical role in public history education to develop historically literate citizens. Public ceremonies are one of several elements of a much longer process of Indigenous-led memorialization and commemoration that evolves over time. Grassroots memorials serve as a call to conscience and action for all Canadians. Permanent memorials—such as designated historical sites and museums and memorial plaques and grave markers in cemeteries—are reinscribing the history, presence, and memory of the missing and disappeared children over the settler colonial landscape in ways that are potentially healing, decolonizing, and transformative.

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430 The Right Honourable Mary Simon, Governor General of Canada, quoted in OSI, *National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children Summary Report*, September 6–8, 2023, 38.

431 Salvioli, *Transitional Justice Measures*.

432 Logan, "(De)colonial Spaces," 245.

433 Kerri J. Malloy, "Indigenous Spaces," in *Routledge Handbook*, ed. Gutman and Wustenberg, 266.

434 Malloy, "Indigenous Spaces," 267. Note that Yurok/Karuk are Indigenous Peoples whose territorial lands are located in California, United States.

435 Dr. Chief Wilton Littlechild, "Voices of Survivors," Panel Presentation, National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Edmonton, Alberta, September 13, 2022.

CHAPTER 16

Expanding the Circle: Settler Alliance and Solidarity in an Indigenous-Led Reparations Framework

> When we released the [Truth and Reconciliation Commission of Canada's] Summary Report and Final Report, I said our ambition here is to arm the reasonable, and by that I meant to give to people the tool that they need to carry on this fight. I point out that we didn't call them recommendations for a reason. We called them Calls to Action because a recommendation is a word that people can say, "that's nice," and ignore it. But a Call to Action has more force to it, has more of a sense of urgency about it, has more of a motivation to it in the sense that we're saying to people "you can do something about this, and here's something you can do, so we're calling upon you to do this."
>
> — Hon. Justice Murray Sinclair, former senator and chair, Truth and Reconciliation Commission of Canada (TRC)[1]

"ARMING THE REASONABLE" TO SUPPORT AN INDIGENOUS-LED REPARATIONS FRAMEWORK

Countering settler amnesty and impunity by rectifying ad hoc, piecemeal approaches to reparations that may further harm Survivors, Indigenous families, and communities not only requires systemic and structural legal, policy, and institutional reform but also anti-colonial, transformative societal change. The TRC understood that, for reconciliation based on the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) to

Survivors with the Governor General, the Right Honourable Mary Simon and Kimberly Murray at the National Gathering on Unmarked Burials in Montréal, Quebec (Office of the Secretary to the Governor General).

be sustainable over time, a majority of Canadians must be willingly engaged in the process.[2] Throughout my Mandate, I have made a similar point, urging non-Indigenous people not to be passive bystanders but to be part of making reparations in ways that truly support Indigenous-led efforts to locate, recover, and commemorate the missing and disappeared children and unmarked burials. Determining the truth about their fate and fully understanding why Canadians were so indifferent to their deaths are essential to breaking recurring cycles and patterns of ongoing colonial violence and mass human rights violations against Indigenous Peoples. As witnesses to this watershed moment in the collective memory and history of Canada, bystanders must now actively embrace truth-finding, accountability, and justice to ensure that reparations and reconciliation are robust and sustainable.

There is an urgent need to "arm the reasonable"—that is, to develop a critical mass of historically literate citizens who understand that, for a democracy to flourish, it must be willing and able to confront and redress the historical injustices that continue to impact Indigenous-settler relationships today. They must be armed with the knowledge, ethical principles, tools, and practical skills needed to engage in this difficult work. Settler amnesty and a culture of impunity still exists in Canada, perpetuated by collective denial and apathy that creates social amnesia. As noted in the previous chapter, these forms of denial exist

along a continuum. As perpetrators and denialists employ various strategies to avoid truth and accountability, bystanders can either be complicit with them through silence and inaction or act in alliance and solidarity with Indigenous Peoples.[3]

As the reports of the Royal Commission on Aboriginal Peoples (RCAP), the TRC, and the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry) demonstrate, Indigenous Peoples have always been upstanders in the anti-colonial struggle for self-determination and freedom from racism, violence, and mass human rights violations perpetrated against them in settler colonial Canada. Survivors resist the colonial dynamics of settler power and control, exercising their right to truth, accountability, justice, and reparations on their own terms. This Final Report documents how the struggle continues as Survivors, Indigenous families, and communities fight for human dignity and justice for the missing and disappeared children to honour their memory and commemorate their burial sites. Under what conditions do non-Indigenous people join this struggle, shifting from being a bystander to an upstander or ally?

This chapter aims to "arm the reasonable"—those Canadians who choose not to be bystanders. It begins by explaining what makes it easier for people to become what legal scholars and human rights advocates define as an "upstander" or "ally" in the face of injustice. However, allies are often unwitting agents of settler amnesty and impunity, despite their good intentions. Colonial forms of empathy support the political, legal, and institutional structures of State power, reinforcing unequal power relations. Indigenous Peoples and the State have different understandings of the scope of harms committed and contrasting visions of what reparations and reconciliation entails. Reframing concepts, principles, and practices of allyship and an ethics of caring, recognition, and accountability through an anti-colonial lens is essential. Situating allyship in the broader context of reparations in settler colonial countries reveals deeply embedded institutional systems, structures, and patterns of violence and genocide that form part of the historical injustices.

The conceptual and structural design of the Indigenous-led Reparations Framework must be carefully considered because, as previously noted, the process itself is as important as the outcome. It is an analytical tool, including a framework and principles for assessing the shortcomings of Canada's current ad hoc, piecemeal approach to reparations, that builds an understanding of what is required. Applying this analytical tool to shape, assess, and recalibrate the Indigenous-led Reparations Framework as it is being designed and implemented will ensure that it meets the needs of Indigenous communities and advances reconciliation. The strategies, action plans, tools, and practices developed by governments, churches, institutions, and other organizations must respect and uphold Indigenous laws, protocols, and

practices. They must meet Indigenous criteria for healing through accountability and justice. This would serve as a powerful antidote to settler amnesty and impunity that will otherwise continue to inflict harms that violate the rights of Indigenous Peoples.

Framing the concept of expanding the circle as one of personal, political, and institutional action within Canada, representative examples of existing gaps and emerging practices in key public institutions—universities, churches, the media, and civic society organizations—are highlighted. Expanding the circle of settler alliance and solidarity has local, regional, national, and international dimensions. Anti-colonial pathways of settler alliance and solidarity reveal two reparative elements of non-Indigenous roles and responsibilities in an Indigenous-led Reparations Framework: (1) working to dismantle settler amnesty and a culture of impunity in settler colonial laws, policies, and institutional systems and structures and (2) supporting multi-year Indigenous-led search, recovery, and commemoration processes.

SHIFTING FROM BYSTANDER TO UPSTANDER

In the previous chapter, the relational dynamic between perpetrators and bystanders in the context of denialism is examined. Here, the focus is on understanding what motivates a bystander to become an upstander in the reparations process and what barriers might prevent them from doing so.

What Is a Bystander?

A person, institution, or organization that fails to fully acknowledge that atrocities, genocide, and crimes against humanity have been committed against Indigenous Peoples. They either remain silent or engage in performative gestures of reconciliation, taking no concrete and sustained action to rectify injustice and prevent the recurrence of these mass human rights violations.

What Is an Upstander?

A person, institution, or organization that is receptive to learning about, and fully acknowledging, that atrocities, genocide, and crimes against humanity have been committed against Indigenous Peoples. They take leadership roles in proactively fostering reconciliation based on truth, accountability, and justice, leveraging their power to implement concrete sustainable actions within their own sphere of influence.

It is crucial to understand what motivates bystanders to remain silent or make only token gestures to acknowledge wrongdoing. Martha Minow, legal scholar and former dean of Harvard Law School, explains that, "bystanding is easier than upstanding. Passivity is easier than action. Yet there are deeper and more complex reasons. These include peer pressure, fear for the safety or reputation of oneself and others, denial, worries about being overwhelmed by the work and repercussions of standing up, and traditions that put the burden on individual heroism rather than shared responsibility."[4] However, as Minow observes, these fears can be mitigated by, "engag[ing] in collective efforts to build policies and communities that support upstanding and in so doing make it easier for individuals to act without having to summon extraordinary courage."[5]

> The challenges of global citizenship include not just developing ideas but also developing practices—practices that make passivity no easier than taking action against hatred and violence. This means creating cultures, institutions, and resources to help individuals empathize with those who are oppressed. Building practices to help individuals resist the pressure from peers to do nothing and strengthening peer support to stand up against suffering and injustice would help. This means addressing genuine fears, sources of denial, and feelings of being overwhelmed so often experienced by those who do nothing in the face of oppression. The role of upstander should not be confined to remarkable heroes but expanded by communities of responsibility and mutual protection while resisting the diffusion of responsibility that contributes to inaction.[6]

Establishing these new networks of allyship is essential for there to be a paradigm shift from a culture of impunity towards a culture of accountability. However, this cannot be done in isolation but, rather, in dialogue with Indigenous people.

DECOLONIZING ALLIES AND ALLYSHIP

Marti Tippens Murphy, executive director of the Memphis Region of Facing History and Ourselves, emphasizes that, in a time of growing pushback against those who protest systemic and structural racism and injustice, upstanders must inevitably be risk takers:

> The term "upstander"—someone who speaks out and stands up for justice on behalf of others—is more widely known now than ever. In this moment, we need to reflect on what being an upstander really takes.

> It calls for so many things—compassion, ethics, reflection, understanding beyond oneself—and it calls for courage. Anytime we courageously use our voice or take an action, it requires some kind of risk, and there is no such thing as courage without fear. At a minimum, it will make us uncomfortable.[7]

At the National Gathering in Vancouver, British Columbia, Megan Metz, a Haisla youth participant, said that, "it's time for Canada as a whole to see this uncomfortable truth for what it is. Our people have been existing in this state of discomfort since the arrival of the settler nations. It's time for them to feel it, see it, sit with those unsettling feelings, and learn from it, so it does not happen again."[8] Philosopher Trudy Govier notes that, while Canadians are reluctant to confront uncomfortable truths that are "incompatible with our favoured picture of ourselves ... through patterns of colonization, land use, racism, disregard for [T]reaties, and the [R]esidential [S]chool [S]ystem ... we share responsibility ... [as] beneficiaries of injustices."[9] It is not up to Indigenous people to decolonize settlers. Rather, as Paulette Regan, author, scholar, and former research director for the TRC, points out, settlers must do their own work and, "risk interacting differently with Indigenous people—with vulnerability, humility, and a willingness to stay in the decolonizing struggle of our own discomfort. What if we were to embrace [Indian Residential School] stories as powerful teachings—disquieting moments in which we can change our beliefs, attitudes, and actions?"[10]

Anishinaabe author Patty Krawec notes that, "colonialism arrived on these shores with the authority of the Doctrine of Discovery tucked beneath its arm, settling into our lands and our heads, shaping everything about how we live."[11] Nevertheless, Indigenous, "histories are emerging, and the stories are being told. What would happen if you listened? What would happen if you, the churches and countries who settled upon us, listened to our histories and heard the good news that we have for you?"[12] Indigenous and settler people can only decolonize, "if we are willing to understand our histories differently, if we take our stories out of isolation and put them together. We need to revisit the stories we tell ourselves—about how we got here—and see something different, see something that allows us to become relatives again."[13] Krawec concludes that Indigenous Peoples and settlers must re-establish kinship relations, challenging people to think about:

> what ... it mean[s] to be *good* relatives—to not only recognize our kinship but to be *good* kin. Because for Indigenous [P]eoples ... it carries specific responsibilities.... If we are going to be kin, then we must accept that these relationships come with responsibility. In our settler colonial context, relationships between us are built on a paternalistic

> foundation: charity and good works, helping the less fortunate. Those who are a part of the society that created the problem become the ones who think they can solve it. So we must move from recognizing the *fact* of our relationship to actually existing together in *reciprocal* relationships.... We can reimagine the relationships we have inherited, and we can take up our responsibilities to each other.[14]

The TRC's Final Report noted that Elders and Knowledge Keepers repeatedly emphasized that Indigenous and non-Indigenous people carry different responsibilities for reconciliation that are nevertheless interconnected. To fulfill these responsibilities, each must do their own personal and political healing and decolonizing, "in ways that honour the ancestors, respect the land, and rebalance relationships."[15] Anishinaabe Elder Mary Deleary said that, while Indigenous people are already using their laws and Medicines to do this work, "Our relatives who come from across the water, you still have work to do on your road.... The land is made up of the dust of our ancestors' bones. And so to reconcile with this land and everything that has happened, there is much work to be done ... in order to create balance."[16] Cree Survivor and former moderator of the United Church of Canada, the Very Reverend Stan McKay said that, "[we cannot] perpetuate the paternalistic concept that only Aboriginal [P]eoples are in need of healing.... The perpetrators are wounded and marked by history in ways that are different from the victims, but both groups require healing."[17]

Michi Saagiig Nishnaabeg scholar, writer, and artist, Leanne Betasamosake Simpson, points to an urgent need for Indigenous and non-Indigenous people to take the time and make the effort to establish and maintain constructive working relationships if we truly want to transform Canadian society:

> Indigenous Peoples have been engaged in a movement for justice, freedom, and political change for over 500 years on Turtle Island. Our collective and individual acts of resistance have been expressed in our daily lives and in our lives together as communities, nations, and confederacies.... Little has been written about how large, international coalitions have supported our community-based stances, or how we have nurtured relationships of solidarity with our friends and allies.... Building relationships with our supporters has been a key strategy in our movement for change. But these relationships do not always come easily. Too often they have been wrought with cross-cultural misunderstandings, poor communication, stereotypes, and racism. Too often, we have forged these relationships without taking the proper time to

> clearly discuss our different roles and responsibilities.... It is most critical for Indigenous Peoples and our allies to discuss good relationships in terms of alliances and solidarity ... [w]hen we have the space to consider how to interact with each other in a respectful, responsible way—in a way that promotes the kind of justice we are seeking on a grander scale, one that honours the very best of our traditions.[18]

"Upstanders" in settler colonial contexts are commonly described as "allies" who are engaging in "allyship." However, those who claim to be allies often work in ways that simply replicate colonial relationships, systems, structures, and institutions. They engage in shallow, performative gestures of reconciliation that ultimately maintain their power and privilege as beneficiaries of colonization, and their actions often harm Indigenous individuals and communities.[19] Reframing the concept of allyship through an Indigenous and anti-colonial lens provides insight into the decolonizing work that settlers must do to work as ethical and caring allies in solidarity with Indigenous Peoples.

Muskogee philosopher Andrea Sullivan-Clarke points out that there is a long and complicated history of settler allies and allyship relating to military alliances in North America.[20] Similarly, the TRC found that, when Indigenous-settler Treaties and military and economic alliances were made, Indigenous and non-Indigenous people understood their purposes very differently. For colonial officials, such alliances were based on meeting short-term transactional goals and common interests rather than being in a relational context of caring for each other as kin in accordance with Indigenous political diplomacy and laws.[21] Consequently, these alliances were dissolved by colonial officials once they no longer needed the support of their Indigenous allies.[22] To counter similarly colonial forms of allyship today, Sullivan-Clarke proposes an Indigenous concept of allyship that, "should be understood as a relationship that promotes the well-being of those being served."[23] Using this conceptual framing, she identifies key considerations that must be taken into account in thinking about what it means to be an ally and how to engage ethically and constructively in allyship.

Sullivan-Clarke begins by acknowledging the importance of cultural competency training for allies but indicates that, "training does not ensure cultural competency.... Despite good intentions, an individual may fail, or they may acquire limited skills. In such cases, there will be times when harm is produced. The problem with allyship being constructed as a social identity is that the harms may go unchecked or uncorrected."[24] She points out that not everyone wants to be, or has the necessary motivation or skills to be, an effective and ethical ally.[25] Importantly, she notes that being a "decolonial ally" requires non-Indigenous people taking responsibility for educating themselves about the history and ongoing impacts of

colonization. They must invest in nurturing long-term relationships, respect the decisions made by Indigenous communities, and work to restore damaged trust.[26] Sullivan-Clarke identifies overarching ethical principles to guide anti-colonial allyship:

> A decolonial ally is one who (1) recognizes the self-determination and sovereignty of Indigenous people, (2) is humble and acknowledges their privilege as someone who benefits from colonialism, and (3) takes their cue to act from the people they seek to serve. In Indigenous communities, relationships are important; they provide a guide for how to act (how to be in the world). These conditions for being an Indigenous ally in North America may translate to the global scale because there is a need for the types of relations that stress the advocacy of Indigenous people in general.[27]

Writing about how to advance reconciliation from her perspective as a Kwakwaka'wakw leader and former minister of justice and Attorney General of Canada, Jody Wilson-Raybould (Puglaas) identifies three practical steps that Canadian individuals, communities, organizations, and governments can take: learn, understand, and act.[28] This is not a one-time linear project but, rather, a cyclical process of ongoing learning, reflection, and action as individual and collective understanding deepens and changes over time.[29] Like Sullivan-Clarke, Wilson-Raybould emphasizes that relationships between Indigenous and non-Indigenous people must be based on an ethics of caring for each other's well-being. This is because, "More than anything, the legacy of colonialism is about two things: lack of *acceptance* and lack of *care*.... In subtle and not-so-subtle ways, non-Indigenous Canadians have been taught not to accept and not to care, and Indigenous Canadians have been taught that they are not accepted and that they do not matter."[30] As non-Indigenous people build ethical alliances with Indigenous people, they must unlearn deeply embedded patterns of colonial behaviour.

To facilitate the reconciliation process, Wilson-Raybould envisions a critical place and role for what she describes as "in-betweeners" who serve as intercultural interlocutors in advancing reconciliation. She defines an "in-betweener" as "one who accepts and cares, and acts based on that" to break down colonial silos between Indigenous and non-Indigenous people.[31] They can be individuals and groups living and working in any sector of Canadian society:

> Being an agent of true reconciliation means aspiring to build unity, cohesion, and harmony between peoples. It means viewing ourselves and our purpose as being a bridge between peoples and communities that have histories of injustice, silos, and conflicts. It means being

> "in-between." As in being an "in-betweener." There is, of course, something innately human in this. We all, throughout our lives, are striving in various ways to bring together aspects of our reality and experience that may seem or become distant or unknown. We are always aiming to build and deepen relationships. To expand our circles.[32]

The TRC reminded Canadians that we are all Treaty people who must take sustained action to reset our relationship to one of mutual respect, responsibility, and reciprocity to advance reconciliation.[33]

DEVELOPING AN ANTI-COLONIAL SETTLER ETHICS OF CARING

> Learning *about* residential schools' history is crucial to reconciliation, but it can be effective only if Canadians also learn *from* this history in terms of repairing broken trust, strengthening a sense of civic responsibility, and spurring remedial and constructive action.... Understanding the ethical dimension of history is especially important. [Canadians] must be able to make ethical judgements about the actions of their ancestors while recognizing that the moral sensibilities of the past may have been quite different from their own. They must be able to make informed decisions about what responsibility today's society has to address historical injustices. This ethical awareness will ensure that tomorrow's citizens both know and care about the injustices of the past as they relate to their own future.
>
> — TRC, Final Report[34]

Learning about and from the history of the missing and disappeared children and unmarked burials requires allies to deal with unsettling emotions in ways that are decolonizing, not recolonizing. Several studies focus on the role of emotions in navigating the political and ethical terrain of rectifying wrongdoing. Education professor Megan Boler observes that, while we may think of emotions as only individual and private, they also have collective public dimensions. In this sense, "emotions are collaboratively constructed and historically situated ... [in] a space in which differences and ethics are communicated, negotiated, and shaped."[35] The TRC acknowledged that learning about the history and ongoing legacy of the Indian Residential School System is difficult. While this can, "bring up feelings of anger, grief, shame,

guilt, and denial ... [it] ... can also shift understanding and alter worldviews.... [D]eveloping respect and empathy for each other ... will be vital to supporting reconciliation in the coming years.... Educating the heart as well as the mind helps young people to become critical thinkers who are also engaged, compassionate citizens."[36]

Feminist scholar Katie Boudreau Morris argues that settlers must reorient their approach to solidarity work with Indigenous Peoples to view their emotional and psychological discomfort not as a type of settler identity but, rather, as a decolonizing relational strategy, process, and practice of solidarity.[37] She points out the difficulties of building anti-colonial solidarity across power imbalances that, "must be continuously mutually negotiated and explored ... in an unsettled relationality—rather than from a 'self-interested' perspective."[38] Canadian studies scholar Eva Mackey observes that creating feelings of settler uncertainty about their entitlement to Indigenous lands is essential to decolonizing laws, policies, and ideologies. This involves dislodging what English professor Mark Rifkin defines as, "settler structures of feeling" that, "normalize settler presence, privilege, and power. Understanding settlement as a structure of feeling entails asking how emotions, sensations, and psychic life take part in the (ongoing) process of exerting non-Native authority over Indigenous politics, governance, and territoriality."[39] Mackey argues that:

> "Settler structures of feeling" ... must be taken seriously in any effort to decolonize, especially because they are also pivotal in jurisprudence and broader dominant culture. They help us to see how coloniality and processes of settlement become naturalized and self evident, how they move from what I call "fantasies of entitlement" to become embedded in law and material worlds.[40]

Given these realities, Regan points out that, "settlers cannot just theorize about decolonizing and liberatory struggle; we must experience it, beginning with ourselves as individuals, and then as morally and ethically responsible socio-political actors in Canadian society."[41] Nor can this be done in a piecemeal fashion or in isolation. Rather, it requires long-term commitment and learning how to work, "respect[fully] and humbl[y] ... with Indigenous people to generate critical hope—vision that is neither cynical nor utopian but rooted in truth as an ethical quality in the struggle for human dignity and freedom."[42]

Writing in an international context about his experiences as a facilitator of intercultural dialogues on historical injustices between various groups in conflict, religious studies scholar Bjorn Krondorfer notes that, in "adopting a responsibility of care toward each other, we need to become unsettled by empathy."[43] He distinguishes this concept from, "pity, compassion,

sympathy, benign paternalism, idealized identification, or voyeuristic appropriation"[44] to frame empathy as a, "force to unsettle our complacencies. It unsettles our unquestioned assumptions about how the world is supposed to operate according to our own political imaginations and psycho-emotional comforts."[45] Even as we are compelled to recognize culpability, complicity, and victimization, we must honour acts of resilience and survival, and embrace the power of human agency to make change.[46] He concludes that:

> [W]e need to assess the politics of memory and moral emotions, probe personal motivations, and open ourselves up to sincere self-questioning. When groups in conflict engage in reconciliatory processes, they are taking on a responsibility towards just relations, tasked with developing relationships of trust even when justice is not yet attained. Investing in a relational practice of empathy, we keep an eye on the past, while directing our gaze toward future generations.[47]

The importance of building trust as an anti-colonial relational practice of empathy in the context of the missing and disappeared children and unmarked burials cannot be overstated. Both the RCAP and the TRC have documented the history of Crown betrayal, broken Treaty promises, and forced child removals within the Indian Residential School System, which have damaged trust. The RCAP cautioned that, "the restoration of trust is essential to the great enterprise of forging peaceful relations."[48] The TRC observed that, "the trust relationship and Canada's particular obligation to uphold the honour of the Crown with regard to Aboriginal peoples goes to the very heart of the relationship."[49]

Non-Indigenous people must understand that, in settler colonial contexts, empathy has functioned as a means of social control to maintain the colonial status quo. International relations professor Naomi Head observes that, "What is revealed by a sentimental politics is the potential for collective emotions to be mobilised to support existing structures of power which work to limit what are perceived as legitimate demands for political responsibility and political change. Interrogating the political character of empathy and the discourses through which it is represented reveals how some groups and identities are brought within its umbrella of care, concern, and responsibility, while others are excluded."[50] Legal scholar James Gallen observes that, "Those who express challenging emotions, such as rage, or become emotional at issues that stretch beyond the endorsed paradigms of addressing the past, those who claim that Indigenous recognition is insufficient and decolonisation is required, for instance, may be excluded. More broadly, epistemic injustice regarding historical-structural injustices is likely to map on to existing forms of such injustice in the racialized and gendered recognition

of emotion within legal processes."[51] Philosopher Miranda Fricker defines epistemic or testimonial injustice as, "a wrong done to someone in their capacity as a knower ... [that] occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word."[52] This happens to Survivors, for example, when their oral history testimonies about the missing and disappeared children and unmarked burials are disbelieved.

Developing an anti-colonial ethics of care requires settlers to actively engage with, and decolonize, deeply embedded colonial forms of empathy. The TRC found that:

> [A]lthough societal empathy for Aboriginal victims of abuse in residential schools is important, this sentiment alone will not prevent similar acts of violence from recurring in new institutional forms. There is a need for a clear and public recognition that Aboriginal peoples must be seen and treated as much more than just the beneficiaries of public goodwill. As holders of Treaty, constitutional, and human rights, they are entitled to justice and accountability from Canada to ensure that their rights are not violated.[53]

The TRC's caution is well-founded. There is a problematic history of colonial forms of empathy that pathologize Indigenous people by focusing primarily on their victimization rather than on their legitimate political claims as rights holders entitled to accountability, reparations, and justice.[54] Regan notes that, "colonial empathy ... is integral to the misguided settler belief that our primary purpose is to channel our caring impulses into solving the 'Indian' problem" rather than focusing on the unsettling process of their own decolonizing.[55] Conceptualizing Indigenous-settler relationships in this way enables settlers to maintain the myth of benevolent intentions towards Indigenous Peoples that is central to Canadian identity. Gallen notes that:

> Emotions play a role in providing narrative and normative content for national myths. Emotions are a key part of myths.... Public emotions include those articulated by public figures, in this context including political and church leadership and representatives of victim-survivor communities.... States and churches already employ emotions to advance their own nation-building and myth making, in their advancement of collective memory or the "imagined communities" such as the nation.[56]

Despite the comforting national myth of benevolence, Tanana Athabascan Indigenous studies scholar Dian Million argues that:

> Canadians were not solely driven by a sense of altruism when they became worried about their "Indian problem" in the 1950s and 1960s.... The "Indian Problem" began to be seen as a political detriment in a changing world as a new emphasis on [S]tate responsibility towards minority and marginalized peoples became institutionalized in an international frame of judicial articulation: The *UN Charter*, 1945, the *Genocide Convention*, 1948, and the *Universal Declaration of Human Rights* in 1948 created a language that ignited both colonial revolutions abroad and the civil rights movement at home. It was a world reordering itself. International decolonization movements emboldened a new generation of Aboriginal thought and activism. A persistence and accumulative Aboriginal resistance undermined public confidence in residential schools. Indian education became a focal point for social change, for imagining any new relations between the colonized and colonizer in Canada.... [However], Canadians would not make changes beneficial to Indians based on sympathy alone.... [For some, the] worry was about social unrest and ... [the] nation's international reputation.... [I]t was a change that would be fuelled and tempered by the degree to which [W]hite Canadians ... might imagine the relationship differently.[57]

Against this backdrop of international human rights discourse, Million notes that Indigenous Peoples have, "entered a reparations process informed by trauma theory,"[58] reframing the language of victimization in their own political terms of colonial resistance and their inherent right of self-determination, "For many [R]esidential [S]chool [S]urvivors and their representatives in Aboriginal organizations, healing is a counter-narrative to *victimization*, and is seen as a pathway to *sovereignty* in an emancipation narrative."[59]

Political theorist Jasper Friedrich observes that, while Survivors and their families as victims of violence in the Indian Residential School System have a need for, and a right to, healing, governments have strategically adopted the rhetoric of trauma and healing for their own political purposes. He points to the wording of Canada's apologies that focus on responding to Survivors' need for the harms they have suffered to be recognized to support healing and closure rather than on acknowledging that their human rights have been violated. This

is consistent with the findings on government apologies in this Final Report that found only one apology worded in the language of addressing human rights violations. Friedrich notes that:

> It is not that "closure" or recognition is never desired or perceived as meaningful by [S]urvivors; rather ... I am claiming that as a response to political claims it is inherently depoliticizing. The TRC, after all, arose not from [S]urvivors seeking recognition for their suffering but, in the first place, as a response to [S]urvivors' attempts, through litigation, to hold the government and the church accountable for atrocities.... When I claim that this narrative is inherently depoliticizing, I am not implying that this narrative, in practice, is always successfully deployed or that this depoliticization goes uncontested—quite to the contrary, victim groups often successfully use the state's language of reconciliation to strategically re-politicize issues, which official discourses seek to bury.[60]

For successive governments who have always sought to control or "manage" Indigenous resistance and refusal to stay silent about violations of their rights, deploying the language of trauma, healing, and closure focuses public attention on Indigenous Peoples solely as victims rather than as rights holders. Among citizens, this reinforces the myth of settler benevolence towards Indigenous victims who are viewed with colonial empathy as beneficiaries of public goodwill. Developing an anti-colonial ethics of caring to counter this myth requires settler allies to continuously reflect on and interrogate what motivates their empathetic responses in working collaboratively with Survivors, Indigenous families, and communities.

Indigenous and anti-colonial concepts, principles, and practices of allyship, solidarity, and alliance building offer valuable insights and guidance to allies about the preparatory work they must do to establish respectful long-term relationships with Survivors, Indigenous families, and communities. Reframing allyship and an ethics of care as a decolonizing relational practice of empathy is essential to the everyday work of dismantling settler amnesty strategies and the culture of impunity that led to the disappearances, deaths, and unmarked burials of thousands of Indigenous children to support Indigenous-led search and recovery processes that will take decades.

TOWARDS AN ETHICS OF RECOGNITION: ACKNOWLEDGING GENOCIDE AND STRENGTHENING ACCOUNTABILITY

Since the TRC's Calls to Action were issued almost a decade ago, a growing number of Canadians may be developing what political scientist Joanna Quinn describes as, "thin sympathy." She examines how citizens in settler colonial democracies might develop thin sympathy not in the emotional sense but, rather, as a first step in education about historical injustices to develop a collective, "understanding, awareness, recognition, and appreciation" of why reconciliation is necessary.[61] Gaining a rudimentary understanding of the basic facts of what happened to Indigenous children in Indian Residential Schools can then lay a more solid foundation for reconciliation moving forward.[62] In a comparative analysis of truth and reconciliation commissions in Canada, Norway, and South Africa, Quinn argues that in established democracies where most of the population benefits from the systems, structures, and institutions of settler colonialism:

> The dominant population is often unable to understand or identify with the need for any kind of transitional justice process. In many ways, their ignorance is fostered by the sorts of piecemeal responses that are doled out by governments when they are pushed to respond to calls to deal with the past and ongoing harms, rather than carrying out the kind of complete overhaul that is needed.[63]

This is consistent with the findings in an earlier chapter of this Final Report that identify the limitations and gaps of Canada's ad hoc or piecemeal approach to reparations for Indigenous Peoples as a strategy of settler amnesty that fosters a culture of impunity. Canada and the churches first denied responsibility for abuses perpetrated in the Indian Residential School System and then only partially acknowledged their accountability in response to litigation pursued by Survivors in the courts. Their primary focus was on limiting political, legal, and financial liability in a series of one-off settlement agreements rather than on taking a more holistic approach to accepting responsibility, repairing wrongdoing, and mending their relationships with Indigenous Peoples.

Quinn argues that, ideally, thin sympathy should be built prior to the start of a truth commission or inquiry, and concludes that, although the TRC's extensive public education program during its tenure and the TRC's Calls to Action on public education built societal capacity for better understanding, "these activities came too late in the process to change hearts and minds and make Canadians more receptive to the work of reconciliation."[64] However, as political scientist Onur Bakiner points out, "some groups in society may develop acknowledgment

through formal initiatives," such as truth commissions.[65] Post-TRC in Canada, human rights-oriented public education continued through universities, schools, museums, archives, books, and films. The TRC's public education work may well have laid the foundation for the outpouring of support for Indigenous communities when it told the public that search and recovery efforts were underway. Equally important, Bakiner observes that critical questions raised by truth and reconciliation commissions about unresolved historical injustices do not simply disappear when a commission completes its work. When recommendations for redress are ignored, these issues can resurface in public discourse as part of political life. In a study of the long-term political, legal, and societal impacts of truth commissions, he suggests that:

> In the future, studies of truth commission impact should acknowledge that truth commissions can live a second life. Argentina's commission moved to the center of political discussion and controversy more than two decades after its completion, thanks to the leftward shift in that country's politics. However, it is also true that the global rise of the far right complicates the picture.... If the political prospects for truth commissions looked dim in the best of times, perhaps the new political climate will constrain their long-term impact further.[66]

In Canada, the TRC's report on the missing children and unmarked burials, having received minimal public response back in 2015, became a renewed focus of nationwide attention in 2021. In this case, the catalyst was not a change in government but, rather, the actions of Indigenous communities making public confirmations of potential unmarked burials of Indigenous children on the sites of former Indian Residential Schools. This news gripped the nation, sparking an emotive wave of outrage and empathy from Canadians. While, on one level, this is a predictable human reaction to the news that Indigenous children have been treated with such callous inhumanity, but it does not fully explain this strong reaction. Canada was once again confronted with the stark genocidal reality that thousands of children died and are buried in marked and unmarked graves in Indian Residential School cemeteries and at the sites of associated institutions across the country. As Survivors, Indigenous families, and communities continue searching for the truth, unresolved questions about genocide have also resurfaced. The public confirmations reignited public dialogue as some Canadians vehemently denied that this was further evidence of genocide. Others, however, are recalibrating their understanding of genocide—a process that has been ongoing since the TRC first announced its finding of cultural genocide.

In tracing the trajectory of this shift in public discourse, it is evident that there is growing recognition amongst Canadians that the Indian Residential School System constitutes genocide. In May 2015, shortly before the TRC's Final Report was released, then Supreme Court of Canada Chief Justice Beverley McLachlin gave a public speech declaring that Canada has developed an, "ethos of exclusion and cultural annihilation" targeting Indigenous Peoples and that Canada's assimilation laws and policies "in the language of the 21st century [is] cultural genocide."[67] In an interview on the need to improve education for Indigenous youth, former Prime Minister Paul Martin said that, "Canada has a 'moral' obligation to respond comprehensively to the work of the Truth and Reconciliation Commission ... [and that the Indian Residential School System] amounted to cultural genocide."[68] Subsequently, at the public release of the TRC's Final Report, the TRC Commissioners said bluntly that, "the Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to [A]boriginal people and gain control over their land and resources."[69] At least one media report framed all 94 Calls to Action as, "recommendations to confront 'cultural genocide' of [the] schools."[70] Although the Commissioners spoke about the thousands of children who disappeared and died in the Indian Residential School System,[71] neither they nor the media explicitly linked this fact to the TRC's broader conclusion that these institutions were genocidal. Nevertheless, many Canadians were able to make this connection. One observer noted that, "in the following weeks, the phrase escalated from obscurity to common Canadian jargon," as political leaders, academic, journalists, and others began using the term.[72]

A public opinion poll conducted in July 2015 found that, "seven-in-ten (70%) Canadians agree with the use of the term 'cultural genocide' to describe the residential schools policy ... [and that] [e]ven among segments that tend to be less sympathetic to Aboriginal causes in their responses to this survey—prairie residents, past Conservative voters, and those without any personal connection to First Nations—majorities agree that Canada committed 'cultural genocide' in carrying out the residential schools policy."[73] While the poll canvassed Canadians for their views on the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry),[74] which 80 percent of Canadians supported, it did not ask any questions relating to the missing and disappeared children and unmarked burials.

In 2019, government officials reacted cautiously to the MMIWG Inquiry's Final Report, finding that the systematic violence perpetrated against Indigenous Peoples within Canada constitutes genocide.[75] Prime Minister Justin Trudeau accepted the finding but stopped short of saying that he agreed with it.[76] He later said that, "for me, it's a little more appropriate, I believe, to speak of cultural genocide."[77] Then Justice Minister David Lametti said that,

"the federal government will leave the discussion of the term 'genocide' to academics and experts."[78] Then Conservative leader, Andrew Scheer, said that, "the tragedy involved with missing and murdered Indigenous women and girls is its own thing, its own tragedy, and doesn't fall into that category of genocide."[79] Others, however, disagreed. Bernie Farber of the Canadian Anti-Hate Network said that, "those upset over the use of 'genocide' in the report have a limited and often misguided understanding of the term.... Taking First Nation children and sending them to residential schools is a form of genocide; the missing and murdered Indigenous women and girls is a form of genocide."[80]

In 2021, shortly after the Tk̓emlúps te Secwépemc's public confirmation, several polls were conducted to gauge public reaction. In May 2021, one public opinion poll reported that:

> [D]espite conversations about Truth and Reconciliation swirling in the political realm for years, it seems this discovery might have made the legacy of Indian [R]esidential [S]chools feel more tangible for many: six in ten (63%) agree that the Kamloops discovery changed their view of Indian Residential Schools. Not only do Canadians indicate that they know more, but there appears to be more political will—77% agree there should be a national day of remembrance for residential school victims, including missing [I]ndigenous children.... 87% of Canadians agree that the Federal government should assist in searching the grounds of other former residential schools to determine whether there are more unmarked burial sites. The exact same proportion (87%) agree the Catholic Church and religious organizations that ran residential schools need to play a bigger role in reconciliation.[81]

Regarding genocide, another poll found that there were, "differences in views among specific demographics. For instance, 69 percent of young people surveyed (aged 18–29) agree that the residential school policy was an instrument of genocide on the Indigenous population in Canada. Sixty percent of immigrants to Canada surveyed agree."[82] Overall, 58 percent of Canadians agreed that the, "[Indian] [R]esidential [S]chool policy and the way it was carried out was genocide [and] 80% of Canadians expected there to be more gravesites found at [Indian] Residential Schools in the future."[83] When asked how the news about the possibility of 215 remains of Indigenous children made them feel, 72 percent said that they felt sad, 51 percent were angry, 25 percent were embarrassed, 12 percent felt betrayed, 6 percent were indifferent, and 7 percent felt none of these emotions. In total, 49 percent said that, "they had a new appreciation for the damage that [Indian] [R]esidential [S]chools caused [I]ndigenous people."[84]

A third poll conducted after the Tk'emlúps te Secwépemc's public announcement delved more deeply into Canadian public opinion regarding the issue of investigations and accountability. Among its key findings were that:

- It has had a profound emotional impact on a majority (73%) of Canadians and for many, this event, more than any other, has actually shifted how they view [I]ndigenous people (58%).
- A vast majority (87%) of Canadians believe that all former residential school sites should immediately be investigated by independent third parties to determine if and where other bodies of children are buried, and that criminal investigations should be commenced immediately (82%) to determine if charges should be laid.
- A majority (66%) of Canadians also don't want to just acknowledge what happened, apologize, and move on—and while a majority (60%) believe that if fault could be assessed for what happened it's the Christian Churches who ran the schools who might shoulder the liability more than the Federal government that designed, funded, and oversaw the school system (40%), a majority (59%) believe that going forward if there may be substantial financial restitution and/or funding required to deal with these matters that the government and the Christian churches should mostly pay for this equally.
- A majority (55%) of Canadians believe that given the context of the residential school era, what occurred was an act of genocide as opposed to an act of good intentions that had bad outcomes (45%)—and given this, a vast majority (81%) support that the International Criminal Court (ICC) be called upon to investigate the Canadian government and the Vatican for crimes against humanity.[85]

This last poll indicates that, not only were a majority of Canadians recognizing that the Indian Residential School System was genocide, but a growing number also want criminal investigations into the actions of Canada and the churches as potential crimes against humanity. More Canadians are joining Indigenous people to demand truth and accountability from the State for the children who went missing, were disappeared, or died in the Indian Residential School System while in the care and custody of the State.

In July 2022, in media interviews after he delivered an apology to Survivors for the Catholic church's role in the Indian Residential School System, Pope Francis said that what happened in the Indian Residential Schools was genocide.[86] On October 27, 2022, the House of Commons passed New Democratic Party Member of Parliament (MP) Leah Gazan's motion with unanimous consent, recognizing the Indian Residential Schools System as genocide. The motion reads: "That, in the opinion of the House, this government must recognize what happened in Canada's Indian [R]esidential [S]chools as genocide, as acknowledged by Pope Francis and in accordance with [A]rticle II of the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide*."[87] As noted previously, the earlier admissions of "cultural genocide" have no legal consequences.[88] In the House of Commons, "Unanimous consent motions do not receive formal votes, and do not always reflect official government policies. Rather, they are adopted only if no MP voices opposition to them when the motion is moved. The motion reflects the will of the House of Commons, rather than the government itself."[89] MP Gazan, who brought the motion to the floor, said that further work is required, "to ensure that the will of Parliament is honoured by formally recognizing residential schools as a genocide."[90]

Nevertheless, these procedural technicalities should not detract from the political and historical significance of this public acknowledgement. As international criminal law researcher Temitayo Olarewaju points out:

> The House of Commons' acceptance of the term genocide supports arguments that what is dominantly conceived as cultural genocide falls within the scope of the Genocide Convention. This now raises new questions about how that interpretation may be applied to Canadian cases. The House of Commons' resolution also indicates new perceptions of old colonial beliefs and emphasizes harms caused by residential schools.... This resolution may not have any current implication legally in an international court of law. But it represents a shift in the way we think about our history and may affect future international jurisprudence.[91]

Canada has taken important first steps to formally recognize the genocide, crimes against humanity, and mass human rights violations that Indigenous Peoples within Canada have experienced at the hands of successive governments and the churches, acting on behalf of the State. However, as Natan Obed, president of Inuit Tapiriit Kanatami, told participants at the

National Gathering in Iqaluit in January 2024, we must continue to push the country to do better, "It's up to us to keep that momentum going. And to exchange the empathy and the worry and the concern with clear direction on what we do about it.... This work is part of an overarching story in this country about disrespect and lack of justice in life and in death."[92]

For non-Indigenous people involved either as individuals or within government, institutions, and organizations, it is important to consider not only what work must be done in fulfilling the various obligations set out in the next chapter but also how they must do it in an Indigenous-led Reparations Framework. Armed with Indigenous and anti-colonial concepts, ethical principles, and relational practices, allies will be better prepared to work in solidarity and alliance with Indigenous communities in practical ways, to develop collaborative strategies and action plans moving forward. It is also important to keep the bigger picture in mind by situating allies and allyship in the broader context of reparations in settler colonial countries. International literature provides further insight into the challenges of implementing reparative measures in governments, institutions, and organizations in ways that advance rather than hinder truth-finding, accountability, and reconciliation. To do so effectively in relation to the missing and disappeared children and unmarked burials will require long-term commitment and bold leadership across all sectors of Canadian society.

CONTRASTING VISIONS: STATE VERSUS INDIGENOUS APPROACHES TO REPARATIONS

An earlier chapter in this Final Report identified the challenges and limitations of government reparations programs in several countries. States, including Canada, often take an ad hoc or piecemeal approach to reparations as a way to manage political, legal, and financial risk; progress depends on government political will; commitments to apologies may change over time; and State interests are prioritized over the rights of Indigenous Peoples. Drawing on international human rights law, guiding principles, and expert reports to examine Canada's current approach, deeply embedded systemic patterns of genocide in settler colonial institutional structures have been identified that must be dislodged. As sociologist Andrew Woolford points out, "a sophisticated understanding of patterns of destruction wrought by settler colonialism offers a more promising path for addressing genocidal Indigenous-settler relations in a decolonizing manner, since we must understand the complexity of these patterns before we can transform them."[93] This points to the need for a new holistic Indigenous-led Reparations Framework to guide the overall process of searching for,

locating, and commemorating the missing and disappeared children and unmarked burials. Broadly speaking, States and Indigenous Peoples have contrasting visions of the purpose and function of reparations.

Yacqui legal scholar Rebecca Tsosie notes that Indigenous Peoples and settler governments have very different starting points for determining the scope and depth of harms perpetrated as well as what form of reparations are required to foster healing, justice, and reconciliation. Although she is writing in the American context, her observations are equally applicable to Canada. For her, the, "concept of reparations [is] one that is simultaneously emotional and spiritual, political and social [and] [t]he framework for understanding the role of reparations for Native nations must be intercultural."[94] By this, she means that reparations from settler colonial governments cannot be pan-Indigenous; they must be tailored according to the distinct cultures, histories, and laws of each Indigenous Nation. She notes that the State views reparations primarily in terms of providing monetary compensation for narrowly defined harms associated with the loss of a specific piece of land or the cultural harms of forced child removals to Indian Boarding Schools or of enabling the repatriation of Indigenous human remains and cultural artifacts. These are attempts to close off the past by redressing historical injustices in strictly legal terms. However, as Tsosie argues, the historical and ongoing harms suffered by Native Americans in the United States, "are simultaneously legal and moral in nature" and include both political and cultural harms.[95]

Indigenous Peoples on both sides of the settler colonial border in North America take a much broader and longer view of reparations. From their perspective, the loss of Sacred Indigenous lands, bodies, and cultural objects is inseparable from the loss of Indigenous political identity and the violation of their inherent rights as self-determining sovereign peoples. From this perspective, "the concept of reparations for Native peoples MUST include recognition of their right to self-determination."[96] The State is accountable for injustices inflicted through government laws, policies, and acts of genocide, land dispossession, and forced assimilation that have caused great harm over multiple generations.[97] Tsosie concludes that, to be effective, reparations must be based on a holistic approach that upholds Indigenous rights, strengthens accountability and structural change, and promotes intercultural justice and intergroup healing between Indigenous and settler people.[98] To achieve this, "perpetrators (or their descendants) are required to *acknowledge* wrongdoing as a way to start healing the wounds of the past.... [T]ruth about the past is essential, and national politics and histories must be opened to include the voices of those who have been excluded."[99]

Tsosie points to the importance of developing intercultural justice approaches that integrate Indigenous concepts and practices of repairing harms, resolving conflicts, and making reparations to foster healing and reconciliation. She highlights the Indigenous Hawaiian tradition of "ho'oponopono," a process of acknowledgement, apology, and potential forgiveness that, "is premised on the idea that the perpetrator and the person wronged are bound together in a relationship of negative entanglement," which must be addressed. The final phase of the ho'oponopono process is "kala," "which means to release, untie, free each other completely" so that both victims and perpetrators of the wrongdoing are released from its negative impacts.[100] Similarly, in Canada, the TRC called for Indigenous laws, cultural protocols, and practices to be central to implementing reparations and reconciliation. Yet nine years after the TRC completed its work, Canada's ad hoc, piecemeal approach of reparations to rectify the harms and historical injustices associated with the Indian Residential School System through various settlement agreements and tort-based compensation remain primarily based on Western legal theory and practice. Establishing an Indigenous-led Reparations Framework is an opportunity to take a different, more holistic approach to addressing historical injustices that may serve as a prototype for designing other reparations processes.

DESIGNING AND IMPLEMENTING A HOLISTIC INDIGENOUS-LED REPARATIONS FRAMEWORK

As previously noted, the Indigenous-led Reparations Framework and search and recovery processes must be governed by Indigenous laws and the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*).[101] It must strengthen truth-finding and accountability mechanisms, structures, and policies in government departments, church administrations, educational institutions, and other organizations. Keeping in mind that the search and recovery process itself is as important as the outcome, the design and implementation of the Indigenous-led Reparations Framework must be carefully considered. Having a methodical way to think about what is needed, and how to monitor and evaluate what is working and what must change as the framework is implemented to ensure that Survivors, Indigenous families, and communities are properly supported, is critical. Recently, both Tsosie and Native Hawaiian legal scholar Troy Andrade engaged with the work of international legal scholar and restorative justice practitioner Eric Yamamoto.[102] They applied his theoretical framework of social justice through healing to historical injustices and reparations involving Indigenous Peoples in settler colonial contexts. Andrade describes Yamamoto's writing on reparations and reconciliation as, "a theoretical intervention to

set forth guiding principles and a framework ... that is workable *in practice* for critiquing and true healing in communities."[103] Tsosie points to the utility of Yamamoto's framework that, "aligns with the contemporary movement to expand the notion of restorative justice from the frame of 'reparations' for past injustices to a human-rights-based notion of 'accountability.'"[104]

In a comparative analysis of American and Canadian efforts to address the undeniable fact that thousands of Indigenous children on both sides of the border died and were buried at Indian Boarding and Residential Schools, Tsosie notes that, whereas these revelations were part of the TRC's Final Report in Canada, which was released in 2015, the United States has only recently begun similar investigations.[105] In 2021, shortly after the public confirmation of potential unmarked burials in Canada, US Secretary of the Interior Deb Haaland (Laguna Pueblo) ordered an investigation into Indian Boarding Schools, and she released a report with findings and recommendations in 2022. Legislative efforts to establish a Healing and Reconciliation Commission are also underway.[106] Applying Yamamoto's framework, she concludes that the United States is still in the early stages of recognizing the historical injustices associated with the Indian Boarding School System, and their attempts at restorative justice to date have been narrowly focused, "Currently there is no federal law that addresses the harms of the Indian [B]oarding [S]chool [S]ystem, and it is unclear whether further progress on establishing a Healing and Reconciliation Commission will be made.[107]

Andrade conducted a case study of the State of Hawai'i's reparative process for addressing historical injustices associated with the illegal overthrow of the Hawaiian sovereign Nation and the consequences of Native Hawaiian's loss of self-determination, land, culture, and language. Setting this in the broader context, he points out that, "from the violent displacement and genocide of [I]ndigenous communities to the enslavement and forced labor of Africans ... American history is rife with examples of atrocious injustice ... involv[ing] complex issues of colonialism, imperialism, racism, capitalism, and rugged individualism."[108] However, while, "many have tried to address these historical injustices through legal and political systems ... providing concrete avenues for the community to not only heal emotionally, but economically, physically, and culturally, ... many of these admirable efforts failed."[109]

Andrade applies Yamamoto's framework to critique the State of Hawai'i's failed reparative efforts and, "to explain how reparative change was possible, but also to demonstrate the fragility of true healing."[110] Briefly summarized, in 1978, the State of Hawai'i "ratified a constitutional amendment that provided a means for Native Hawaiian self-governance and self-determination ... [which] began at the pinnacle of a Hawaiian renaissance."[111] The

creation of the Office of Hawaiian Affairs (OHA), "[a] semi-autonomous entity through the state constitution, the highest form of law in Hawai'i, restructured power and the relationship between Native Hawaiians and the State of Hawai'i."[112] However, "the victory of Hawaiian advancement in state governance was quickly dampened by a swift backlash—not by the public, but by politicians ... who actively undermined the reparative intent of the OHA."[113] Using various legislative manoeuvres, they, "gutted Native Hawaiian autonomy from the constitutional mandate and ripped apart the reconciliation process."[114] Importantly, Andrade emphasizes that Yamamoto's, "*social justice through healing framework* reflects the Native Hawaiian saying, 'pūpūkahi i holomua,'" which translates to, 'united, as in harmonious co-operation [to move] forward.'"[115]

In a similar manner, Yamamoto's theoretical intervention is a valuable analytical tool for assessing the shortcomings of Canada's current ad hoc, piecemeal approach to reparations and identifying the elements of a holistic Indigenous-led Reparations Framework to address these gaps in ways that meet Indigenous criteria. The following section sets out the key aspects of the framework, applying these as they relate to current reparative efforts relating to the missing and disappeared children and unmarked burials. Yamamoto developed the framework because he has witnessed first-hand the problems created when States take a narrow, piecemeal approach to reparations based on tort law. Such an approach, "undercuts the viability of most reparations claims and distorts public understandings of broad-scale group-based injustice. Something else is needed. A praxis approach—connecting the conceptual to the practical and a pragmatic remaking of the idea of 'reparations.'"[116] He therefore aimed to produce, "a framework grounded in theory and workable in practice that helps shape, implement and assess social healing initiatives."[117]

Drawing on a multidisciplinary approach, Yamamoto's holistic framework for "social healing through justice" first sets out six preconditions or working principles that are prerequisites for effective social healing. These principles coalesce into an analytical framework of the 4Rs—recognition, responsibility, reconstruction, and reparation—"that stand as shorthand for the analytical inquiries generated by a *social justice through healing framework* that aims to shape, assess, and recalibrate social healing initiatives to foster the kind of reparative justice that heals."[118] In practical terms, the framework is designed for those engaged in a reparative process to, "assess and reinvigorate the initiative along the way so that it meaningfully addresses the harms to people, communities, and society itself."[119] The framework is not prescriptive; rather, it is designed to be a dynamic, flexible process that takes into account the intercultural dynamics and changing political, legal, and social circumstances that impact efforts to address the historical injustice.

Preconditions and Working Principles for Social Justice through Healing

Working Principle 1

Participants in the process and society more generally must share an interest in peaceable and productive group relations in a reconstructed society even though challenging and difficult.[120] Despite the challenges and slow progress on fulfilling the TRC's Calls to Action 71–76, and the toxic denialism of a small group of people, there is broad societal consensus and support for Survivors, Indigenous families, and communities seeking the truth about what happened to their children and where they are buried. This is generally understood to be an essential part of reconciliation across all levels and sectors of Canadian society. However, there is ongoing tension between government and institutional approaches to reparations and reconciliation that replicate inequitable settler colonial power relations versus Indigenous human rights-oriented approaches that uphold Indigenous laws, sovereignty, and the right of self-determination. To ensure ongoing widespread support, there is an urgent need for public education to counter settler amnesty and a culture of impunity fuelled by denialism and apathy.

Working Principle 2

Reparative justice or social healing for historical injustices must not supplant contemporary justice advocates' efforts to dismantle oppressive systems, structures, and institutions of oppression but should inform and catalyze these efforts.[121] The TRC's reconciliation framework recognizes the need to address the history and ongoing legacy of all aspects of the Indian Residential School System, and this overarching principle is now well established in Canada. At the Office of the Independent Special Interlocutor's (OSI) National Gatherings over the past two years, participants made strong connections between the need to find the truth about the missing and disappeared children and the need for contemporary systemic, structural, and institutional change to ensure the non-repetition of atrocities, genocide, and crimes against humanity. The Indigenous-led Reparations Framework builds on the TRC's work, identifying pathways to strengthen truth-finding, accountability, and justice and promote anti-colonial transformative change.

Working Principle 3

Social justice through healing must occur simultaneously at individual and collective levels and address both emotional and material aspects of redress, including opportunities for survivors to share their experiences, State acknowledgement of harms, community capacity building, and financial support.[122] The OSI's National Gatherings confirmed the ongoing need for opportunities for Survivors, Indigenous families, and communities to share public testimonies about the missing and disappeared children and their searches to find them and locate their burial sites. This supports individual and collective healing and holds government and churches to account. Indigenous Nation-to-Nation collaborative relationships and strategies of community empowerment are strengthened by exchanging information about barriers and sharing emerging practices being developed to overcome these challenges. Various political and church leaders have made public statements acknowledging harms, and Pope Francis has made an apology. Governments have been providing limited financial support for search and recovery work. However, full accountability for the scope and depth of harms relating to the missing and disappeared children and unmarked burials in the Indian Residential School System and associated institutions is still required.

Working Principle 4

There must be changes in social structures by restructuring social, economic, and political relationships to prevent the recurrence of the injustice. The focus is on institutional reordering through legal and political changes that build democratic checks and balances into the exercise of government power.[123] Strengthening State accountability to prevent the recurrence of injustices relating to the missing and disappeared children and unmarked burials requires countering settler amnesty and a culture of impunity by dismantling inequitable settler colonial power relations in Canadian systems, structures, and institutions through political, legal, and policy reform. This is extremely challenging and will require a long-term commitment to decolonizing on individual and collective levels to implement transformative organizational change. Implementing the Indigenous-led Reparations Framework may serve as a potential template for expanding this approach to address other historical and ongoing injustices that impact Indigenous-Crown relations.

Working Principle 5

This principle is linked to Principle 4 and emphasizes the practical importance of generating a real-world collective sense that justice has been done, not just in words but also by actions. This requires the pragmatism that comes with recognizing that, "what may be ideal theoretically may not be fully achievable practically" in the short term. Achievable goals and workable processes must be flexible to adapt to changing political and economic circumstances that may impact reparations processes.[124] This principle speaks to the importance of ongoing advocacy by Indigenous political leadership as well as the practical need to deploy interim measures in developing a new legal and policy framework to support search and recovery processes in preparation for its full implementation. This creates collaborative opportunities to learn from mistakes and develop appropriate practical remedies to improve the multi-year Indigenous-led Reparations Framework as circumstances change. However, firm timeline and financial commitments for achieving interim and full measures are required to prevent backsliding by governments, churches, and other institutions and organizations.

Working Principle 6

This principle is cautionary. It points to the need for participants to understand the, "dark side of [the] reparative justice process." It requires interventions to call the involved parties to account for stalled initiatives that are attempts to deflect or subvert organizing efforts for substantive changes in systemic power structures. The limitations of tort-based reparations must be kept in mind and, "pushback and recriminations for ideological, financial, political or other reasons" must be anticipated. This, "highlights the importance of community organizing, public education and political struggle along with acknowledgement of justice inaction—continuing mistrust or enmity, social divisions, a failure of social ideals and damage to societal stature."[125] This principle affirms the importance of ongoing Indigenous resistance, and interventions in, settler colonial strategies of genocide and violence that engendered mass human rights violations against Indigenous children who went missing, were disappeared, died, and were buried at the sites of former Indigenous Residential Schools and associated institutions. It points to the need for non-Indigenous people to join Survivors, Indigenous families, and communities in this struggle through relationships of alliance and solidarity to ensure full implementation of the Indigenous-led Reparations Framework.

Together, these six preconditions or working principles establish a foundation for critical inquiry and analysis, as set out in Yamamoto's holistic social justice through healing framework. Applying the framework's 4Rs—recognition, responsibility, reconstruction, and reparation—to the reparation or reconciliation process gives States and citizens a practical tool to ask questions, identify and mitigate problems, and make changes to resolve issues to prevent further harms.

Applying the 4Rs Framework in the Context of the Missing and Disappeared Children and Unmarked Burials

Yamamoto explains that, "in practical terms, the 4Rs inquiries engender pivotal questions about a social healing initiative ... as a workable means for tackling messy, conflictual, yet significant, social healing initiatives."[126] Applying the concepts of recognition, responsibility, reconstruction, and reparation in the context of the missing and disappeared children reveals the broader issues and questions that must be kept in mind when implementing an Indigenous-led Reparations Framework. Beginning with recognition is key because it is the concept from which responsibility, reconstruction, and reparation flow. He cautions against developing, "an idealized vision of actual prospects for social healing reparations processes," pointing out that reparations processes based solely on a therapeutic model can overlook the shaping or distorting influences of political and social structures.[127]

Recognition

There are two aspects of recognition: (1) the need to identify and assess the scope of the historical injustice that must be addressed with a view to understanding its ongoing impacts today and (2) the need to recognize the depth of harm and foster empathy. When governments ignore the totality of the injustice perpetrated by the State by attempting to limit reparations to a singular event and a narrowly defined scope of harms, victims' sense of injustice is heightened. Yamamoto points out that, for Indigenous Peoples, unresolved historical injustices perpetrated by the federal government through land dispossession, cultural destruction, and denial of self-governance over generations, "undergirds ... contemporary anger at the government's insistence on monetary payments ('buy-outs') as social healing."[128]

In Canada, Indigenous Peoples do not view unjust child removal laws and policies as separate from other unresolved historical injustices stemming from territorial land dispossession and the denial of Indigenous self-determination. Rather, these are all manifestations of genocide perpetrated by successive settler colonial governments. Although Canada has acknowledged

the abuses perpetrated in the Indian Residential School System, apologized, made tort-based reparations, and initiated the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry), both the TRC and the MMIWG Inquiry found that Canada has still only partially recognized the full scope and depth of the harms and mass human rights violations. From this broader perspective, Indigenous public confirmations of potential unmarked burials of the missing and disappeared children peel back another and perhaps the most horrifying layer of atrocities, genocide, and crimes against humanity perpetrated in the Indian Residential School System. However, the opinion polls conducted shortly after the public confirmations by Tk'emlúps te Secwépemc, Cowessess First Nation, and others suggest that there is growing public acceptance that Canada committed genocide against Indigenous Peoples. While this awareness is needed, it remains to be seen whether full and formal recognition by the State will occur.

Yamamoto notes that, "*recognition* asks participants in the social healing process to acknowledge and empathize with the anger, suffering and hopes of those harmed, focusing on 'victims' but also with an eye on 'perpetrators.' The goal is to humanize the other ... and this need for empathy extends to re-inflicted injuries that occur during the social healing process."[129] These harms or "wounds" can be emotional, material, or stem from, "collective memories of group exclusion, and both kinds of harms need attention." Therefore, "recognition of the historical roots of present-day grievances and the localized context of specific conflicts are critical. Otherwise, social healing efforts can be undermined from the start because of misunderstandings about the nature of the harms and underlying causes."[130] Analysis of these historical roots means, "unravelling 'stock stories' [or] narratives shaped and told by groups (especially governments) to justify abuse of others,"[131] thereby emphasizing the critical importance of public education. As discussed above, in the context of truth-finding relating to the missing and disappeared children and unmarked burials, anti-colonial forms of empathy are essential to developing an ethics of caring in search and recovery processes.

Responsibility

Responsibility asks participants to, "carefully assess the dynamics of group power" that impact reparations and reconciliation processes.[132] Yamamoto observes that acknowledging and accepting responsibility for harms caused by the abuse of power not only applies to those who participated directly in the abuse but also to those who were complicit because they knew about the abuse and did nothing to address it. Those who have benefited indirectly (for example, through land acquisition or career advancement) from the violations of others'

human rights and citizens who are the group beneficiaries of such violations are also responsible.[133] While Canada and the churches accepted some legal and moral responsibility for abuses in the Indian Residential School System, they did so grudgingly in a litigation process that took years. In the context of the missing and disappeared children and unmarked burials, the concept of responsibility is linked even more strongly to the need for truth, justice, and accountability. For many Canadians, as images of children at the former Indian Residential Schools and the cemeteries flashed across screens in media stories, being confronted with the full extent of Canada's violation of the humanity and dignity of Indigenous children marked an important turning point in the country's history. A growing number of Canadians understand the need for comprehensive forensic and criminal investigations and believe that Canada must be held fully accountable through the international human rights and criminal legal systems. In their view, it is unacceptable for Canada to continue to evade full responsibility for the enforced disappearances, deaths, and burials of thousands of Indigenous children while in the care and custody of the government and churches.

Reconstruction

Yamamoto explains that "*Reconstruction* means acting on the words of *recognition* and *responsibility*. It means interactively reaching out in concrete ways that promote individual and community healing by rebuilding relationships and remaking institutions."[134] Therefore, how those involved in a reparations process conduct their everyday work is as important as the work itself. A first step in reconstruction is the offering of apologies. But to be judged as sincere, formal apologies must be followed with action.[135] These may include commemorative actions such as the construction of memorials, museums, and educational facilities as well as public messaging about the lessons learned about the historical injustices.[136] Finally, there must be institutional restructuring to implement significant changes in the legal, political, educational, health-care, business, and media sectors of society to prevent recurrence, "*Reconstruction* must result over time in restructuring the institutions and relationships that gave rise to the underlying injustice. Otherwise, the root problems of misuse of power remain, particularly the maintenance of oppressive systemic structures, including discriminatory courts, legislators, bureaucracies, and businesses."[137]

In Canada, work is slowly ongoing to fully implement the TRC's Calls to Action on reconciliation to repair Indigenous/non-Indigenous relationships and restructure settler colonial institutions. This includes ongoing apologies, settlement agreements, public education, and commemoration relating to addressing the history and ongoing legacy of the Indian

Residential School System. Recent public revelations about the history and unresolved legacy of the missing and disappeared children and unmarked burials demonstrates how much truth remains unknown. Establishing respectful collaborative working relationships with Survivors, Indigenous families, and communities, and encouraging Indigenous leadership to support Indigenous-led search and recovery processes through political, legal, and policy reform can lay a strong foundation for social justice through healing.

Reparation

Yamamoto observes that, *"Reparation* links closely to *reconstruction*.... It speaks to transformation.... [A]cts of *reparation* (and *reconstruction*) by governments or groups must result over time in a restructuring of the institutions and relationships ... that produced the underlying justice grievances. Otherwise, the reparative initiative cannot be effective in addressing the root problems of power abuses, particularly the maintenance of oppressive systemic structures."[138] He cautions, however, that transformative societal change, "will not flow naturally and inevitably from words of apology or from the formal bestowal of reparations. Governments or private groups will likely twist reparative efforts and cast reparations in ways that tend to perpetuate existing power structures and relationships."[139] Countering this requires ongoing advocacy and collaboration across all sectors of society. This accurately describes what has happened in Canada in terms of political and legal responses to Indian Residential School litigation that has ultimately served to maintain settler amnesty and perpetuate a culture of impunity. The Indigenous-led Reparations Framework provides a pathway for changing this in fundamental ways that would support Yamamoto's path-breaking vision of social justice through healing. With that in mind and drawing on the international guiding principles for reparations and reconciliation outlined in earlier chapters, it is essential to articulate the overarching principles to guide an Indigenous-led reparations process.

WEAVING TOGETHER INDIGENOUS AND WESTERN APPROACHES TO REPARATIONS AND RECONCILIATION PROCESSES

Survivors, Indigenous families, and communities, and Indigenous leadership are exercising their right to apply Indigenous laws in search and recovery processes.[140] This includes the right to decide when the Sacred ceremonies, protocols, and practices of Indigenous laws must remain private and when they may be publicly shared. When Indigenous communities decide

to apply Indigenous laws in designing and implementing the Indigenous-led Reparations Framework, this must be respected and upheld by governments, churches, archives, museums, universities, and other institutions involved in collaborative initiatives. Rebecca Tsosie emphasizes that Indigenous methods of resolving conflicts, repairing harms, and making peace must be integral to developing holistic intercultural justice approaches to rectify the ongoing violence and historical injustices of settler colonialism. Anishinaabe legal scholar John Borrows notes that, "Indigenous [P]eoples have long possessed normative values to guide their response to disputes. These norms, and the structures they can generate, have not received sufficient protection and preeminence in alternative dispute resolution discussions.... [However,] care should be taken that intercultural dispute resolution does not become colonialism's leading edge, erasing cultural difference in the guise of sharing."[141] He points out that, "The independence of [I]ndigenous legal systems is, in fact, necessary for healthy intercultural relations ... [and that] [t]o advocate for separate [I]ndigenous justice systems ... is not to deny the vital importance of intercultural dispute resolution."[142] Both are essential to an Indigenous-led Reparations Framework.

Weaving together Indigenous and Western reparative justice approaches to addressing harms, resolving conflicts, and making peace has decolonizing transformative potential for intercultural relationships between Indigenous and non-Indigenous people. For example, William Woodworth (Raweno;kwas) (Lower Mohawk Kanien'kehá:ka Nation of Six Nations of the Grand River) shares the importance of Haudenosaunee laws and the Condolence Ceremony to explain how, "a good life (peace, power, and righteousness) can only take place among the 'clear-minded' even today at Six Nations of the Grand River Territory":

> The [C]ondolence evolved in several forms out of the needs of the people, including a condensed form of the "three bare words" of the "At the Woods Edge" greeting offered to strangers found wandering in our territories. In this simplest of condolences, a small group of "brothers" is dispatched to meet those wandering "on the path." They approach strangers crying to demonstrate their compassion. They build a fire directly on the trail. There they begin burning tobacco while they carry out a condolence. First they wipe away the tears with a soft doeskin, so that they may look about the place with peace and with clarity. Next, they are assumed to have obstructions in their ears, so they are cleaned that they may more easily listen to the good words spoken. Finally, they are offered fresh spring water to clear the obstructions of their throats so that words of mutual greeting can be spoken freely. Only after acceptance and

> participation in this ceremony are the "strangers" offered a place in the village, where they can eat the food and sleep in the longhouse if they find these things and practices agreeable. Finally, the fire is extinguished, and they are escorted, if willing, into their adopted "home."
>
> The sweet compassion of this respectful, comforting, and consoling ceremony of welcome struck me in the form of a "vision" as a deep and meaningful response to the ennui and disconnection of immigrants to our homeland—past, present, and future. These practices might also recover and reconstruct our traditional identities as Indigenous [P]eoples hosting those wanting to adopt our homeland as their own. In this reconstructed and renewed relationship we might all correct and model a way to address the destructive patterns of colonization which have contaminated relationships among peoples all over the planet over the past several hundred years.[143]

In another example, Rainey Gaywish (Cree and Icelandic, Fisher River Cree Nation), fourth degree Grandmother in the Three Fires Midewiwin Lodge, explains that:

> The [P]ipe has a very significant role and understanding to affect the intent of reconciliation, which is to restore peace and a lot of those teachings that come from our traditional places explain the healing as being a transformative kind of process. And it's to restore equilibrium or to restore balance and it's understood that you can't have peace if there's an imbalance that's been created. So reconciliation is a particularly English word, but if you go back to what the words are in different languages, you probably will find more resonance using words like peace, or the making of relations. You can't have reconciliation until we have reparation. Like some of the damage that's been done to the relationship has to be addressed and reparation to repair it. We can't have reconciliation until there's restitution.[144]

When Indigenous Peoples decide to apply their laws in intercultural justice processes, the TRC noted that, "We all have a 'duty to learn' about Indigenous law. There is a duty to listen to the voices of those who have lived on this land for thousands of years. Ignorance will take us down the wrong road. Honest efforts are needed to learn and apply Indigenous principles of apology, restitution, and reconciliation."[145] Developing a holistic reparative intercultural justice process led by Indigenous Peoples demands nothing less from non-Indigenous people.

According to international conflict transformation scholar and practitioner John Paul Lederach, participants in conflict resolution and peacebuilding processes must, "understand and feel the landscape of protracted violence and why it poses such deep-rooted challenges to constructive change. In other words, we must set our feet deeply into the geographies and realities of what destructive relationships produce, what legacies they leave, and what breaking their violent patterns will require."[146] This means using "moral imagination," which he defines as, "the capacity to imagine and generate constructive responses and initiatives that, while rooted in the day-to-day challenges of violent settings, transcend and ultimately break the grips of those destructive patterns and cycles."[147] He asks a key question, "How do we transcend cycles of violence ... while still living in them?" For Lederach, "constructive social change seeks to move the flow of interaction in human conflict from cycles of destructive relational patterns towards cycles of relational dignity and respectful engagement."[148]

Lederach concludes that doing this effectively requires careful analysis and structuring of the process to understand the overall situation both in terms of the various people involved and the resources and activities they can mobilize as well as the immediate issues and systemic concerns they must address. The roles and responsibilities of leadership at all levels—political, institutional, and grassroots—must be identified.[149] Political or top-level leadership includes politicians and senior government officials. Institutional or mid-range leaders come from all sectors of society, including the governments, the legal system, churches, academia, and non-governmental organizations. Grassroots leadership includes community leaders and local officials.[150] Individuals and groups at each of these levels have a critical role in identifying and addressing the systemic issues supporting relationships of violence and injustice. Lederach notes that mid-level leaders with connections to both top-level and grassroots leadership and their ability to, "draw on valuable human resources, tap into and take maximum benefit from institutional, cultural, and informal networks that cut across the lines of conflict ... [have] the greatest potential to serve as sources of practical, immediate action and to sustain long-term transformation in the setting."[151]

In the Canadian context, upholding the overarching principles of an Indigenous-led process points to the need for non-Indigenous allies to critically assess concepts, principles, and practices of leadership through an anti-colonial lens. Kanien'kehá:ka (Mohawk) leadership studies scholar Michael Lickers and Métis intercultural mediator and scholar Lorelei Higgins Parker note that:

> The foundation for leadership is paramount to many Original Teachings and is ingrained in Indigenous Ways of Knowing, Being, and

> Doing. Indigenous leadership generally invites the views that a leader is never above the people and, in many cases, not even seen as equal. Leaders are below others, with the sacred duty to hold up the people to achieve their greatest dreams. Leadership is not self-appointed.... One of the most significant actions that can be taken and is a large part of the Truth and Reconciliation journey in Canada is to honour the Original Teachings and the deep understanding embedded in the Teachings.... This paralleling of knowledge will result in more culturally grounded and aware leaders from the balance of Indigenous and Western knowledge bases and there is no greater time than now to exercise our leadership and opportunities.[152]

For non-Indigenous allies, anti-colonial approaches to leadership involves learning to work with humility and an ethics of care. All those working to implement the Indigenous-led Reparations Framework must not only attend to the more visible elements of the process but also bear in mind what Lederach describes as relational "qualities of practice." "From this lens, reconciliation looks through—at times goes through—what is visible and penetrates the deeper processes of perceptions, understandings, and interpretations of the purpose and meaning of a relationship, how it was constructed and will be reconstructed."[153] He identifies five qualities of practice that centre relationship, including:

- Creating relationships of trust, transparency, and accountability;
- Envisioning the process as an ongoing journey of shared humanity and demonstrating the authenticity of one's commitment through respectful actions;
- Practising humility as part of truth-finding and critical self-reflection, engaging in the process with a spirit of inquiry and creativity through ongoing learning;
- Restoring the damaged fabric of community at local, regional, and national levels, creating opportunities for communities not to "forgive and forget" but to remember and change; and
- Developing long-term institutional processes and timelines to enable individuals and communities to prepare and to support multigenerational reconciliation.[154]

> Focus on people and their experience. Seek a genuine and committed relationship rather than results.... Be leery of quick fixes. Respect complexity but do not be paralyzed by it. Think comprehensively about the voices you hear that seem contradictory, both within a person, between people, and across a whole community.... No matter how small, create spaces of connection between them. Never assume you know better or more than those you are with who are struggling with the process. You don't. Do not fear the feeling of being lost. It is part and parcel of creating safe space. Give it time.
>
> — John Paul Lederach[155]

What Are the Overarching Principles of an Indigenous-Led Process?

For allies to work effectively in an Indigenous-led process, they must understand the principles that guide it. While the specific elements of the various processes will differ according to the Indigenous laws, protocols, and practices of the Indigenous community, tribal council, political territorial organization, or other representative body involved, certain overarching principles are applicable to all. Article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) is the key principle from which all others flow, "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own [I]ndigenous decision-making institutions." An earlier chapter in this Final Report documents the international legal principles and various expert reports confirming that Indigenous Peoples must be active participants, have a leadership role, and have decision-making powers in designing and implementing reparations. They emphasize, as previously noted, that the process is as important as the outcome, and that establishing respectful relationships is essential to this task. These international legal principles and reports highlight several important aspects of what Indigenous-led means in the context of searching, locating, and commemorating the missing and disappeared children and their unmarked burials. The process matters and must be respectful of Survivors, Indigenous families, and communities. To be legitimate, the perspectives and full participation of Survivors, Indigenous families, and communities need to be incorporated at all stages.

An Indigenous-led process should be guided by the following key principles:

- Decisions about what steps are required leading up to, during, and after searches, including which outside experts to involve, must be made by Survivors, Indigenous families, and communities.
- Governments, churches, archives, museums, universities, and other institutions must respect and uphold Indigenous Peoples' right to oversight and decision-making in the search and recovery process. This requires colonial institutions to cede power/control to Survivors, Indigenous families, and communities to develop, implement, and evaluate initiatives and collaborative agreements at community, regional and national levels. This is so even if these colonial institutions/organizations are providing the funding to support search and recovery efforts.
- Where national or regional policies or laws are being considered, Indigenous sovereignty must be respected. All levels of government must consult in good faith with Survivors, community leadership, Indigenous national/provincial/territorial political organizations, and Indigenous bodies with the required expertise (such as the National Advisory Committee on Residential Schools Missing Children and Unmarked Burials) with respect to any decisions being made that impact search and recovery efforts.

Although there are instances where true co-development and partnership between governments and Indigenous communities is occurring, all too often, "co-development" and "partnership" are euphemistic terms that governments rely on when making unilateral decisions. It is not appropriate for the federal government to make decisions for or on behalf of Survivors, Indigenous families, and communities leading this Sacred work. Rather, Indigenous Peoples have the sovereignty and jurisdiction to make these decisions themselves. It is for Indigenous Peoples to determine who their "partners" will be and who they wish to work collaboratively with to find the missing and disappeared children and their unmarked burials. Search and recovery work is not a "program" or a "partnership" between the federal government and Indigenous communities. Rather, it is an international obligation of the Canadian State to support the work to find the missing and disappeared children and ensure those responsible for creating the conditions that contributed to their deaths are held accountable.

EXPANDING THE CIRCLE: IDENTIFYING REPARATION GAPS AND EMERGING PRACTICES OF ALLIANCE AND SOLIDARITY

> Together, Canadians must do more than just *talk* about reconciliation; we must learn how to *practise* reconciliation in our everyday lives—within ourselves and our families, and in our communities, governments, places of worship, schools, and workplaces. To do so constructively, Canadians must remain committed to the ongoing work of establishing and maintaining respectful relationships.
>
> — TRC, Final Report[156]

While much of the focus of the Indigenous-led Reparations Framework is necessarily on legislative and government policy reform, key public institutions such as universities, churches, the media, and civic society organizations also have an important role in supporting the Indigenous-led Reparations Framework. Expanding the circle is both conceptual and practical. Conceptually, this Final Report expands the scope and methodology of search and recovery processes to ensure that they are governed by Indigenous laws, principles, cultural protocols and ceremonies, and the *UN Declaration*. It expands the scope of responsibility for the missing and disappeared children and unmarked burials beyond the Indian Residential School System to encompass other institutions such as Indian Hospitals, sanitoria, psychiatric institutions, reformatories, and homes for unwed mothers. These have been discussed in detail in *Sites of Truth, Sites of Conscience*. In short, any other institution where Indigenous children were forcibly transferred to, or whose members were complicit (either directly or indirectly) in the mistreatment of Indigenous children in these institutions, has a responsibility to investigate and account for their role by taking reparative action.

Practically, expanding the circle encompasses people within governments, universities, church administrations, the media, museums and archives, and various other institutions and professional organizations engaged with Survivors, Indigenous families, and communities and Indigenous leadership to implement the Indigenous-led Reparations Framework. There is much to be learned from the collaborative arrangements and practices that have emerged over the past two years. While an exhaustive list of these is beyond the scope of this chapter, there are many representative examples throughout this Final Report. Without losing sight of the substantive challenges and barriers that remain, it is equally important to focus on how institutions, groups, and individuals are working to overcome these barriers. As such, three key societal institutions—universities, churches, and the media—are examined, noting the existing gaps and identifying the emerging practices of truth-finding that can strengthen societal accountability. Each has a critical role in countering settler amnesty

and impunity that fuels denialism and apathy. Other examples highlight the actions of Indigenous and non-Indigenous individuals or groups who are working in alliance and solidarity on various collaborative initiatives. Together, these examples demonstrate the power and potential of seizing opportunities to work creatively and collaboratively to support Survivors, Indigenous families, and communities engaged in search and recovery efforts. They illustrate how Eric Yamamoto's analytical framework and principles of social justice through healing, and Lederach's concept of leadership at all levels and qualities of practice, can be applied in reparations and reconciliation processes to establish a solid foundation of shared truths that strengthen accountability in ways that generate anti-colonial transformative change.

Universities: Allies in Education, Bystanders to Truth-Finding and Accountability

It is important to acknowledge that universities, to varying degrees, are implementing the TRC's Calls to Action on education, and several have issued apologies acknowledging their role as one of the many colonial institutions that supported and failed to speak out against the Indian Residential School System.[157] As discussed in previous chapters, professors from various faculties are establishing collaborative relationships with Indigenous communities to support search efforts to locate, recover, and commemorate the missing and disappeared children and unmarked burials.[158] Many faculty members with expertise in ground searching are volunteering their time to support Indigenous-led searches. This time is not counted towards their professional obligations as professors. They are still required to teach a full course load and publish at the same rate despite dedicating much of their time to searching sites. There are some instances where universities are charging First Nations and other Indigenous organizations leading search and recovery efforts for the costs of students to help with ground-penetrating radar (GPR) or other remote-sensing technologies.

EMERGING PRACTICE: COLLABORATIVE PARTNERSHIPS TO TRANSLATE OLD FRENCH RECORDS

Barbara Lavallee, of Cowessess First Nation, was part of the team investigating the Cowessess (Marieval) Indian Residential School. While gathering records, Lavallee found that a large number were in French. These French language documents were in sacramental and burial registers that could help the community identify missing children and unmarked burials. However, she realized that it was much more complicated than just translating documents

word for word because it involved appreciating the social context of the era and understanding the historical use of the French language.

The University of Regina's French and Francophone Intercultural Studies program offered to help with the historical French translation of Marieval Indian Residential School documents. Around 60 percent of Indian Residential Schools were administered by the Catholic church, with the Oblates of Mary Immaculate as the primary order in charge. While many of these Indian Residential Schools taught children in English, the Oblates were an order based in France and Quebec, and they communicated in oral and written French. Although much of the content of the written documents deal little with the children's own experiences in Indian Residential Schools, the material can provide leads and information that can be cross-referenced with oral testimonies and documents from other archival sources. Details on school policies, medical visits, runaways, transfers, and even some cases of abuse are contained in these documents.

Dr. Jérôme Melançon, the head of the French document translation project, is able to translate these documents applying the context of historical French. Historical French differs from contemporary French in expressions of speech, word meanings, and nuances. At the National Gatherings, Melançon warned participants against the use of translation services that do not specifically offer historic French translation services, noting that it is more important for researchers to find someone who understands old French than it is to hire a professional translator. Francophones who have grown up with rural French or were taught by older-generation French speakers are better suited to provide a more accurate and useful translation of these documents. Melançon also noted that translation services are often very expensive. The translation industry is unregulated, and while there are no standards for translation services, many run between 15 and 19 cents per word. Given the volume of documentation that may need translation, not only for the Marieval Indian Residential School but also for many other institutions, substantial budgets could be spent on translation alone.

Translators of Indian Residential School records should approach their work differently than regular translation work. While translators typically work in isolation from their clients, this type of work requires translators to collaborate directly with the researchers and communities to ensure authenticity.

Non-Indigenous translators engaged in Indian Residential Schools must read the TRC's Final Report to understand the history, the operations, and how religious entities interacted with Indigenous communities. A good understanding of the historical context and the community's research goals is important for translators in order to highlight important contextual nuances of the era as they translate. The translation group led by Melançon is prioritizing sharing information and resources with Indigenous communities, researchers, and translators. They hope to create training programs and a formal information document to support this work in other communities searching different Indian Residential School sites. Additionally, Melançon is exploring a way to inform francophone communities on the relationships between francophone, religious orders, and Indian Residential Schools. He hopes this will assist with some of the, "historical amnesia" in francophone society and address the historical responsibilities that they have in assisting with finding the missing and disappeared children.

Expanding the Scope of Knowledge about University Complicity and Benefits

There is considerable information available regarding university efforts to fulfill the TRC's Calls to Action relating to education. This Final Report concludes that more public education is required to counter denialism and apathy. However, universities have not yet fully investigated their complicity in the Indian Residential School System and the deaths of Indigenous children at these and other associated institutions. Their histories as institutional bystanders who reaped the benefits of active complicity in supporting the Indian Residential School System and other institutions such as hospitals, juvenile reformatories, and orphanages is not well understood. As previous chapters indicate, universities established reputations of research excellence, and individual professors advanced their careers conducting public policy research for governments on health, education, social welfare, and criminal law relating to Indigenous people. Some of these research studies involved medical experiments on Indigenous children at Indian Residential Schools and associated institutions.[159]

At the National Gathering in Vancouver in January 2023, Ogimaw (Andy Rickard), of Garden River First Nation, told participants that, as a leader, he, "is tired of education institutions capitalizing on the backs of the pain and suffering of our people to cushion their funding ... for whatever they need in terms of their institutions.... We have to be very leery sometimes of education institutions, and sometimes, we have to call it out the way it is,

even though it's tough, it's uncomfortable."[160] Many archival records and other materials documenting university research projects, as well as those relating to university governance, administration, and policies, remain inaccessible to Indigenous communities. University presses are also complicit to the extent that they have published and profited from research on Indigenous children at Indian Residential Schools. They may also have information in their records about university involvement in the Indian Residential School System or associated institutions.

The fact that many universities gained substantial institutional wealth from owning lands where Indian Residential Schools and other institutions were sometimes built is often overlooked. Yet, as the legal actions taken by the Kanien'kehá:ka Kahnistensera (Mohawk Mothers) to halt McGill University's redevelopment of the Royal Victoria Hospital grounds indicate, the ongoing impacts of Indigenous land dispossession is part of the history of the missing and disappeared children.[161] There may be unmarked burials on the grounds of some universities, including those with teaching hospitals.[162] In a comparative study of how universities in Canada and other settler colonial countries acquired land, historian Caitlin Harvey concludes that:

> Considering Canadian universities as settler-colonial landholders has important implications for the study of empire, colonialism, and Indigenous dispossession. University landholding made institutions of higher education the beneficiaries of Indigenous removal and agents of colonization. It also, eventually, made them facilitators of land transfer to settlers and speculators, a role that both depended upon and enhanced maturing systems of settler property rights.... Although some of the Indigenous lands granted to these universities had been purchased or ceded before their reassignment, large portions had not, while other land had been sold under dubious circumstances. Funding universities with Indigenous land, therefore, produced an enormous wealth transfer in land from Indigenous communities to universities.... In both the US and British colonies of settlement, including Canada, the practice of transferring Indigenous land to young institutions formed a common financing strategy and produced a shared pattern of institutional development.[163]

As Harvey points out, McGill and other Canadian universities are part of a transnational history that traces, "the initial foundations and subsequent wealth" of universities built through Indigenous land acquisitions in settler colonial countries.[164] Harvey's study,

"explores the nineteenth-century global gold rushes that furnished a group of institutions with 'goldfield foundations' [and] traces the endowments of Indigenous land granted to new universities by settler governments."[165] She concludes, in part, that:

> [T]hese lands, over fifteen million acres, represented an enormous wealth transfer from Indigenous communities to settler-academic institutions. In addition to government funds and tuition fees, these two financial mechanisms—gold and land—provided crucial foundations for new universities, giving them the time to generate broader student constituencies and popular appeal. At the same time, land financing also implicated these institutions in the process of Indigenous dispossession and the territorialization practiced by settler-colonial states.[166]

As part of a larger global study, Harvey documented the aggregate totals of university land acquired by grants to eight universities across Canada from 1785 to 1907. She noted that, between 1821 and 1900, McGill University (and MacDonald College) in Lower Canada acquired 1,680 acres of land from the territorial homeland of the Haudenosaunee (Kanien'kehà:ka) Nation.[167] In 2024, McGill University announced that an Indigenous Tuition Initiative was being established to cover tuition and mandatory fees for students who are members of Kahnawà:ke, Kanehsatà:ke, and Akwesasne communities as well as the Six Nations of the Grand River in Ontario. This action was to, "signal McGill's recognition of how, in the 19th century, the institution benefitted from a federal government loan linked to funds allocated to the Six Nations of the Grand River. In the spirit of redress and reconciliation, students from Six Nations of the Grand River will be included in the first phase of this new Indigenous Tuition Initiative."[168] Aside from this brief mention, no further explanation of the land grant was given. Many other universities are also waiving tuition for Indigenous students from communities on whose lands their institutions were built.[169] This is an important reparative act that makes post-secondary education accessible for more Indigenous people, and it should be followed by other universities. However, in the broader context of reparations and reconciliation, it is only a partial acknowledgement of the history and ongoing impacts of colonial university land acquisitions and a comparatively small reparation measure.

Importantly, McGill and other universities are becoming more transparent about this untold aspect of their history. For example, both McGill and the University of Alberta have websites that publicly track their progress on implementing the TRC's Calls to Action on education. As one of its historical resources, McGill has posted a scholarly paper on the university's

history with Indigenous Peoples.[170] In it, the author, McGill history professor Suzanne Morton:

> starts with the premise: McGill's history is Indigenous history, and the university's campus has always been Indigenous space. Importantly, this premise is intended as provocation rather than celebration. It challenges us to trace disparate threads of historical inquiry without resolving them. The two main threads traced here are one, the centrality of Indigenous land, resources, and peoples to the origins and evolution of McGill as an institution and two, the university's contribution to the structures of colonialism, injustice, and silencing.[171] The current McGill territorial acknowledgement avoids the history and present-day dispossession by highlighting land, not as the loss of a resource but as a place of "meeting and exchange amongst Indigenous peoples, including the Haudenosaunee and Anishinabeg nations."[172]

The University of Alberta's website has a highly visible acknowledgement of Indigenous land dispossession relating to its campus, emphasizing that truth must come before reconciliation:

> Many of Canada's leading universities owe their existence to unceded land expropriated from Indigenous communities. These lands, integral to constructing infrastructure or bolstering endowment funds, underscore a sombre reality: the foundational role of dispossession in the establishment of prominent educational institutions. Canadian university lands taken from Indigenous Peoples in Canada from 1828 to the present day equal nearly half a million acres. Globally, British imperial and land-grant universities involve the disbursement of 15 million acres of Indigenous lands spread over three continents.
>
> The University of Alberta's North Campus is on land that was a meeting place for diverse Indigenous Peoples and a territory of the Papaschase Cree, who signed an adhesion to Treaty 6 in 1877. The adhesion promised a reserve and treaty rights in perpetuity on the land. Despite their longstanding presence on the river's south bank, colonial authorities, with ambitions of acquiring valuable land for settlers and investors, dispossessed the Papaschase and coerced the band to settle for a reserve two miles south which was also later disbanded.[173]

For some universities, the move towards critical self-examination is linked to a global trend to research complicity in transnational slavery and colonialism.[174] For example, in 2020, as part of the preparations for its bicentenary in 2021, McGill University established two Provostial Research Scholars in Institutional Histories, Slavery, and Colonialism. The scholars program signalled McGill's commitment to, "reflecting critically on some troubling elements of its past by confronting its historical connection to the transatlantic slave trade and colonialism." The scholars will examine, "McGill's historic connections, both direct and indirect, to transatlantic slavery ... [and] McGill's historic connections, both direct and indirect, to colonialism and its impact on Indigenous communities."[175] An unrelated bicentenary report and recommendations identified shortcomings on both counts. The report compared McGill with the University of British Columbia and Dalhousie University, concluding that, "UBC has taken action regarding their colonial history with [I]indigenous [P]eoples and Dalhousie has addressed their direct ties to Transatlantic Slavery; ties, it must be stated, that are less direct than those of McGill University. McGill, with colonial connections to the oppression of both [B]lack and [I]ndigenous [P]eoples, has taken little action towards recognition and reconciliation."[176] However, in 2022, the university established the Office of Indigenous Initiatives as the institutional steward for implementing the TRC's Calls to Action and coordinating McGill's vision of Indigeneity through a wide range of projects, education outreach, and other activities to strengthen McGill's reconciliation efforts.[177] Like other universities, the primary focus is understandably on education initiatives. However, this does not negate the need for universities to continue to critically examine questions and issues of complicity as integral to reparations and reconciliation.

For universities, thoroughly examining their institutional histories with a view to investigating, understanding, and sharing knowledge about their direct and indirect role in the Indian Residential School System and Indigenous land dispossession is an important act of truth-finding and accountability. As Indigenous communities trace the missing and disappeared children across institutions, university records can provide critical information about university connections with the Indian Residential Schools and associated institutions. Equally important, universities can shed light on how institutions that benefited from the Indian Residential School System had strong incentives to remain complicit in perpetrating historical injustices and mass human rights violations against Indigenous Peoples. As institutions that have a pivotal role in Canadian society, universities can demonstrate anti-colonial leadership and transparency that strengthens societal understanding and support for reparations and reconciliation. This may also serve as inspiration for other institutions.

Sacred Covenant between Tk̓emlúps te Secwépemc and the Catholic Church

On June 27, 2024, Tk̓emlúps te Secwépemc Kukpi7 Rosanne Casimir and Archbishop of Vancouver J. Michael Miller (Congregation of St. Basil) held a joint press conference to share the details about the *Sacred Covenant between Tk̓emlúps te Secwépemc and the Roman Catholic Archdiocese of Vancouver and the Roman Catholic Diocese of Kamloops* (*Sacred Covenant*), which was signed on Easter Sunday (March 31, 2024) and released to the public on National Indigenous Day (June 21, 2024).[178] Kukpi7 Casimir told the media that:

> [F]or me, there are two sections of particular significance. The first is a confirmation of the truth, and what this Covenant confirms as shared truth … [and the second] is the commitments to action, as this is the path forward for all the signatories.
>
> In Section 27, the Catholic Church now recognizes that the consequences of Indian Residential Schools were profoundly negative and have had a lasting and damaging effect on Aboriginal culture, heritage, and language. While some former students have spoken positively about their experience at the Kamloops Indian Residential School, these stories are overshadowed by tragic accounts of the emotional, physical, and sexual abuse and neglect of helpless children, and their separation from their families and communities, including Secwépemc, Sylix, Nlaka'pamux, and St'át'imc Nations.
>
> Section 28 [affirms that] [i]n 2022, Pope Francis visited Maskwacis, Alberta, with representatives from First Nations, Métis, and Inuit communities. There, he asked for forgiveness for the evil committed by Christians against Indigenous Peoples. He acknowledged the suffering and abuse endured by Indigenous children in residential schools, describing the residential school policy as catastrophic and a dangerous error incompatible with the Gospel of Jesus Christ. He apologized for members of the Catholic Church who co-operated with Canada's "devastating" Indian Residential School policy. Pope Francis committed to a serious investigation into the facts of what took place in the past and pledged assistance to [R]esidential [S]chool [S]urvivors to enable them to experience healing from the traumas they suffered. He expressed his hope that the sufferings of the past can lead to a future of justice, healing, and reconciliation.[179]

Reflecting on her journey to the Vatican with other delegates to meet with Pope Francis in 2022, which led to the signing of the *Sacred Covenant*, Kukpi7 Casimir said that:

> [I]t was meaningful, impactful, and ... truly historical.... I went there representing our people with the hope of building meaningful steps towards reconciliation, but also seeking justice.... This is a crucial time in our history, and we all need to rebuild our relationships at every level and walk this journey together.... This journey for me was to bring honour ... and dignity to the ones who did not come home, but also to carry forth and deliver those messages on behalf of the many who shared their anger, their frustration, with the hope of their messages being heard.... I did provide a hand-delivered invitation to give our Survivors and intergenerational Survivors that opportunity to witness true, meaningful apology for the harms of the Residential Schools ... and for the Church to address the reparations that are still needed for real reconciliation. Our delegation spent over two hours speaking to the impacts of Residential Schools and unmarked graves ... explaining how important it was to look to the other forms of reconciliation.... [We spoke] also of the Papal apology and the reparations that are needed for healing and reconciliation. [We explained that] the Doctrine of Discovery needs to be repudiated as a racist document, and that the system of colonialization needs to be addressed. We called on the Pope to acknowledge the harm done and hold the church to account for their role. It is a necessary part of that acknowledgment of our past and also it is working with them that is truly important as well, to be able to move forward.[180]

Archbishop Miller then spoke at the press conference. He said that, "as Christians, our faith compels us to not be apathetic, and to show that we are listening and that we do care. The first part [of the *Sacred Covenant*] clarifies Catholic teaching regarding the rights of First Nations people. These rights follow from the dignity of the human person ... a teaching that is ingrained in Catholic theology.... The commitments are the heart of the path forward."[181] He said that:

> [B]eyond the learning we have received, it has been the kindness and openness of the people that has moved me most deeply and been a cause of great hope.... The church was wrong in how it complied in implementing a government colonialist policy.... Even the most ardent skeptics must know that a system requiring or pressuring the separation

> of families would have devastating consequences.... Chronic underfunding from the Government of Canada meant that significant numbers of children died, especially early on, because of overcrowded and poorly constructed schools. This was especially heartbreaking for families who would have received news of their dying child with a great distance between them.... As the Catholic Church, we recognize our role in the resulting tragedies and the desire now to journey with the people of the Tk̓emlúps Nation on the path to healing and to further understanding. Indeed, we encourage all Catholics and all Canadians to learn about the ongoing challenges faced by Indigenous people.... We understand that they have so much work to do in their communities and we stand ready as always, to follow their lead.
>
> This *Sacred Covenant* is more than just a formal document ... it has become an instrument of further dialogue and accountability. In that sense, it's not a finished document. It's a living dynamic statement of moving to the future in hope. By embracing these commitments and the shared truths outlined in the document, we have a solid foundation, and we hope that other First Nations and Christian communities across Canada will begin similar journeys.... We aspire to spread this light of truth until as many as possible are working together towards reconciliation, particularly between the Catholic Church and First Nations communities.... We're in a process, it's dynamic. We have still a road to travel.

The goals of the *Sacred Covenant* are for the signatories to share the historical truths regarding the Kamloops Indian Residential School; for the dioceses to acknowledge their role in the Indian Residential School System and build on official Catholic teaching supporting the rights and freedoms of Indigenous people; and for the signatories to establish a shared path to healing and reconciliation.[182] The document sets the harms perpetrated by the Catholic church, in partnership with Canada, in the Indian Residential School System in the broader historical context of coerced or forcible child removal laws and policies, Indigenous land dispossession and the denial of Indigenous rights of sovereignty and self-determination:

- The parties negotiated a set of agreed-upon historical facts and events and confirmed shared truths that acknowledge both the church's early support for Indigenous jurisdictional rights and title and the harms subsequently

perpetrated by the church at the Kamloops Indian Residential School.[183] The dioceses will renew their commitments to supporting a fair and just recognition and implementation of First Nation jurisdiction and title.[184]

- The parties concur with the findings of the TRC's Final Report on the missing and disappeared children and unmarked burials that high numbers of children died in the Indian Residential Schools, hospitals, and sanatoria and that some of the deceased were never returned home and were buried in cemeteries on school grounds, or in nearby churches, reserves, or municipal cemeteries.[185] No provisions were made for the continuing maintenance of Indian Residential School cemeteries, including the cemetery on the former site of the Kamloops Indian Residential School, or who is now responsible for these sites.[186]

- The parties note the apologies offered by Canada in 2008, and the statement made to the TRC in 2013 by Archbishop Miller on behalf of the Roman Catholic church of the Archdiocese of Vancouver, apologizing for the church's role in Indian Residential Schools and for the abuses suffered by Indigenous children, and recommitted to contributing to healing, education, and reconciliation in 2015.[187]

- The parties confirm that, in 2022, Pope Francis came to Maskwacis, Alberta, to apologize to Survivors, Indigenous families, and communities for the Catholic church's role in the Indian Residential School System and the abuses and harms perpetrated there. As noted above, he committed to, "a serious investigation into the facts of what took place in the past and pledged assistance to ... [S]urvivors ... [and] expressed his hope that the sufferings of the past can lead to a future of justice, healing, and reconciliation."[188]

- The signatories note that, in May 2021, Tk'emlúps te Secwépemc reported preliminary findings of a GPR survey on the grounds of the former Kamloops Indian Residential School that may show potential unmarked graves of Indigenous children and cautioned that more research was needed to determine what exists in this part of the site. This report caused renewed grief in Indigenous communities, and especially for Survivors and intergenerational Survivors of the Kamloops Indian Residential School, many of whom are devout Catholics, who are seeking recognition, empathy, and accountability from the Catholic church.[189]

Sacred Covenant's Commitments to Actions

31. This covenant commits us to the following actions in pursuit of honour, truth, justice, healing, and reconciliation:

    (a) That we will seek fitting ways to memorialize the children of residential schools and regularly call them to mind in [S]acred ceremonies that we shall conduct together to ensure their lives are never forgotten.

    (b) That we will work together and share information in full transparency to determine the truth: the identities of the children, the circumstances of their deaths, and all information about the missing children to ensure we can accurately determine their home communities so they can rest in peace and their families have answers.

    (c) That the Catholic Parties will offer and support mental health support and counselling for family members and others whose loved ones may be buried on the site of the former Kamloops Indian Residential School.

    (d) The Catholic Parties, through the Healing and Reconciliation Grant program, will provide technical and scientific expertise and technical services needed to answer the questions raised by the previous GPR survey. This provision is offered as an act of reconciliation in action as called for by the TRC. The Tk̓emlúps te Secwépemc and other affected Nations will choose how and when to honour, repatriate, and remember their deceased children.

    (e) The Parties acknowledge that the work the TRC initiated in identifying and commemorating those students who died at residential schools needs to be finished. Archbishop Miller issued an Expression of Commitment in June 2021 to be fully

transparent with the archives and records in the Vancouver Archdiocese's possession and control relating to the Kamloops Residential School.

(f) Developing a strategy to address unmarked graves is complicated and will require long-term thoughtful discussion about the most appropriate procedures to document, commemorate, and protect those burials. The Parties have confirmed their commitment to work collaboratively to implement the TRC's [C]alls to [A]ction and to address issues relating to missing children, unmarked burials, and archival records about residential schools.

(g) That the dioceses will renew their commitments to support a fair and just recognition and implementation of First Nation jurisdiction and title.

(h) That the dioceses will support fundraising to support those First Nations who wish to maintain their residential schools as national monuments.

(i) That the Parties will identify lead officials to work together regularly to implement these commitments to action and as leaders we will meet regularly as needed to review progress on this covenant.

(j) That we will hold a [S]acred joint ceremony each year during the Easter season to light a candle signifying our progress toward truth, justice and reconciliation.

(k) That we will pass this candle on to other First Nations and dioceses until the light of truth becomes strong enough to replace this darkness with reconciliation.[190]

Can the *Sacred Covenant* Support an Indigenous-Led Reparations Framework?

In describing the goals and commitments of the *Sacred Covenant,* Kukpi7 Casimir and Archbishop Miller emphasized the importance of working collaboratively and transparently to determine shared truths based on mutually agreed upon historical facts, the critical role of leadership at all levels, and the need for an ethics of caring and recognition to guide truth-finding, reparations, and reconciliation processes. Linking together international, national, and local elements, the agreement demonstrates the need for a holistic approach that connects the broader historical injustices and mass human rights violations perpetrated by Canada and the churches against Indigenous Peoples through forced child removals, land dispossession, and the denial of sovereignty and self-determination with the local history and circumstances of the Kamloops Indian Residential School. The provisions for monitoring progress are critical. As Eric Yamamoto points out, the ability to analyze, evaluate, and make the necessary changes to strengthen reparations and reconciliation processes is essential to its success. The commitment to holding a Sacred joint ceremony every Easter, lighting a candle to signify progress, affirms that this is a living covenant. The commitment to passing this candle on to other First Nations and Catholic dioceses signifies the collective responsibility of all Canadians to ensure that reconciliation is based on truth, accountability, and justice.

The *Sacred Covenant* also clarifies that, despite some initially inaccurate media claims that these were confirmed mass graves,[191] Tk'emlúps te Secwépemc was cautious, noting that the anomalies were only preliminary indicators of potential burials and that more research was needed to determine whether such burials exist. The Covenant effectively counters denialist claims that have been rising since Tk'emlúps te Secwépemc made its public announcement in 2021. As historian Sean Carleton pointed out recently, "this will help take the air out of Residential School denialism. Many Residential School denialists will use Tk'emlúps' situation to say that deaths didn't happen, or they were unavoidable, that abuse is being exaggerated. What the *Sacred Covenant* does is it debunks all these Residential School denialist talking points. It brings people into the awareness that moving forward, that establishing better relationships for reconciliation is embracing the truth rather than finding false refuge in these denialist talking points."[192] As Carleton suggests, the *Sacred Covenant* is a foundation of truth that can be an important tool for combatting denialism.

The *Sacred Covenant* draws on a long tradition of covenant making between Indigenous Peoples and the Catholic church, dating back to a Concordant (covenant) between Mi'kmaq Peoples and Pope Paul the Fifth on June 24, 1610.[193] The TRC's Final Report observed that, at the Manitoba National Event, "leaders from various faiths pointed out that many spiritual

traditions—Indigenous, Christian, Muslim, and Jewish—share a belief in [S]acred covenants between peoples and the Creator God, which for Indigenous [P]eoples is manifested in Treaty covenants."[194] The TRC noted that, in February 1987, the Aboriginal Rights Coalition issued *"A New Covenant: Towards Constitutional Recognition and Protection of Aboriginal Self-Government in Canada, A Pastoral Statement by the Leaders of Christian Churches on Aboriginal Rights and the Canadian Constitution."*[195] The Covenant noted that:

> the idea of covenant-making has deep spiritual roots, which, in turn, can teach us a great deal about the true purpose and meaning of covenant-making and covenant-keeping among peoples today.... Thus, there are moral and spiritual dimensions to making and keeping covenants.... Today, after the experience of cultural oppression and economic dependency in recent centuries, Aboriginal peoples are struggling to decolonize themselves and regain recognition of their historic rights in Canada. These Aboriginal rights are recognized in both international law and the historic documents of this country. We maintain, however, that the rights of Aboriginal peoples are not simply a legal or political issue, but first and foremost, a moral issue touching on the very soul and heart of Canada.[196]

The TRC's Call to Action 46 called upon the federal government, the churches, and First Nations and Inuit parties to the *Indian Residential Schools Settlement Agreement* to, "demonstrate leadership by establishing and implementing a Covenant of Reconciliation."[197] The commitments expressed in the *Sacred Covenant* are encouraging. If they are implemented in a holistic and comprehensive strategy, they can support an Indigenous-led Reparations Framework and may serve as a template for covenants with other Indigenous communities and Catholic dioceses to adapt to their own circumstances. On a national level, the *Sacred Covenant* between Tk'emlúps te Secwépemc and the Catholic church may set a precedent for renewed covenant making that leads to fulfilling the TRC's Call to Action 46.

Media: Decolonizing Truth-Finding and Strengthening Accountability

> Media is one of the most powerful institutions we have in Canada. We disseminate what are expected to be facts, we help people form opinions and we frame the narrative. When it comes to Indigenous people we failed as media in a massive, massive way, to this day. We've perpetuated stereotypes, we've legitimized the lie that there was no genocide ... and that colonial violence was

> either a myth or it was necessary. When it comes to Indigenous people, without a doubt, the media has helped to erase history by burying the truth, and by maintaining that lie.
>
> **— Angela Sterritt, Journalist, Gitanmaax First Nation**[198]

As journalist and author Angela Sterritt points out, media has tremendous power to sway public opinion. It is therefore essential to hold media accountable for its broader role in shaping Canada's relationship with Indigenous Peoples. There has been some progress in implementing the TRC's Calls to Action aimed at the media in terms of increasing Indigenous news coverage and jobs and improving education in journalism schools.[199] However, to date, media institutions have failed to investigate or apologize for their complicity in settler colonialism, which has perpetuated harms against Indigenous Peoples. Nor have they thoroughly examined the benefits they have reaped from this reporting over many years. The need to do so is evident in the troubling dynamics that have emerged around media reporting over the past two years. Indigenous communities across the country have been publicly confirming the results of ground searches and other aspects of search and recovery work through the media. At National Gatherings, many have shared information about their negative experiences with the media. They have offered insights and guidance to participants about how to protect Survivors and their communities, as well as the cemeteries and potential burial sites that they are searching, from the onslaught of media. While, initially, communities were ill-prepared to deal with media, there has been a gradual shift as they take a more proactive approach to managing communications. Many communities are now better prepared in advance to first share information with the community and exercise their right to decide what information will remain confidential from the public.[200]

EMERGING PRACTICE: COWESSESS FIRST NATION

At the Vancouver National Gathering in January 2023, Survivor Barbara Lavallee, lead researcher for the Cowessess search and recovery team at the former Marieval Indian Residential School, said that, when Cowessess First Nation publicly confirmed in 2021 that GPR had found 751 anomalies on the site, the community was bombarded with media requests. The first contact with media was very difficult. Unfortunately, the number was leaked to the media without the necessary context explaining that the anomalies

were in a community cemetery, where most of the graves were unmarked. Although some members of the media came to the site with good intentions, according to Lavallee, "freelance journalists crossed the line so many times." Reporters were hiding in the tall grass, sneaking into the site, and flying helicopters or drones over the site for footage. The community established a media embargo to stop all journalists from publishing information about the Cowessess investigation and from gaining access to the investigation site. They also implemented site access restrictions. However, these measures did not stop some media from attempting to gain access, which interfered with the team's ability to continue the GPR work.

Lavallee said that Cowessess First Nation now has a policy preventing media from reporting on new developments at their site until the work is completed. Since the initial number of targets found by GPR was taken out of context by media and sensationalized, no more information will be shared with media until the community can identify each burial and each missing child. She also said that, whenever news about unmarked burials at Indian Residential School sites appears in the media, including relating to Cowessess Indian Residential School, communities have been targeted by denialists. She told participants that her community has learned that the best response to denialism is no response at all.[201]

EMERGING PRACTICE: TK̓EMLÚPS TE SECWÉPEMC: DEVELOPING A COMPREHENSIVE MEDIA STRATEGY

Kúkpi7 Casimir also spoke at the Vancouver National Gathering. She reflected on the challenges and lessons the Tk̓emlúps te Secwépemc learned in navigating the national and international media. She told participants that some media outlets were ethical; that their reporting was fact-based, honoured Survivors' truths, and was respectful of cultural protocols, and that journalists tried to use a trauma-informed approach when interviewing Survivors and community members. However, the community also received predatory and exploitive media requests that they had to filter. They had to deal with many uninvited visitors, including media and denialists, who did not always respect this Sacred site. Some breached cultural protocols,

taking photos and video recordings of the burial site area without consent. Based on these experiences, Kúkpi7 Casimir provided some advice to those leading similar work:

- Create a communications strategy;
- Ensure resources and staff are in place to implement the communications strategy;
- Make mental health supports available to leaders, staff, Survivors, and community members affected by media intrusions and coverage;
- Set boundaries and protocols with media;
- Have dialogues that respect Survivors' truths;
- Know the media's agenda; and
- Support, protect, and honour those that this information will impact.

She concluded that the Tk̓emlúps te Secwépemc's experiences with media and denialism demonstrate the need for communities to maintain strict control of investigation sites and information provided to the media. She told participants that, "this is more than a media story whose time is coming and going, we have to ensure justice and accountability keeps going in the long-term. [We need to] pressure the government and the churches to do the right thing so our Survivors can find peace."[202]

The effectiveness of this media strategy was evident at the press conference about the *Sacred Covenant* on June 27, 2024. Kukpi7 Casimir was asked about the status of the investigation into the potential unmarked graves. She said that the investigation is confidential, but:

> what I can share is that the investigation is working to determine whether, where, and to what extent, more intrusive forensic investigative methods are also warranted, and whether that's going to be through the extraction of DNA, exhumations, and/or other steps. We know that these are more intrusive steps, but also disturbance of remains, may be taken to find that truth.... [This will only happen] after consideration by our community's Elders, Survivors. Leadership will also have to consult and coordinate such decisions with many [other]

affected communities. We'll also be carrying this out in consultation with the experts and our task force members.[203]

Indigenous communities have the right to decide whether and when to make findings of search investigations public. Indigenous communities are being rightfully cautious in what they convey to media in light of the misinformation and disinformation that is easily spread, particularly through social media.

Barbara Lavallee, Kúkpi7 Rosanne Casimir, and Angela Sterritt responding to participant questions during the panel session, "Media: Ensuring the Respectful Treatment and Public Disclosure of Community Information and Knowledge" at the National Gathering on Unmarked Burials in Vancouver, British Columbia (Office of the Independent Special Interlocutor).

EMERGING PRACTICE: SHÍSHÁLH NATION ASSERTS SOVEREIGNTY OVER ITS TRUTHS

On April 20, 2023, shíshálh Nation announced the recovery of unmarked, shallow graves of 40 children near the former St. Augustine's Indian Residential School. Their investigation, which started in early 2022, is part of an ongoing archaeology project with the University of Saskatchewan. The shíshálh Archaeological Research Project has involved consultation with Survivors, historical research, and GPR. According to the team, there are still more

areas to be searched. However, the community is pausing the work, taking time to reflect and find the best path forward. Chief yalxwemult' (Lenora Joe) released a video statement on the findings to date and made it clear that the community was prioritizing the well-being and safety of Survivors, community members, and staff through ceremony and cultural supports.[204] The video and statement released by shíshálh Nation is an emerging practice that demonstrates how a community can assert control over its own narrative and set boundaries with media and the general public. In the video statement, Chief Joe addressed the media's pre-occupation with numbers and noted how this focus is becoming normalized. Chief Joe said, "I ask you to not focus on the numbers. Not all of the missing children have been found, and many will never be found." She asked people to think of these children as relations, as children who have living connections, and whose families are grieving them. She said that these children are more than just numbers in a news story.

As shared, shíshálh Nation will not be disclosing exact locations of the burials, and the community asks that the children be referred to as children rather than as remains. The statement made by shíshálh Nation subtly addresses denialism by stating that, "whether or not unmarked graves are found, there is enough documented oral and archival evidence to say that these burials do or did exist." The community acknowledges that the voices of Survivors, who have first-hand accounts of what happened in Indian Residential Schools, should be prioritized over anything else. Chief Joe acknowledged that, while there will be many questions about the findings and what will come next, she asked that the media and the public respect the community's process to heal and understand that, "asking questions that seem innocent could be triggers and bring up trauma." shíshálh Nation will be taking time to pause and will not be speaking to the media or elaborating further. They have asked for media to use their statement and release video for their press and not to contact the community leadership or its members for comment.

While media has published on the shíshálh Nation's findings, they have only been able to report on what the community has said in their media release and what the University of Saskatchewan was willing to comment on concerning the investigation. This emerging practice signals a way forward

for communities who want to release their findings on their own terms, informed by their community's best practices and in accordance with Survivors' and Elders' directions.

Following Cowessess First Nation's public confirmation and media coverage, the Canadian Association of Journalists (CAJ) issued a statement reaffirming that all media organizations and journalists should be implementing the TRC's Calls to Action for the media. The CAJ pointed out that, "newsrooms should make educating their reporters on how to cover Indigenous communities with care and respect their largest priority as these graves continue to be uncovered. It is long overdue and shameful that it has not happened."[205] Journalists must also be accurate in their use of terminology to avoid fuelling the Indian Residential School denialism that has unfortunately become commonplace in some media outlets.[206] Sean Carleton and Reid Gerbrandt's analysis of 386 news articles across five Canadian media outlets demonstrates the importance of this work.[207] They found that the majority of articles published used factual information. Only a minority used incorrect terminology or facts that were evolving, which often happens with a breaking news story.[208] However, denialists seized on these inaccuracies to claim that this was evidence of a "mass grave hoax."[209] Carleton and Reid concluded that:

> [O]ur research shows that the "mass grave hoax" narrative hinges on a misrepresentation of how Canadian journalists reported on the identification of potential unmarked graves at former residential school sites in 2021. And we hope our report sparks a national conversation about how important language is when covering this issue. Media needs to be precise with language and also acknowledge its errors (and avoid future ones), or clarify details in a way that feeds truth, empathy and more accurate reporting—not denialism, hate and conspiracy.[210]

While countering denialism is critical, media institutions and journalists must also critically examine their own policies, principles, and practices when covering news relating to the missing and disappeared children and unmarked burials.

Minimizing Harm and Trauma-Informed Journalism

Minimizing harm is a central principle of the Society of Professional Journalists' Code of Ethics.[211] In reporting on search and recovery work in Indigenous communities, the tenet to minimize or do no harm becomes paramount. News organizations can actively work to

minimize harm by being conscious of how news stories are framed and by supporting journalists, both financially and through training opportunities, to ensure that they are reporting in a way that is trauma informed. At the Vancouver Gathering, Kúkpi7 Casimir told participants that:

> [W]hen I think about the media and what is needed for respectful treatment and public disclosure of community information and knowledge I want to know, and I also want to ensure, that media outlets and the interviewers are trauma-informed. That they're professional, real. I also expect reporting that is honest, that is accurate and at the highest level of respect for our Survivors, because it is they who carry those truths and who are sharing their truths. It is emotional and is extremely difficult and is also re-traumatizing for not only them but their families. When I look at those parameters, they need to be in place to protect them and support all of them and support all the people that it has impacted.[212]

Trauma-informed journalism is an evolving area of practice in media and communications that emphasizes the importance of minimizing harm in the journalistic process. Trauma-informed journalism has become a critical competency in newsrooms and journalism schools. According to the Campaign for Trauma-Informed Policy and Practice, trauma-informed journalism utilizes, "scientific evidence to help build resilience and promote healing, engagement, and empowerment" and can, "lead to more accurate stories and protect survivors from retraumatization and further harm."[213]

Indigenous journalists are particularly aware of the importance of trauma-informed journalism. Angela Sterritt notes that, "part of being trauma-informed means sharing a story that is about breaking those stereotypes, that is about breaking those lies, that is about making that truth, that history come to life."[214] Cree journalist Connie Walker notes that, "When you're dealing with Indigenous communities, trauma is interwoven into so many aspects of life. You have to be careful and respectful of how that impacts people."[215] As Anishinaabe journalist Duncan McCue explains in *Decolonizing Journalism: A Guide to Reporting in Indigenous Communities,* "if trauma reporting isn't approached with special care and attention, there's a real risk that you may cause further trauma to the Indigenous people you interview. Caring for your interviewee is at the heart of trauma-informed journalism."[216] Trauma-informed reporting is Survivor-led and applies the principle of informed consent. McCue advises giving interviewees as much control as possible over their story, which includes being transparent about the process and explaining how any words, photos, or interviews will be used.[217] He notes the importance of humility when working with Survivors of trauma, "It is a privilege

to have a survivor of trauma share their experience with us. Treat that story and the person sharing it with care. Centring the needs of a survivor—not yourself—will show that you understand your place and go a long way toward creating an environment of trust."[218]

Framing Media Stories

Journalists and media organizations have a responsibility to be conscious of the way in which they frame stories when reporting on matters relating to the missing and disappeared children and unmarked burials. Journalists draw on their own knowledge, perspectives, and biases in framing media stories. While they are not neutral arbiters of truth, as professor emeritus of journalism John Miller observes, "Journalism's first obligation is to the truth.... Journalism does not pursue truth in an absolute or philosophical sense, but it can—and must—pursue it in a practical sense.... Its practitioners must be allowed to exercise their personal conscience. Every journalist must have a personal sense of ethics and responsibility—a moral compass."[219] This can be challenging because, as former journalist Michael Orsini points out, "Journalists can become unthinking and unwilling participants in history, not because they are unfeeling or uncaring but because journalistic culture ... presents a romanticized view of the journalist craft and rarely pauses to ask journalists to reflect on their own reporting and the impact it might have on others.... A few reporters will dare to challenge the status quo, probing deeper. But media resources being what they are, there is scarce support for journalists who want to stick with stories."[220] Nevertheless, journalists have an ethical and professional responsibility to fact-check commentators, media personalities, and public figures and to frame stories that make the complexities of truth determination visible to the public in ways that do not reinforce harmful stereotypes and historical myths of settler colonialism.

Journalists and editors need to be particularly conscious of the real-world implications of how they choose to frame these stories. Media-framing theory proposes that how news stories are "framed" influences people's views and can help promote a particular agenda, interpretation, or moral judgment about a topic.[221] Media framing has the power to directly influence public opinion, public policy, and impact the lives of Indigenous people.[222] It can either reinforce denialist perspectives or contribute to truth determination and public education through a more accurate account of the historical record. International human rights and transitional justice professor Rosemary Nagy and author Emily Gillespie analyze how media stories about the TRC and the Indian Residential School System framed "truth" in relation to "reconciliation," shaping public understanding of what these concepts mean.[223] They categorize representations of truth in expansive frames as those linking the Indian Residential School System to the ongoing impacts of genocide and colonization and connect this explicitly to the need for structural change. Conversely, representations of truth in reductive frames focus

on the sexual and physical abuse of individuals and use language that emphasizes "mistakes of the past." Representations of reconciliation in expansive frames focus on decolonization, structural change, and holistic Indigenous forms of healing, whereas reductive frames focus on closure of the past and the need for individual healing.[224] They conclude that, in media stories, rather than use an expansive frame, "the path from truth to reconciliation is instead framed in reductive terms of truth-telling as therapy, witnessing and public education."[225]

Nagy and Gillespie emphasize that, "conflicting discourses of truth and reconciliation are being mobilized in the public sphere."[226] They note that, whereas Indigenous leaders and settler allies tend to view the truth expansively, government frames it in reductive terms.[227] Although Nagy and Gillespie's study was conducted in 2015, and some media and journalists may be framing news coverage of the missing and disappeared children and unmarked burials more expansively, the fundamental tension between limiting or expanding public perceptions of what truth and reconciliation is and how best to achieve it, continues to the present. At the Vancouver National Gathering, Sterritt told participants that members of the media must be accountable and ethically responsible to Indigenous communities in ways that respect Indigenous protocols and practices. She said that:

> It is important for me to make an effort to hold my colleagues [journalists] accountable for the harm they have done to Survivors in the past, of re-traumatizing, but also for the lack of investigation ... into these stories. [They need] to work hard to open those vaults and get those archives and find out where the data is and find out who is able to tell the story, who is able to frame this narrative—which shouldn't be us, it should be Survivors.[228]

Reframing Media Accountability through a Reparations Lens

In addition to focusing on the importance of journalists and editors practising trauma-informed journalism and reframing media stories through an expansive lens, media organizations as institutions of accountability in Canadian society must be more accountable themselves. As noted earlier, they have failed to investigate or apologize for their complicity in settler colonialism or the benefits they have accrued in the process. Their actions have supported settler amnesty and a culture of impunity that has harmed Indigenous Peoples, contributing to the disappearances, deaths, and undocumented burials of Indigenous children. Recently, in the United States, a research report entitled *Media 2070: An Invitation to Dream Up Media Reparations* called for media and journalism institutions who supported

and benefited from the harms and exploitation of Black people to make reparations. This must include apologies, policy reform, and structural change to combat systemic racism. Advocates for media reparations argue that, "Any strategy to address journalism's future must reconcile and repair these harms. Individual news organizations must advocate for systemic change while taking an active role inside their communities and their own operations to offset the impacts of their history of anti-Black racism.[229] They note that, while their focus is on reparations for Black people, "any group that has been harmed by our government or by corporations has the right to demand reparations to reconcile and repair the injuries caused to their communities. Colonialism, capitalism and imperialism have been destructive forces for people of color in the United States, starting with our nation's Indigenous communities."[230] The need for media reparations, including apologies, in relation to Indigenous Peoples is also applicable in Canada.

The Importance of Action: Audits and Apologies

It is important for the public and media institutions to recognize the ways in which the media has failed Indigenous people and communities. This requires media institutions to take concrete action to investigate their own past because, as Les Couchi, a member of Nipissing First Nation, points out, "the foundation of today's racism can be found in the mainstream press of the past."[231] Performing audits and studies of their media coverage relating to Indigenous Peoples is an essential first step to understanding media's role in supporting settler colonialism and denying or limiting truths about the Indian Residential School System, including the circumstances surrounding the disappearances, deaths, and undocumented burials of Indigenous children. This will establish a foundation for reframing media accountability to ensure appropriate reparations are forthcoming. Among other actions, this may include making apologies.

EMERGING PRACTICE: CANADIAN BROADCASTING CORPORATION (CBC) / RADIO-CANADA

> In my view, it is more than just a question of equity and inclusion—Indigenous Peoples are distinct and a founding peoples in this country that need to be reflected distinctly by the public broadcaster. The [TRC] has said that the media needs to engage in its own acts of reconciliation…. We need to turn the lens on ourselves.
>
> — Participant from CBC/Radio-Canada's internal engagement session[232]

In February 2024, CBC/Radio-Canada released *Strengthening Relations, Walking Together: 2024–2027 National Indigenous Strategy* after extensive internal and external engagements. Among several commitments outlined in the strategy, the national broadcaster will begin to investigate its own past by conducting an audit of its extensive archival collection to investigate its role in perpetrating harms against Indigenous Peoples:

> Truth and Reconciliation is not a goal—it's a process. Renewing relationships with First Nations, Inuit and Métis calls for respectful, sensitive and collaborative partnerships. It also calls for an exploration of our collective past and recognition of possible harms committed. As Canada's public broadcaster, CBC/Radio-Canada's archives can shed light on this past, help educate future generations and help us move forward.... We commit to pursuing the truth regarding CBC/Radio-Canada's role in harms against Indigenous Peoples and determining appropriate actions to take.... [A key initiative is to] Initiate a study of CBC/Radio-Canada's past coverage to better understand its reflection and representations of First Nations, Inuit and Métis.[233]

The broadcaster will demonstrate transparency and accountability by "releas[ing] a report, informed by staff and audiences, on activities stemming from the implementation of the 2024–2027 National Indigenous Strategy. We'll highlight achievements while providing insights from lessons learned."[234] CBC/Radio-Canada's leadership should inspire other media organizations to conduct similar investigations. As an emerging practice, the national strategy is a critical first step in media reparations.

Media institutions in settler colonial countries are just beginning to investigate their own pasts, and a growing number are issuing apologies for their actions. The *Media 2070* report emphasizes the role of apology as a reparative measure that must be followed by structural change. It notes that, beginning in the early 2000s, several newspapers that had published slave advertisements in the past acknowledged this wrong and issued apologies, "showing that it's never too late for a news organization to reconcile with its past."[235] Other newspapers issued apologies for anti-Black harm relating to Black people wrongfully accused of criminal

actions or unfounded suspicious behaviours that all too often resulted in their deaths.[236] The report concludes that:

> [I]t is critical for media institutions locally and nationally ... to reconcile the harms they have caused through racist news coverage, for editorial positions that have supported white supremacy, for the racism Black journalists and other journalists of color have faced in newsrooms, and for the impact of narratives weaponized to uphold policies that dehumanize Black people and other communities of color in protecting a white-racial hierarchy.[237]

The Need for Apologies

Indigenous Peoples in settler colonial countries, including Canada, have been subjected to similar harms, but there have been few apologies. However, on November 30, 2020, *Stuff,* New Zealand's oldest and largest media outlet, issued a front-page apology for the organization's racist and harmful portrayal of Māori over the past 163 years. The cover, written in both Māori and English languages, noted, "We've been racist, contributing to stigma, marginalisation, and stereotypes against Māori" and "No matou te he – We Are Sorry." The apology was the result of a three-month investigation of over a century of the publication's news coverage, led by Pou Tiaki Editor Carmen Parahi (Māori) and Head of News Mark Stevens.[238] As a result of the investigation, *Stuff* established a new charter, "intended to address historic wrongs and foster more trust, by building deeper relationships with Māori communities."[239] Along with the apology, *Stuff* committed to taking action by:

- Introducing the *Treaty of Waitangi* (focusing on partnership, participation, and protection) into its company charter;
- Publishing an Editorial Code of Practice and Ethics to represent the diversity of Aotearoa New Zealand;
- Partnering with Māori Television to increase coverage of stories relating to Māori;
- Developing a Pou Tiaki section to showcase Māori and minority community stories;
- Translating "a small number" of stories into te reo Māori; and

- Committing to increasing Māori journalists in its newsrooms and establishing the Pou Tiaki editor's role.[240]

In an editorial, Stevens wrote that, with the Our Truth, Tā Mātou Pono project, the newspaper had, "embarked on a challenging—and, at times, difficult—critique of our own history.... Across the board, the findings don't make for good reading.... Our coverage of Māori issues over the past 160 years ranged from racist to blinkered. Seldom was it fair or balanced in terms of representing Māori.... Apologies are hollow without a commitment to change, to do better in the future. We've begun that journey, with much distance to travel."[241] Media institutions and journalists in Canada must now follow suit; media reparations are long overdue.

ALLIES STANDING UP AND STANDING TOGETHER: UNMARKED BURIALS AT OTHER INSTITUTIONS

Over the past two years, there have been many examples of non-Indigenous people who have taken action to support efforts to locate and commemorate Indigenous children who died and were buried at an Indian Residential School or one of the many other institutions where they were sent. Whether they were transferred from an Indian Residential School or apprehended from their families and placed in an orphanage, hospital, or reformatory, all these children were victims of State-imposed child removals that violated their human rights. Some Indigenous and non-Indigenous Survivors of these institutions, or groups representing them, are working together to locate the burial sites of all the children, many of whom grew to adulthood in places where they were kept for years.

Mohawk Mothers and Duplessis Orphans: Searching for Truth in the Former Cemetery of the St. Jean de Dieu Hospital, in Montreal, Quebec

There are disturbing parallels in the histories of human rights abuses suffered by non-Indigenous Duplessis orphans and Indigenous children who, as wards of the State, were sent to Catholic-run institutions in Quebec such as orphanages, homes for unwed mothers, and psychiatric hospitals. In June 2024, anthropologist Phillipe Blouin told media that he has found, "very intimate links between Duplessis orphans and the way that Indigenous children were also treated.... We found some very compelling pieces of evidence of the transfers of children, how it happened, especially in the '50s and '60s while the Duplessis orphan era was ongoing."[242] Aboriginal Peoples Television Network journalist Tom Fennario reported that,

in one instance, Blouin found such information, "in a list from 1964 that shows dozens of Indigenous patients were spread out all over Quebec—many in mental institutions that held Duplessis Orphans."[243] Blouin said that the research relating to Duplessis orphans, "intersect[s] with current searches in Quebec, for Indigenous children who were lost in the health care system."[244] Fennario notes that Blouin is, "referring to the ongoing investigation into Quebec's 'ghost babies' ... the colloquial name for at least 199 Indigenous children who went missing after being placed in a Quebec institution before [19]92."[245]

The Duplessis Orphanages: A History of Human Rights Abuses of Children

The Duplessis Orphanages were established by Maurice Duplessis, the former premier of Quebec, at a time in Quebec's history known as "le grande noirceur" (the great darkness). By the 1950s, Duplessis had become associated with some of the worst instances of State abuse of civil liberties in Canadian history. One of these created the "Duplessis orphans."[246] From 1936 to 1964, thousands of children who were orphaned, born to unwed mothers, or forcibly removed from their families due to poverty, illness, unemployment, or abuse were sent to, "nurseries, orphanages or psychiatric hospitals run by Catholic congregations."[247] Duplessis, a staunch ally of the Catholic church, was concerned about federal interference in Catholic-run hospitals, orphanages, asylums, and other care facilities after the federal government introduced a funding subsidy for provincial health services in 1948.[248] Because orphanages received a much smaller federal subsidy than hospitals, there was a strong incentive to label increasing numbers of children as "mentally unfit" and send them to psychiatric hospitals, "In some instances, such as Mont-Providence, entire orphanages were reclassified as psychiatric institutions."[249] Children, "who were falsely diagnosed with an intellectual disability were medicated, and some were subjected to electroshock treatment."[250] Similar to Survivors of the Indian Residential School System, the children who remained institutionalized in orphanages received substandard education and were subjected to severe neglect and abuse:

> Jean Gaudreau, a psychologist at the University of Montreal who visited one of the orphanages in 1961, said there is little doubt that children were unnecessarily institutionalized during that time.... An estimated two to four thousand children were physically, mentally, and sexually abused. They were not treated when they became ill.... Many orphans were forced to work as domestics, farmhands, or as help in church-run institutions such as hospitals—their pay was remitted to the orphanages. Several committed suicide, were killed,

> or struggled with mental illness. News reports claimed that some endured lobotomies, electroshock, straitjackets, and corporal punishment. When the province removed the orphans from psychiatric institutions in the 1960s (following the 1962 Bédard Commission report that recommended deinstitutionalization), they struggled to integrate into society. Many had difficulties with personal and romantic relationships, addictions, unemployment, and financial hardships. Most suffered from discrimination later in life.[251]

Gaudreau's observations are substantiated by many of the Duplessis orphans and their family members. In *Legacy: Trauma, Story, and Indigenous Healing*, Neyihaw author and educator Suzanne Methot, whose father was a Duplessis orphan born to a single mother, examines the impacts of colonization on Indigenous people's health.[252] She notes that her father, who was born in 1938, was sent to a Duplessis orphanage, where he, like many others, was, "improperly diagnosed as mentally incompetent or psychotic, so that the priests and nuns running the orphanages receive bigger subsidies from the federal government.... Many of the Duplessis orphans have their names changed and identities erased, so that their mothers cannot search for them and families can never reunite."[253] This is what happened to Paul St-Aubin, a Duplessis orphan whose single mother was told by the nuns at the Soeurs de Misericorde hospital in Montreal where he was born that he had died. In June 2024, St-Aubin told Fennario that:

> [H]is mother never truly believed he died. In the 1980s, she found St-Aubin after she did an access to information request—a form the public can file with the government to get information. The nuns had named him Joseph Paul Forand but kept his birthday the same. He was living in a halfway house in Joliette when his mother showed up at his door.... [T]hey spent three years together before she died. But before she did, she made sure St-Aubin's name was changed to St-Aubin, and that he got his rightful status as an Abenaki from the Wôlinak First Nation.[254]

St-Aubin told Fennario that, after he was taken from his mother, he was sent to an orphanage and, "at the age of 11, was sent to work on a farm where he says he was physically abused."[255] St-Aubin was later sent to a psychiatric hospital where he was, "given lobotomies that mentally and physically scarred him. He says he was physically abused, received electro-shock treatment and was given massive amounts of drugs. As horrible as it sounds, St-Aubin's story is not uncommon amongst Duplessis Orphans."[256]

Like the Survivors of the Indian Residential School System, the Duplessis orphans have sought truth, accountability, and justice for the neglect and abuse they experienced as children and the ongoing harms that resulted. Their campaign for redress began in the 1990s with a series of media interviews and the establishment of the Duplessis Orphans' Committee that pursued litigation against the Quebec government and criminal charges against the priests and nuns accused of abuses in the orphanages. Historical sociologist Dominique Clément notes that:

> [I]n 1999, the government finally apologized and offered $3 million in compensation, which was rejected. [Daniel] Jacoby[257] described the offer as unfair and humiliating. The Catholic Church refused to apologize or provide compensation. Following extensive publicity and public pressure, the Quebec government extended another apology in 2001 as well as individual compensation of $10,000 plus $1,000 for each year spent in an asylum (1,500 people qualified for compensation). The Duplessis Orphans' Committee accepted the offer, and the government provided an additional $26 million compensation in 2006.[258]

However, the settlement agreement proved controversial, and many Survivors rejected it as inadequate. In 2018, the Duplessis Orphans' Committee filed an unsuccessful application for certification of a class action lawsuit in Quebec Superior Court. In 2021, media reported that the decision was being appealed in the Quebec Court of Appeal.[259] However, the appeal was rejected in May 2022.[260]

Protecting the Former Cemetery of the St. Jean de Dieu Hospital

Some of those who survived their time as Duplessis orphans described their experiences of having to transport the bodies of other children from operating rooms to morgues at the hospitals. In 2004, Albert Sylvio, a Duplessis orphan who was institutionalized at St. Jean de Dieu Hospital in Montreal, which was run by the Sisters of Providence in the 1950s, told the *National Post* that he transported more than 60 bodies of fellow orphans and, "put them in cardboard boxes. Some of them were children." He said that the bodies were taken to the cemetery and buried in unmarked graves.[261] When plans to excavate the former cemetery at the St. Jean de Dieu Hospital for a building expansion became public, the Committee of Duplessis Orphans Victims of Abuse and the Kanien'kehá:ka Kahnistensera (Mohawk Mothers) began working together to protect the site so that a forensic investigation could be conducted. On January 8, 2024, the Committee of Duplessis Orphans Victims of Abuse and

the Mohawk Mothers sent a letter to Quebec's minister of justice, the minister of culture and communications, and the Société des alcools du Québec (SAQ) regarding the planned expansion of a SAQ warehouse in Montreal.[262] They explained that:

> [T]he site of the SAQ warehouse on rue des Futailles is a former cemetery that belonged to the Sœurs de la Providence.... More specifically, the site served as an informal cemetery where the unclaimed bodies of patients who died at Hôpital Saint-Jean de Dieu were buried. In addition to numerous unmarked burials of children, namely Duplessis Orphans, there is a strong probability that Indigenous children were also buried on the site, as evidenced by archival documents.... Given the high probability of the presence of anonymous burials of Indigenous and non-Indigenous children on the site, we seek to establish a collaborative archaeological and forensic protocol to protect human remains prior to excavation work. As appears from the testimony of Sister Marie Paule Levaque before the Superior Court of Quebec on February 4, 1980 ... patients who died at St-Jean-de-Dieu and whose bodies were not claimed by their families were buried in this cemetery between 1873 and 1958, ... Sister Levaque estimated that the cemetery contained nearly 2,000 people ... while the Registre des sépultures de l'hôpital Saint-Jean-de-Dieu puts the number at 2,168.[263]

The letter also noted that there was a mass exhumation of the cemetery in 1967, and additional human remains were found inadvertently during construction in 1975, "revealing that not all the bones had been exhumed in 1967."[264] In 1999 during further construction on the site, more human remains were found, and, "The SAQ admitted at the time that, 'its technicians and engineers had no particular expertise in forensic medicine.'"[265] The letter concluded with an invitation for the parties to engage in dialogue and collaboration:

> On behalf of the Duplessis Orphans and Mohawk communities, we do not wish to see such accidental discoveries happen again. We are therefore writing to establish a dialogue in a spirit of collaboration and reconciliation to protect these graves and allow us to investigate unmarked burials, under and around the SAQ warehouse as well as in other locations where the bodies were displaced in the past. More specifically, it appears necessary:
>
> 1. To provide the Mohawk Mothers and the Committee of Duplessis Orphans Victims of Abuse with more information about upcoming

> excavation work around the SAQ distribution center on Rue des Futailles.
>
> 2. That a qualified, independent bioarchaeologist be present during any excavation to identify human remains.
> 3. Given the likelihood of Indigenous children being buried at this site, that an Indigenous cultural monitor appointed by the Mohawk Mothers and the Committee of Duplessis Orphans Victims of Abuses be present during any excavation to conduct ceremonies, document and monitor the dig.
> 4. That a dialogue be initiated in order to conduct an independent investigation into the origin of the human remains buried in the "pigsty" cemetery and the potential crimes against humanity that led to these clandestine burials.[266]

On February 2, 2024, Martine Comtois, the SAQ's vice-president of corporate affairs and secretary general, responded to the letter, writing that, "certain preparatory work is ongoing, but no excavation work is being carried out in connection with the planned expansion" and that they would be assessing the circumstances.[267] On February 7, 2024, media reported that, "Clémence Beaulieu-Gendron, a SAQ spokesperson, said the company's intention 'is to do things right.'"[268] According to SAQ's chief executive officer Jacques Farcy, the company has stopped work on the site and is developing an action plan before making any decision on its next steps.[269] However, as of February 12, 2024, the Mohawk Mothers and the Committee of Duplessis Orphans Victims of Abuse had not yet heard from the SAQ.[270] Mohawk Mother Kwetiio told media that, "we are looking for our children, and they [Duplessis Orphans] are looking for the people they lived with.... An archeological dig is imperative."[271] The two groups believe that a forensic investigation may also find proof of maltreatment and medical experiments on children.[272] Philippe Blouin, who is working with them, told media that:

> There's been no admission of the guilt of the Quebec government in creating this situation.... Orphans, back then, were not necessarily orphans, just a very small percentage actually did not have parents because all children born out of wedlock, would be taken by the [S]tate and so often given for adoption, or use for medical experiments, very sadly, especially psychiatry, at the time in Quebec.... These [S]urvivors want closure and especially want protection of the evidence of what happened to them."[273]

On May 10, 2024, media reported that the SAQ was resuming the building expansion, saying that an archaeological investigation found no human remains in the area of the cemetery where they want to build. However, the Mohawk Mothers and the Committee of Duplessis Orphans Victims of Abuse contested these findings. They said that, while they have had a respectful relationship with the SAQ, based on a recommendation from the Canadian Archaeological Association Working Group on Unmarked Graves (CAAWGUG), they want historic human remains detection (HHRD) dogs brought in to search the site.[274] On May 15, 2024, the groups announced that they would be taking legal action against the SAQ. Speaking on behalf of the Mohawk Mothers, Kahentinetha said, "That was very shocking to me for them to do that, in violation of what we had all agreed to do."[275] That same day, the SAQ issued a public statement, saying that it was surprised by the groups' comments, noting their, "constructive dialogue and transparency with the representatives of the two groups," the work stoppage, and the presence of observers from the groups to monitor the archaeological research.[276] The SAQ rejected the CAAWGUG's recommendations and noted as follows:

> Regarding the use of tracking dogs, we have asked the competent authorities for evaluation. Their conclusions state that this type of method is not appropriate for our site.... [The experts] confirm that there is no issue with the resumption of SAQ activities on this portion of the land. That said, we remain sensitive to what these two groups have experienced. This is why we are committed to recognizing this chapter of history on our property, at the end of our expansion work, by working jointly with them to determine the form that this commemorative space will take.[277]

However, in a press release issued on May 16, 2024, Kahentinetha, speaking on behalf of the Mohawk Mothers said that:

> The SAQ has repeatedly ignored our calls to thoroughly investigate this tragic site where Duplessis orphans and Indigenous children suffered abuse and inhumane medical experimentation. Their remains could be buried in unmarked graves that the SAQ is preparing to disturb with no respect for their dignity.... Hervé Bertrand, representing the Duplessis orphans, said, "The SAQ must be held accountable and demonstrate transparency by immediately suspending work until a proper investigation is carried out."[278]

In backgrounder information released, the Mohawk Mothers and the Duplessis Orphan's Committee pointed out that the inventory conducted by the archaeologists hired by SAQ, "was not specifically designed to identify and preserve unmarked graves or burials, but rather to identify the remains of material heritage such as buildings, roads, and artifacts. Its sampling approach ... was insufficient to reassure [S]urvivors whose loved ones were buried in this cemetery as a result of mistreatment, including lobotomies."[279] They noted that, "only just over half of the bones excavated at the site could be visually identified as being of animal origin, and that no laboratory tests were planned for bone fragments that could not be visually identified."[280] Contrary to the SAQ's claim that the CAAWGUG lacked expertise, they said that the working group, "brings together fifteen (15) professional archaeologists and scholars selected specifically for their expertise in the search for unmarked graves and burials in humanitarian contexts, such as [R]esidential [S]chools."[281] The groups said that, "Faced with the SAQ's refusal to let the [HHRD dogs] enter the site to ensure that no graves will be disturbed and destroyed, the Duplessis Orphans and Mohawk Mothers may have no choice but to seek to file the appropriate emergency legal applications, while being prepared to use mediation or negotiation before going to court if work has halted."[282]

At the time of writing this Final Report, it is unclear what will happen next. What is clear, however, is that the Mohawk Mothers and the Committee of Duplessis Orphans Victims of Abuse will continue to work together to protect the former cemetery, determine who is buried there, and commemorate the missing and disappeared Indigenous children and Duplessis orphans who are buried on this site.

The Lakeshore Psychiatric Hospital

The Lakeshore Psychiatric Hospital in the province of Ontario operated from 1889 to 1979. During its existence, it was known under several different names, including the Mimico Asylum (1889), the Mimico Insane Asylum (1894), the Mimico Hospital for the Insane (1911), the Ontario Hospital (1920), and the Ontario Hospital New Toronto (1934). The hospital lands are now occupied by Humber College. The hospital was overcrowded,[283] and many patients died from tuberculosis, which was strongly associated with institutional detention.[284] The hospital was known to perform electroshock therapy, insulin shock therapy, and lobotomies on patients.[285] Many patients were required to build some of the hospital buildings and did not receive payment for their labour. Patients also were required to assist in making coffins and burying other patients at the asylum cemetery. The treatment of the patients at the Lakeshore Psychiatric Hospital was cruel, including forced labour and violent restraint methods. Unfortunately, this type of treatment was not common at psychiatric

hospitals during this time. There are 1,511 patients buried in a cemetery approximately two to three kilometres north of the former hospital site. Most of the graves were, and continue to be, unmarked.

In 2004, Ed Janiszewski, a former employee of the institution, came across some burial records relating to the Lakeshore Psychiatric Hospital. He has worked to investigate and restore the cemetery and identify the unmarked graves for the last 15 years.[286] After decades of advocacy by Janiszewski and other volunteers of the Lakeshore Asylum Cemetery Project (LACP), the government of Ontario finally memorialized the cemetery in 2012 by installing a commemorative plaque. The government also committed to determining the location of each burial and establishing a process to install headstones.[287] Several Indigenous people are buried in unmarked graves in this cemetery. A current list of names of those buried at the cemetery includes a boy who is only listed as "Indian Boy." As of March 2024, 33 burials of Indigenous people at this cemetery have been found. The LACP, Anishinabek Nation, Nishnawbe Aski Nation, and the Indian Residential School Death Investigation Team in the Office of the Chief Coroner are working collaboratively, conducting further investigations to determine how many of the unmarked graves are of Indigenous people and which communities they were taken from.

St. Joseph's Training School for Boys

David McCann exemplifies how, by speaking out and demanding justice, non-Indigenous people can be more than bystanders. In September 2022, McCann, along with Ontario's chief coroner, Dr. Dirk Huyer, MD, and one of his investigators, an Ontario Provincial Police (OPP) officer, attended at the former site of the St. Joseph's Training School for Boys in Alfred, Ontario, where McCann believes there are unmarked burials of Indigenous boys who died there. He told media that, "you had kids there from the Far North, they didn't ship them back home. They died there, they got stuck in a grave, and that's it."[288] The reformatory was run by the De La Salle Brothers of the Christian Schools, a Roman Catholic lay order, and McCann was sent there for two years in the 1950s when he was 12–13 years old.[289] While detained there, he was subjected to physical and sexual abuse, as were many Indigenous boys who were sent there for truancy after running away from an Indian Residential School. In 1989, McCann shared his experiences publicly. His campaign for justice led to, "1,600 other survivors of St. Joseph's ... coming forward. It resulted in one of the largest OPP investigations in the province's history, millions of dollars in compensation for hundreds of victims, and class-action lawsuits."[290] There were also 16 criminal convictions of perpetrators who abused the boys.[291]

McCann has continued his advocacy by fighting for a papal apology and calling for investigations into the potential unmarked burials. Through his efforts, the burial of three boys in an unmarked grave in a nearby cemetery has been verified, "All found their final resting places in a communal grave next to a boy's penal institution where youngsters were sent for crimes as insignificant as stealing candy."[292] McCann plans to place a headstone on their grave. He noted that, "We know they're there. We know their date of birth. We know the day they died. They threw them in a hole and threw some dirt on top of them. That's how much they valued those kids."[293] Speaking about what motivates him to continue his advocacy, McCann said that:

> It's my hope that the federal, provincial and territorial governments follow through on the commitments they've made to look at all residential sites that potentially have unmarked graves.... The residential schools became a feeder system for orphanages, foster homes, training schools, industrial schools, reformatories, and other places. And, if you really want to turn the page to the next chapter in reconciliation, you're going to have to deal with that issue of unmarked graves. It's not something you're going to do in a year or two. It's probably going to take a decade or more. But do it all and start now. Look at them all. If we really believe in the journey from pain to hope, you have to turn the page.[294]

Permanent Peoples Tribunal: An Alliance of Civic Society Organizations for an International Investigation

On November 28, 2023, two non-profit organizations—the Native Women's Shelter of Montreal and Resilience Montreal—together with the human rights non-governmental organization Amnesty International, sent a formal request to the Permanent Peoples Tribunal (PPT), asking officials to activate an investigative procedure review regarding the missing and disappeared children and unmarked burials in Canada.[295] They took action based on the recent report of the UN Special Rapporteur on the Rights of Indigenous Peoples that, "points to numerous failures on the part of both the Canadian government and the churches to collaborate with Indigenous Nations to provide the necessary information and documentation, and to provide support in setting up Indigenous-led investigations,"[296] and they noted the following from my Interim Report as the Independent Special Interlocutor which, "encourages Indigenous Peoples to explore alternative avenues of investigation, including

the pursuit of international legal remedies."[297] Their request highlighted the reasons why the PPT should investigate:

> We urge the Permanent People's Tribunal to consider conducting a thorough review of the claims related to missing children and unmarked burials of Canadian Indigenous children in Quebec, Canada. Such a review is crucial for several reasons:
>
> 1. Human Rights Violations: The allegations of missing children and unmarked burials constitute potential violations of fundamental human rights, including the right to life, dignity, and justice. A tribunal review can help assess these violations in light of international human rights standards.
> 2. Truth and Reconciliation: A comprehensive examination of this issue can contribute to the truth and reconciliation process between Indigenous communities and the Canadian government. It can help uncover the full extent of the historical injustices committed against Indigenous peoples.
> 3. Accountability: The pursuit of justice requires accountability. By conducting a review, the Permanent People's Tribunal can identify responsible parties, whether governmental institutions, religious organizations, or individuals, and recommend appropriate actions to hold them accountable.
> 4. Preventing Future Atrocities: Lessons learned from this review can help prevent similar atrocities from occurring in the future, not only in Canada but also in other parts of the world.[298]

The PPT, which is based in Rome, Italy, is an international opinion tribunal composed of human rights experts that was established in 1979, following the worldwide adoption of the *Universal Declaration of the Rights of Peoples* in 1976. The PPT's mandate is to consider:

> requests made by community representatives, minorities, peoples, civil society who have been and/or are subject to serious systematic violations of their human and peoples' rights, by governments, institutional and private actors, and who are unable to find a response in national, regional or international court proceedings.... The Tribunal's main function is subsidiary, as it acts in the absence of an international

> jurisdiction to adjudicate on peoples' justice cases. In its judgments, the Tribunal does not merely apply existing norms, but highlights gaps or limitations in the human rights international system to indicate lines of development.[299]

Once the PPT confirms that an applicant's request conforms with its mandate and agrees to conduct an investigative procedure and render a judgment or advisory opinion, it verifies the independence of the applicant's independent decision-making authority and operational autonomy from government. The Tribunal then works with the applicants to establish a process for the investigation, including public meetings where victims, Survivors, and other witnesses can testify. It notifies accused parties and invites them to participate in the proceedings. After all documentation, oral testimonies, and arguments presented by the accused are heard, the panel of judges deliberates and then delivers its judgment or advisory opinion.[300]

On February 14, 2024, the PPT informed the Native Women's Shelter of Montreal, Resilience Montreal, and Amnesty International that their request meets the criteria of its mandate. The Tribunal will now work collaboratively with them to prepare the investigative process and next steps. At the time of writing this Final Report, the applicants are preparing a formal indictment that will clarify the scope and issues to be investigated as well as a proposal with timelines for conducting public hearings. They are also seeking funding for the logistical expenses of the hearings as the PPT does not cover these costs. Once the indictment and public hearings process are confirmed, the PPT will select judges to conduct the investigative procedure and then render its judgment.[301]

The PPT has conducted investigations worldwide and issued judgments on over 50 cases relating to mass human rights violations, crimes against humanity, war crimes, and genocide as well as economic, ecological, and systemic crimes.[302] Its mandate and structure ensure the collective participation of victims' groups and civic society organizations. Earlier chapters in this Final Report document the current limitations of the international legal system to adequately address Indigenous Peoples' call for truth, accountability, and justice and note the need for anti-colonial legal reform of human rights mechanisms.[303] While the Tribunal has no legal power to compel witnesses or to enforce its judgments, it sheds light on human rights cases that might otherwise be unheard because existing international legal mechanisms are unavailable in practice. It promotes civic society's understanding of international human rights law and has a critical role in highlighting the shortcomings and failures of the current international legal system.[304]

Legal scholars Andrew Byrnes and Gabrielle Simm point out that international peoples' tribunals cannot only, "consider allegations of violations of specific standards of international law ... [but] (also possibly other bodies of law such as national law, [I]ndigenous law, or 'peoples' law)" in making their deliberations.[305] They note that peoples' tribunals have an important function because they, "assert the right of peoples themselves to articulate law that is not dependent on endorsement by [S]tates for its legitimacy.... Peoples' tribunals critique the content of existing international law in some areas, where that law embodies and perpetuates oppressive power relations."[306] Rosalba Icaza, a professor of global politics, feminist theory and decoloniality, argues that, despite its foundations in the coloniality of Eurocentric law,[307] which has silenced legal pluralism, the PPT has potential to contribute to epistemic justice for Indigenous Peoples. She concludes that, "tribunals are worthwhile despite their (modern/colonial) legalist vocabulary and Eurocentric rationality.... [C]ontrary to a superficial observation that could simply characterize the PPT as another form of modern/colonial imposition ... there exists a fragile but nonetheless highly relevant opening for *a coexistence of notions of justices*."[308]

The investigative procedure of the PPT can help galvanize international support for Survivors, Indigenous families, and communities engaging in search and recovery efforts. The Tribunal is not a substitute for holding Canada accountable under international law. Nevertheless, it can help establish a solid factual foundation for moving forward and may potentially contribute to decolonizing international law if human rights violations against Indigenous Peoples in Canada are also assessed against the criteria of Indigenous laws. In bringing the unresolved injustices relating to the missing and disappeared children and unmarked burials to the PPT, the Native Women's Shelter of Montreal, Resilience Montreal, and Amnesty International are demonstrating collaborative leadership and creativity that other civic society organizations working on various other initiatives at the local, regional, national, and international level can emulate.

CONCLUSION: EXPANDING THE CIRCLE OF TRUTH, ACCOUNTABILITY, AND JUSTICE IN AN INDIGENOUS-LED REPARATIONS FRAMEWORK

Expanding the circle, as outlined in this chapter, entails far more than ad hoc, piecemeal, or token gestures of reparation and reconciliation. Shifting from being bystanders to upstanders or allies and arming the reasonable to do the work necessary requires rethinking concepts of allyship and developing an anti-colonial ethics of caring and recognition that fully acknowledges Canada's responsibility for genocide, crimes against humanity, and mass human rights

violations of Indigenous Peoples. It requires understanding contrasting State and Indigenous approaches to reparations that may create tensions as a holistic Indigenous-led Reparations Framework is designed and implemented. Therefore, it will be helpful to use the analytical frameworks developed by Eric Yamamoto and John Paul Lederach as methodical ways to think about what is needed and how to monitor and evaluate what is working and what must change as the framework is implemented to ensure that Survivors, Indigenous families, and communities are properly supported. Such efforts can form a solid foundation for ensuring that the framework is guided by the overarching principles of an Indigenous-led process and governed by Indigenous laws, protocols, and practices. Identifying gaps and emerging practices of alliance and solidarity of three key institutions: universities, churches, and the media demonstrates the need for these institutions to investigate their own complicity and how they have benefited from settler colonialism. Other institutions can learn from these representative examples and take their own actions accordingly. Finally, the representative examples of allies engaging in collaborative work to foster truth, accountability, and justice for the missing and disappeared children and unmarked burials demonstrate the importance of leadership at the local, national, and international level. Taking these concrete reparative measures can begin the decades-long work of countering settler amnesty and impunity through individual and collective action and transformative systemic, structural, and institutional change.

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CONCLUSION AND OBLIGATIONS

Implementing an Indigenous-Led Reparations Framework for Truth, Accountability, Justice, and Reconciliation

In meeting with Survivors, Indigenous families, and communities over the past two years, and gathering in-depth information about the substantive barriers they are encountering in search and recovery work, it is apparent that the new legal framework, to be effective, requires more than minor tinkering with existing legislation. Despite the many barriers, Survivors, Indigenous families, and communities are exercising their sovereignty as they establish rights-based, trauma-informed processes based on Indigenous laws to search for, recover, and commemorate the missing and disappeared children and their burial sites. Bearing witness to these emerging truth-finding processes affirms that Indigenous people must lead this work. Canada has ongoing international legal obligations to determine the truth and hold perpetrators accountable for what happened to the children, their families, and communities, and to make reparations. Yet Canada, as the perpetrator of atrocity crimes and mass human rights breaches, cannot investigate itself. To do so creates a fundamental conflict that is unacceptable to Indigenous Peoples.

In a letter to the United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples in March 2023, then Grand Council Chief Reg Niganobe of the Anishinabek Nation wrote that:

> the colonial system of justice simply cannot be expected to be unbiased in claims and accusations against itself. Therefore, the creation of a mechanism of justice to acknowledge and compensate for the decades of trauma and subsequent intergenerational trauma are necessary. The establishment of accountability such as a tribunal, similar to what

> occurred in other areas of the world in response to genocide, could be a potential avenue to consider.[1]

There is an urgent need for an independent search and truth recovery mechanism, which incorporates other forms of reparation, to create a robust, comprehensive, and cohesive Indigenous-led Reparations Framework in Canada.[2] Building on the Truth and Reconciliation Commission of Canada's (TRC) vision of an Indigenous rights-based reconciliation framework governed by the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) and Indigenous laws, and its emphasis on the critical role of reparations, this new Reparations Framework must be developed through an anti-colonial lens that highlights the importance of Indigenous laws, international human rights and criminal law, and the *UN Declaration*.[3]

International human rights and criminal law on enforced disappearances, human experimentation, and unmarked burials and mass graves, when applied to the Indian Residential School System in Canada, provides insight into the full scope and depth of the harmful impacts of the colonial violence and atrocity crimes perpetrated against Indigenous children at these institutions. The violence, crimes, and harms extended beyond Indian Residential Schools to many other institutions, including the Indian hospitals, sanitoria, psychiatric institutes, homes for unwed mothers, industrial schools, orphanages, and detention centres where children were forcibly transferred to by government and church officials. Many children were detained in these institutions until they became adults. Canada's responsibility to investigate and inform the families of their fate, and return their bodies home, where requested, does not end with childhood.

International human rights principles, norms, and standards on the rights of victims, Survivors, families, and communities to seek and obtain truth, accountability, and justice through various forms of reparations—restitution, compensation, rehabilitation, satisfaction, and the guarantee of non-repetition—inform this Final Report. State reparations relating to the missing and disappeared children and unmarked burials must support not only legal and policy reform but also the memorialization, commemoration, and repatriation of the children; return of lands; reclamation and revitalization of Indigenous cultures, languages, spirituality, laws, and governance systems; apology; rewriting of national history; and public education.

As noted in chapter 1 of this Final Report, a comparative analysis of State-led reparations programs in several countries reveals their limitations when measured against Indigenous legal criteria for truth, accountability, justice, and reconciliation. Overall, States take a reactionary, incremental, ad hoc approach to reparations; progress depends on the political will and economic priorities of the government in power, and State interests are prioritized over the

individual and collective rights and needs of victims. This makes reparations programs vulnerable to defunding or underfunding. States use several strategies to limit their political, legal, and financial liability such as denying any wrongdoing or granting various types of amnesty to perpetrators. However, marginalized groups who are the victims of mass human rights violations have always resisted government attempts to silence them. Through persistent legal and political actions and advocacy over many years, they demand truth, accountability, and justice. When finally compelled to acknowledge the harmful impacts of their actions, States negotiate political agreements and legal settlements that include various forms of reparations. They establish reparations programs that limit monetary compensation and apply eligibility criteria that often excludes certain groups of victims. Those administering the programs may also be biased or discriminatory, ignoring the importance of ensuring that culturally specific laws, protocols, and practices of victims, families, and communities are respected and upheld.

Despite its claim to be a global champion of human rights, Canada is no exception. The Canadian State deployed similar strategies with a view to managing the political, legal, and financial repercussions of its role in the Indian Residential School System. Following his visit to Canada in March 2023, José Francisco Calí Tzay, the UN Special Rapporteur on the Rights of Indigenous Peoples, concluded that:

> it is laudable that Canada has taken many important steps to advance Indigenous Peoples' rights. Regrettably, the most significant achievements are often acquired through court decisions or case settlement rather than implementation of governmental policies, and these advances are ultimately the result of Indigenous Peoples' strong determination and unabated courage to defend their rights.[4]

While the federal government and the churches have partially acknowledged responsibility and apologized for some of the atrocities of the Indian Residential School System, they have done so primarily in response to litigation by Survivors. The late Isabelle Knockwood, Survivor of Shubenacadie Indian Residential School, pointed out that she had waited, and many other Survivors are still waiting, to hear the whole truth from Canada:

> As children, the residential school students were warrior children—we stood on the front line alone, unprotected and unarmed trying to defend our culture, identity and heritage. As adults we brought a lawsuit against the two most powerful organizations in the world, the federal government and the churches. We empowered ourselves when we broke the code of silence of abuse. One issue remains unresolved for me: that in order for truth and reconciliation to happen between First

> Nations and non-Aboriginal populations, the [S]urvivors need to hear the other side of the story. Both victims and perpetrators were operating in residential schools throughout Canada. The victims have spoken. The perpetrators have not spoken. I would like the perpetrators, their supporters and defenders to tell the world about their experience in a public forum.[5]

Despite the participation of federal government and church officials at the TRC's proceedings, this full disclosure has still not happened. Instead, Canada has adopted a de facto, unlimited, unconditional, blanket self-amnesty—a "settler amnesty"—to evade accountability at the international and domestic level. This has created a culture of institutional and individual impunity that still prevails in Canada, perpetuated by racist settler colonial beliefs and attitudes about Indigenous Peoples. The importance of combatting impunity cannot be overstated. The UN Working Group on Enforced and Involuntary Disappearances emphasizes that:

> throughout its history, the Working Group has drawn the attention of the international community to impunity as a distinctive trait of enforced disappearances. It continues to observe alarming patterns of impunity, both in relation to past acts of enforced disappearance and to new disappearances occurring in different parts of the world. Impunity can have a multiplying effect, which causes additional suffering and anguish to the victims and their families. The Working Group believes that the international community should not stand neutral in the face of such suffering. Instead, it must strengthen cooperation efforts, increase the assistance available to victims and pursue judicial investigations and prosecutions, both at the local and international levels.[6]

In Canada, settler amnesty and a culture of impunity has impeded accountability and justice for Survivors, Indigenous families, and communities. Canada has legal and moral obligations to ensure a full investigation is conducted into the disappearances and deaths of the children in the care of the State and churches at Indian Residential Schools and other institutions. This would combat the impunity that continues to protect the State, its agents, and those who operated the institutions from justice and accountability. Even where criminal justice for these atrocities is no longer possible, the evidence gathered becomes part of the historical record.[7] Canada is obligated to disclose and remember its own disreputable past by rewriting national history to accurately reflect this reality. Canadians must learn the whole truth about the missing and disappeared children and unmarked burials to fully understand Canada's

failure to protect Indigenous Peoples' human rights. This education should happen not only in schools and universities but also through public history institutions and commemorations.

Empty Chairs honouring the missing and disappeared children at community Gatherings across the country (Office of the Independent Special Interlocutor).

The political, legal, and socio-economic systems, institutional structures, and agents of settler colonialism that targeted Indigenous Peoples through laws and policies of forced child removal and land dispossession, subjecting them to mass human rights violations and atrocities, remain deeply embedded in Canadian society. However, Indigenous Peoples have always resisted colonization on individual and collective levels. They continue to assert their inherent, Treaty, constitutional and human rights of self-determination in international and domestic political and legal forums. They continue to protect, reclaim, and revitalize Nation-specific cultures, languages, spirituality, political philosophies, governance systems, laws, and histories and support culturally distinct, trauma-informed health and community well-being.

The relational dynamic between settler colonial oppression and anti-colonial resistance shapes all aspects of Indigenous/non-Indigenous relationships; it underpins the search and recovery

work currently underway across the country to find the missing and disappeared children and their burial sites, investigate their deaths, repatriate them where desired, and memorialize and commemorate their short lives. This same dynamic also manifests in conflicts over Indigenous efforts to protect cemeteries and unmarked burial sites and to rematriate lands to Indigenous Nations and communities.

THE NEED FOR AN INDIGENOUS-LED SEARCH AND TRUTH RECOVERY MECHANISM

It is essential for all Canadians to understand that Indigenous-led search and recovery work is not just another "program" or "partnership" between the federal government and Indigenous communities. Funding supports or access to records agreements with government and church officials are only the first steps towards a full range of reparations that Canada must make to Indigenous Peoples for violating their rights so profoundly for well over a century. Consistent with international human rights law, principles, and standards, the right to truth is both, "an obligation of the State derived from the guarantees of justice ... [and] a form of reparation in cases of human rights violations ... because it is a way of acknowledging the importance and value of people as individuals, victims and rights holders."[8] Under international law, the right to truth is inalienable—it cannot be lost or waived. It is owed to Indigenous communities until it is fully satisfied by Canada.

As noted in this Final Report, international experts point out that:

> enforced disappearances occur when people are deprived of liberty by State actors, or by organized groups or private individuals acting on behalf of, or with the support, consent, or direct or indirect acquiescence of, State officials; and when this deprivation of liberty is followed by a refusal to disclose the fate or whereabouts of the persons concerned, and/or a refusal to acknowledge the deprivation of their liberty.[9]

Canada deprived Indigenous children of their liberty and subjected them, including their families and communities, to mass human rights violations. Survivors, Indigenous families, and communities have the right to a rigorous, highly credible process to find and disclose the whole truth about what happened to the missing and disappeared children, locate their burial sites, and ensure that those responsible for their deaths are held accountable. All Canadians have a role and responsibility to support reparation measures in ways that advance truth, accountability, justice, and reconciliation.

EVOLVING INTERNATIONAL APPROACHES FOR EFFECTIVE SEARCH AND TRUTH RECOVERY MECHANISMS

Reparations programs are not substitutes for search and truth recovery mechanisms needed to investigate what happened to persons who are missing or disappeared by the State and its agents. Accountability and access to justice are themselves key forms of reparation that can only be advanced through full investigations and truth-finding. However, search and truth recovery mechanisms alone do not wholly satisfy the State's obligation to provide a broad range of reparations to those whose human rights have been violated. Searches for the disappeared in several Latin American countries were previously conducted primarily through the criminal justice system where the focus is on identifying those responsible for atrocities rather than on meeting the needs of victims and their families. More recently, however, there is growing emphasis on the equally important need to search for information to provide answers to families and communities about their loved one's fate and where they are buried.[10] While these two approaches address two distinct and autonomous obligations—the obligation to search and the obligation to seek justice and accountability—they are not mutually exclusive. The search for truth and/or to find victims, pursued through a non-judicial mechanism, does not preclude the pursuit of justice against the perpetrators of crime. Indeed, these obligations, far from being mutually exclusive, are interrelated, and activities carried out in pursuit of them should be complementary.[11]

Several States across the globe have established non-judicial search and truth recovery mechanisms to investigate enforced disappearances. Whereas judicial investigations are conducted through the criminal justice system, non-judicial mechanisms, such as offices or commissions of investigation, are created through legislation or by presidential decree. They are mandated to investigate missing persons and enforced disappearances where the State or its agents have been responsible.[12] A group of international experts note that in the countries they examined in Latin America and Asia:

> [E]ach State search institution ... has different, country-specific, features, and each has its strengths and weakness. Nonetheless, they have some shared characteristics: the State bodies focused on are non-judicial, i.e., administrative, mechanisms ... with relatively autonomous powers and capabilities in the search for, and/or identification of, disappeared persons. They also generally maintain close contact with families of the disappeared, who can be an essential source of information, as well as having a right to participate and be kept informed. Each non-judicial

> search mechanism has its own unique mandate, which often limits it to certain historical events or time periods, as well as outlining the legal and operational relationship between search and any parallel or subsequent justice system activity. These characteristics are often determined by the political and institutional environment prevailing at the time each was set up.[13]

The diversity and complexity of the circumstances leading to the creation of a search and truth recovery mechanism in vastly different countries with different political histories, governance structures, and legal systems demonstrates the need for an investigative body to be tailored specifically to the Canadian context.

Applying the UN Committee on Enforced Disappearances' Guiding Principles for the Search for Disappeared Persons in Canada

In 2019, the UN Committee on Enforced Disappearances (UNCED) issued 16 principles to guide the search for disappeared persons. Key among these is the need for:

- Respect for human dignity;
- A comprehensive, transparent, and consistent public policy on enforced disappearances and searches with appropriate legislative, administrative, and budgetary measures and educational policies as well as health supports for victims and families;
- Searches to take a differential (distinctions-based) approach to consider the specific interests and needs of women and children and the cultural practices of Indigenous Peoples or other ethnic or cultural groups;
- The right of victims and families to participate in searches and to receive information, progress reports, and search results to be protected and guaranteed;
- The search to continue until the fate of the victim is determined and, where the person is deceased, for their remains to be returned to family members with dignity in accordance with their cultural norms;

- A comprehensive, coordinated strategy for search investigations using appropriate forensic methods, forensic experts, and other specialists with technical or other areas of expertise;
- Authorities in charge of investigations to have the necessary legal capacity, financial and technical resources, professional staff, and training;
- Authorities in charge of investigations to have unrestricted access to information, records, and databases, including those with information on births, and deaths;
- National registers and databases to be established with information on individuals, including details of their death, exhumation, disposition of their remains, and determination of whether the person was disappeared;
- DNA databases with an appropriate legal framework and safeguards for personal information collected;
- Searches to be coordinated under a competent body and for States to guarantee that investigations are coordinated collaboratively across all levels of government and other institutions;
- Searches and criminal investigations to be interrelated; non-judicial bodies such as offices or commissions of investigation should establish mechanisms, protocols, and procedures to ensure cooperation, coordination, and an exchange of information with those conducting investigations in the criminal justice system;
- The safety, health and well-being of victims, families, and communities participating in searches to be ensured;
- Searches to be independent and impartial; mechanisms established to conduct searches should not be subordinate to any institution, agency, or person that may be involved in cases of enforced disappearance; and
- Searches to be governed by public protocols to ensure effectiveness and transparency; search protocols should be revised and updated periodically to incorporate lessons learned, innovations, and good practices.[14]

UNCED's *Guiding Principles*, as well as a report issued in 2020 by the UN Working Group on Enforced or Involuntary Disappearances (WGEID) on standards and public policies for an effective investigation of enforced disappearances, and various studies by other international experts, can inform the creation of a search and truth recovery mechanism in Canada.[15] Together, they provide important understandings into the practicalities of designing and implementing independent offices or commissions of investigation established by the State.

The WGEID observes that, "although States should assume the duty to investigate, relatives and civil society organizations should be allowed to actively participate in this process."[16] Principle 5.1 of the *Guiding Principles* notes that, "victims ... have the right to take part in the search.... [They] should have access to information ... on the progress and results of the search and the investigation. Their input, experiences, alternative suggestions, questions and doubts should be taken into account at all stages of the search."[17] However, international approaches have some shortcomings when applied to the Canadian situation where Indigenous rights and sovereignty exist. While they emphasize the critical role of victims, Survivors, families, and communities in searching for the disappeared, and their right to participate in forensic investigations, they do not envision them leading such processes.

How Forensic Investigations in Guatemala and Colombia Respectfully Incorporate Indigenous Families, Communities, Laws, Ceremonies, and Protocols

As highlighted earlier in this Final Report, Indigenous and Afro-Colombian people in Colombia and Mayan people in Guatemala are intervening in, and transforming, forensic investigations by integrating their laws, ceremonies, protocols, and practices into the process.[18] Both the Committee for the Rights of the Victims of Bojayá (Comité por los Derechos de las Víctimas de Bojayá) from Colombia and the Forensic Anthropology Foundation of Guatemala (FAFG) have come to Canada, generously sharing their knowledge, experiences, and expertise with Survivors, Indigenous families, and communities.[19]

The Committee for the Rights of the Victims of Bojayá, Colombia

In Colombia, the Committee for the Rights of the Victims of Bojayá is led by the family members of those who were killed in the Bojayá massacre.[20] In May 2002, intense infighting erupted between the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia or FARC) and the United Self-Defence Forces (Autodefensas Unidas de Colombia or AUC) in Bojayá. Approximately three hundred people took shelter in the church. The FARC fired several explosive bomb cylinders, one of which landed in the church,

killing over 80 men, women, and children.[21] Leyner Palacios, the former commissioner of the Truth Commission in Colombia, Bojayá Survivor, and family member, explained that, "the community wanted to do proper burials but could not, as they had to flee. This caused pain for the community as improper burials mean that the Spirits of the lost cannot move on. The people died a violent death so they were just wandering. This generated illness among the community."[22]

Committee member José de la Cruz Valencia further explained that the Elders and Knowledge Keepers from the Afro-Colombian and Indigenous communities had an important role in bringing the community together to decide whether to conduct exhumations and try to identify their loved ones. This was a particularly difficult decision since Afro-Colombian communities traditionally do not conduct exhumations because, "burials are meant to be forever," and exhumations are rare among the Indigenous Embera communities.[23] They brought family members from all over the country to sit in assembly together and explained the process of exhumation and identification. The Elders and Knowledge Keepers guided the process to be followed and appointed 10 representatives. The Knowledge Keepers then trained the forensic and psychosocial professionals about the cultural beliefs and how to treat the bodies in a respectful manner. No expert was permitted to access the territory or conduct exhumations without completing this training.

The understandings of death, spiritual protocols, and cultural beliefs of both Afro-Colombian and Indigenous communities were embedded in the process of searching, exhuming, identifying, and reburial. Indigenous Embera Knowledge Keeper Baltasar Mecha explained that, "if someone dies a violent death, the Spirit has the power to attack people. So what must be done is to ask permission from the Spirits if humans can go in there and do the work. Then work must be done to harmonize the area through medicines and ceremonies, but this can only happen if the Spirits agree." After this, alabados—Afro-Colombian chants for the dead—were sung for Elders and children, and prayers were given. The investigation process lasted two years. The exhumation process was painful for family members to witness. Ereigiza Palomeque, rezandera[24] and singer of alabados, noted that, "psychologists were not enough, they also needed ancestral medicines."[25] After a two-year process of exhumations and identification, the families came back into assembly; they decided to hold a collective wake and rebury everyone in the same place, "because they wanted to communicate to the country and the world that what happened there cannot happen again."[26]

In November 2019—17 years after the massacre had occurred—102 caskets were returned to Bojayá for reburial. Some contained the remains of the victims who died, while others were empty to represent those who were never found, those who could not be identified, or

unborn babies of pregnant mothers who were killed. Traditional wake ceremonies were held for a week to honour the dead, after which the victims were finally laid to rest. Herling Perea, a member of the Committee for the Rights of the Victims of Bojayá, survived the massacre, but his brother, niece, aunt, and cousin were killed. He said, "[at] the time of our families' deaths, it wasn't possible for us to sing and pray for them in our way, ... so that has resulted in the revictimisation of the victim's families, because until now, the wounds have remained open."[27] He stressed that it was extremely important for the whole community to give them a dignified burial since, "that's what they deserve."[28]

Pilar Riaño Alcalá, a Colombian Canadian researcher, who worked with the Committee for the Rights of the Victims of Bojayá, notes that:

> by the time the exhumations began in May of 2017, the Committee and [K]nowledge [K]eepers shared with the institutions and stakeholders involved a vision and a set of principles that framed the exhumations in two intersecting lenses: (a) a process inscribing forensic procedures and protocols of exhuming, identifying, and return of the remains of the dead in funerary rituals and traditional ceremonial practices of caring for the dead (I refer to this process as forensics of care); (b) an autonomous political movement of truth-seeking, historical clarification, and memorialization led by the community under the guidance of their [K]nowledge [K]eepers. Since they began the journey to identify and bury their dead, Black and Indigenous ways of understanding life and death and the responsibilities towards their dead guided the Committee's work.[29]

Led by the committee, the families and community also gathered the life histories of those who died and gave one copy to the family and the other was left for el lugar de memoria de Bojayá (the place of memory of Bojaya), which is under planning. The families wanted to make sure their loved ones are remembered for who they were. There has also been a book written and a website and documentary produced.[30]

As the Committee for the Rights of the Victims of Bojayá's work demonstrates, family and community involvement has the ability to transform forensic investigations processes through an ethic of care. Here, family and community involvement ensured that both Afro-Colombian and Indigenous community beliefs, ceremonies, and protocols were respected and incorporated into forensic processes. This committee's work also provides a powerful example of the ways in which families and communities have insisted on the right to truth and the duty to remember to guard against non-repetition of human right atrocities.

Through their ongoing dedication and persistence, the families of the victims of the Bojayá massacre continue their work to restore dignity and honour, and to commemorate each and every victim.

Forensic Anthropology Foundation of Guatemala

In Guatemala, forensic approaches have also included the family and enabled a systemic analysis of human rights violations. At the Edmonton National Gathering, Fredy Peccerelli, executive director of the FAFG described how they developed a multi-disciplinary approach to conducting forensic analyses of unidentified persons recovered in mass, unmarked graves that is respectful of and incorporates Mayan laws, protocols, families, and communities. Importantly, he noted that the FAFG is an organization that is completely independent of government. He highlighted that the Mayan community is deeply and directly involved in every aspect of the search for the disappeared: the searches for the disappeared begin and end with community engagement, traditional protocols, and ceremony. Children are also involved in the work. They have grown up with the legacy of the losses, and it is seen as very important that they be part of the searches. Children are at the heart of what they do.

He emphasized that the integrity of the search and forensic investigations process is always maintained. The FAFG's forensic work has been recognized around the world, and there have been criminal prosecutions in both State and international courts arising from the FAFG's work. The FAFG's approach, as highlighted in this Final Report, demonstrates that cultural and forensic integrity are compatible. Throughout his presentation, Peccerelli emphasized the importance of creating a dignifying process for the families of those who have been disappeared, "In the search, one of the biggest things we find is the truth. And that's what we mean when we say the search is dignifying. We uncover the truth of the trauma: we can see how people died by their skeletons; we can see if they were with anyone else; we can see where and how they were buried." The FAFG keeps families informed and reports back to them in a way that is respectful:

> We notify families directly—we don't do it with any intermediaries. The same way they trusted us, we trust them and give them the information back right away. We will accompany them in the process [of reburial of their loved one] if they ask us to. And they have pretty much asked us in every single case. You can see what this means to the families.[31]

In the FAFG's forensic investigation process, Mayan families and communities are not just consulted about a plan that has already been established by Western-trained archaeologists, anthropologists, and other forensic experts. Rather, they are an integral part of all aspects

of the investigation, integrating Mayan laws, ceremonies, and protocols into the search and recovery work, from the beginning. As Peccerelli emphasizes, in the context of the search for the disappeared in Guatemala, "families are probably the largest contributors to the search for disappeared individuals."[32] He notes that, "we wouldn't be able to find these graves if the community didn't tell us where they were. They sometimes know where the bodies are, or where to start looking."[33] Peccerelli also pointed out that the families who are searching for their loved ones can identify who is missing and provide information about their remains that may help identify them. For instance, if the person ever broke a bone, it may help to identify their remains if a decision to exhume is made. As a result, part of the FAFG's forensic process is to interview families to create a "social and biological profile" of the disappeared person. Interviewing the families to gather as much information about the missing or disappeared person is therefore crucial to the search process.

Families and communities, with appropriate training, can also participate directly in search and recovery processes, including exhumations. Having families involved ensures both continuity and long-term commitment and dedication. Peccerelli notes that the families tell him that they, "will never give up" in searching for their disappeared loved one.[34] He emphasizes:

> The only way to deal with something like this, is to put it in the hands of the communities. The communities ask relentlessly for the truth and they will not have another answer. It is not only about justice—it is not only about one thing for the families—it is about the search process itself.... The beginning of the search is already a success. That first step is a success as long as it is done in a way that is led by communities and families and recognizes them.... The way forward has to come from the families, the Survivors, the communities [otherwise] it will not be sustainable. It must be sustained by the community and become a process that is part of the community that entails the inclusion of the different generations.[35]

Indigenous youth and cultural performers at National Gatherings between 2022 and 2024 (Office of the Independent Special Interlocutor).

KEY ELEMENTS OF AN INDIGENOUS-LED REPARATIONS FRAMEWORK FOR TRUTH, ACCOUNTABILITY, JUSTICE, AND RECONCILIATION

The principles, standards, and policies developed by international experts for search and truth recovery mechanisms affirm the importance of respecting culturally distinct practices of victims and families in search and truth recovery processes.[36] However, for Indigenous Peoples, these are not just practices; they are laws. At the Toronto National Gathering in March 2023, participants shared how Indigenous laws are being upheld in the Sacred work of searching for the missing and disappeared children and unmarked burials, including how:

- It unites many Indigenous Nations in shared purpose, and diverse legal orders are working together to advance it;
- Indigenous laws establish specific obligations and practices for the care of children and those who have died, and how these laws are meeting family and community needs in responding to the genocidal harms inflicted on Indigenous Peoples;
- Indigenous leaders, Knowledge Keepers, Elders, Matriarchs, and communities are upholding and practising their laws within, beyond, and despite the Canadian legal system;
- Communities are caring for the children's bodies, Spirits, and burial places according to their own laws;
- The application of Indigenous laws can advance accountability and justice and rebuild responsible relations across societies;[37] and
- As Indigenous Peoples exercise their sovereignty and adapt and apply Indigenous laws, they are decolonizing and moving beyond mere participation in leading these investigations.

International approaches also emphasize the importance of family and community participation. However, more than mere participation is needed. These approaches must be tailored to support investigations into the missing and disappeared children and unmarked burials in the Canadian context, which include a history of atrocities and genocide. These tailored approaches must:

- Consider how the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*) should be integrated into investigations;

- Reflect Indigenous Peoples' sovereignty as self-determining peoples and holders of inherent, Treaty, and constitutional rights within Canada;
- Be governed by Indigenous laws relating to grieving, death, burial, and memorialization, with appropriate respect for Indigenous ceremonies and protocols in all aspects of the investigation process; and
- Examine the systemic patterns of genocide and crimes against humanity perpetrated against Indigenous Peoples within Canada.

In his July 2023 report on Canada, José Francisco Calí Tzay made several findings and recommendations relating to the missing and disappeared children and unmarked burials. He concluded that a particular approach is needed to reflect the Canadian context:

> The negative legacies of colonialism and history of abuse and discrimination have left [S]urvivors and their families with a deep mistrust of Canadian institutions. First Nations, Métis and Inuit peoples want to lead the repatriation of the remains of their children in a culturally relevant way with adequate financial support from Canada to cover the costs of forensic investigation, exhumation and/or commemoration, healing and wellness.[38]

He recommended that Canada:

> fully support Indigenous Peoples' calls for **[S]urvivor-centred, Indigenous-led investigations** into residential school burial sites, including those located on private lands, to mitigate against further harm in accordance with Truth and Reconciliation Commission Call to Action 76, and **respect Indigenous Peoples' laws and protocols** related to grieving, death and burial practices in any investigation of residential school burial sites.[39]

This Final Report has examined four elements of reparation that when woven together form the foundation of an Indigenous-led Reparations Framework for truth, accountability, justice, and reconciliation:

1. Activating and enforcing international obligations;
2. Implementing Indigenous laws and decolonizing the Canadian legal framework;

3. Finding truth, rematriating lands, and repatriating the children; and
4. Supporting Indigneous-led healing and countering settler amnesty.

Implementing each of these four elements into the new framework is essential and can be achieved by adherence to the obligations identified below.

Obligations

Many mandates of federal commissions of inquiry or Orders in Council appointing officials direct that "recommendations" be made in final reports. The Mandate and Terms of Reference for my position as the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools are no different, directing me to, "identify areas of improvement in Canadian law and make recommendations for a new federal legal framework." However, too often governments and other institutions do not implement the "recommendations" made. As such, I have opted to not make recommendations but, rather, to identify the legal, moral, and ethical obligations that governments, churches, and other institutions have to support Indigenous-led search and recovery work. These obligations must be fulfilled in accordance with the *UN Declaration*, Indigenous laws, international human rights and criminal law, and Canadian constitutional law.

The greatest and most important obligation that we all have is to the Survivors. They must be honoured and acknowledged for their courage, determination, and advocacy to raise public awareness about the truths of unmarked burials of children who died at Indian Residential Schools and other associated institutions. Survivors have shared these truths for decades, but, for far too long, their testimonies have been dismissed or ignored. Survivors continue to be at the forefront of holding the federal government accountable for these harms. They are the living witnesses of what happened to the missing and disappeared children. Many Survivors have been reliving their trauma in walking the sites of former Indian Residential Schools and associated institutions to help find the missing and disappeared children. They hold the collective memory of the harms perpetrated against them and other children. Their testimonies, about each institution and across institutions, reveal the systemic patterns of genocide and the crimes against humanity perpetrated by Canada against Indigenous children and families. Survivors are aging, and there is urgency to gather their truths and testimonies. Indigenous communities are best placed to do this important truth gathering. Given this urgency, the federal government must comply with Canada's international legal obligations.

Survivors Are the Living Witnesses

1. The federal government must provide continued and ongoing sufficient funding to support Survivor Gatherings at the national, regional, and community level and for the recording of Survivor truths.

Establishing a National, Indigenous-Led Commission of Investigation into Missing and Disappeared Indigenous Children and Unmarked Burials

2. The federal government, in consultation and collaboration with Survivors, Indigenous families and communities, and Indigenous Leadership, must establish through legislation an independent, Indigenous-led national Commission of Investigation into Missing and Disappeared Indigenous Children and Unmarked Burials (see Appendix A). In creating this Commission, the federal government must adopt the human rights-based forensic investigation principles set out in the 2019 UN Committee on Enforced Disappearances' *Guiding Principles for the Search for Disappeared Persons*.

TRC Calls to Action

3. All levels of government in Canada, along with church entities, must fully implement TRC Calls to Action 71–76.

4. Call to Action 73 must be expanded to include cemeteries and burial sites associated with the other institutions to which children were taken or transferred (see Appendix B).

Long-Term, Sufficient, Flexible Funding

5. The federal, provincial, and territorial governments, and church entities, must fully support Indigenous families and communities' right to truth under international law and provide long-term, sufficient, and flexible funding for Indigenous-led investigations into the missing and disappeared children and unmarked burials at all Indian Residential Schools and associated institutions. Funding must support search and recovery efforts for

any purposes deemed necessary by Indigenous communities or organizations leading investigations (see Appendix C).

6. Where disputes arise as to which level of government should provide funding in relation to investigations, a Jordan's Principle approach should be applied. The first level of government contacted must provide the funding requested, and any disputes about responsibility or apportionment of funds be subsequently resolved.

International Obligations

7. The federal government must provide full reparations, including compensation, to families of the missing and disappeared children, including their living descendants.

8. The federal government must publicly acknowledge that many of the Indigenous children who were taken to Indian Residential Schools, and other associated institutions, are not just missing. They are victims of "enforced disappearance" as defined by international law.

9. Canada must sign and ratify the *American Convention on Human Rights* and accept the jurisdiction of the Inter-American Court on Human Rights.

10. Canada must sign and ratify the *International Convention for the Protection of All Persons from Enforced Disappearance*. Canada must also explicitly codify enforced disappearance as a crime under the *Criminal Code* as well as the *Crimes Against Humanity and War Crimes Act*.

11. Canada must refer the enforced disappearance of children, as a crime against humanity, to the International Criminal Court (ICC). Where other individuals or organizations request that the ICC investigate, Canada must not oppose or interfere with such requests.

Upholding Indigenous Laws

12. Federal, provincial, and territorial governments must fully support and respect Indigenous Peoples' inherent right of self-determination, including their right to apply Indigenous laws and legal systems in relation to finding, repatriating, and commemorating the missing and disappeared children and

their burials. This requires that governments adhere to the Supreme Court of Canada's guidance on how the *UN Declaration on the Rights of Indigenous Peoples* can be incorporated into Canadian law, including ways to uphold Indigenous legal orders.

Protecting Indigenous Burial Sites

13. The federal, provincial, and territorial governments, in consultation and collaboration with Indigenous Peoples, must amend or enact legislation that creates an "Indigenous Burial Site" designation to protect these sites. Associated regulations, policies, processes, and effective enforcement mechanisms must also be implemented.

Indigenous Data Sovereignty

14. The federal government, in consultation and collaboration with Indigenous Peoples, must establish a National Indigenous Data Sovereignty Strategy and Action Plan. This must be in accordance with Articles 11 and 31 of the *UN Declaration on the Rights of Indigenous Peoples*, the recommendations of UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the *Joinet-Orentlicher Principles*.

15. All institutions, including federal, provincial, territorial, and municipal departments and archives, church entities and universities, and other organizations that hold records relating to Indigenous Peoples must:

    - Create a proactive plan to search their record systems and archives for information about the missing and disappeared children and unmarked burials and create a public, transparent, and accessible inventory of these records;
    - Work to transfer these records to Indigenous Peoples, in compliance with First Nations, Inuit, and Métis Indigenous data sovereignty principles; and
    - Provide education and training for archivists and staff on international human rights laws and principles, including the *UN Declaration on the Rights of Indigenous Peoples* and the *Joinet-Orentlicher Principles*.

Federal Right to Truth Legislation

16. The federal government, in consultation and collaboration with Indigenous Peoples, must enact federal legislation creating a statutory requirement for all individuals, governments, churches, universities, and organizations that hold records relating to children at Indian Residential Schools and associated institutions to register their holdings in a National Records Registry. This Federal Right to Truth legislation must:

    - Specify a time frame for the registration of holdings;
    - Require federal departments and agencies, including Library and Archives Canada and the Royal Canadian Mounted Police (RCMP), to provide notice to Indigenous families and communities if they wish to destroy records that relate to them. No records shall be destroyed without their consent;
    - Create an offence for destroying or altering such records;
    - Include penalties for failing to abide by the time frame and requirements set out in the legislation; and
    - Include appropriate enforcement powers and mechanisms.

    The preamble should state that, consistent with the right to the truth, the *UN Declaration on the Rights of Indigenous Peoples*, and the *Joinet-Orentlicher Principles*, it is in the collective public interest that all records relating to Canada's treatment of Indigenous Peoples be preserved.

Moratorium or Prohibition of Destruction of Records

17. Federal, provincial, territorial, and municipal governments—as well as organizations, institutions, and other entities who hold records that may contain information relating to the death of a child while in the care of Indian Residential Schools and other associated institutions—must place immediate moratoriums on record destruction. These moratoriums must include health and dental records, court files, police records, and various government departmental records, including those relating to education, child welfare, juvenile detention, and corrections.

18. The federal government must create an inventory of records relating to Indigenous Peoples that have already been destroyed and provide the dates of, and reasons for, their destruction. This inventory must be made available to those leading search and recovery work and the Commission of Investigation into Missing and Disappeared Children and Unmarked Burials, once it is established.

Access to, and Protection of, Records

19. The federal government, in consultation and collaboration with Indigenous Peoples, must review, amend, and modernize the federal access to information system, including by amending the *Access to Information Act* and the *Privacy Act*. Such amendments should:

    - Recognize Indigenous Peoples' collective rights;
    - Implement a "public interest" override that specifically recognizes Indigenous Peoples' interests;
    - Create independent oversight to ensure full and timely access and disclosure of records relating to Indigenous Peoples, including the missing and disappeared children; and
    - Align with the *UN Declaration on the Rights of Indigenous Peoples*, the *Joinet-Orentlicher Principles*, and the right to truth.

20. Federal, provincial, and territorial governments, in consultation and collaboration with Indigenous Peoples, must review and amend existing laws, policies, and procedures on the access, retention, and destruction of records. Indigenous Peoples should determine what government records are of "historical" value and ought to be preserved. No government records relating to Indigenous Peoples should be destroyed without their consent.

Support for Families and Communities to Obtain Records

21. All provinces and territories must enact new legislation to establish a permanent office to provide support for families and communities of missing and disappeared children. These offices can draw on the successful aspects of

Bill 79, *An Act to Authorize the Communication of Personal Information to the Families of Indigenous Children Who Went Missing or Died after Being Admitted to an Institution*, in Quebec.

Independent Assessment Process Records

22. The federal government, in consultation and collaboration with Indigenous Peoples, must immediately appoint independent reviewers to review the records and testimonies of the Independent Assessment and Alternative Dispute Resolution processes. The scope of the review is to gather and report on information relating to the deaths and burials of any children prior to the court-ordered destruction date in 2027.

Return of Records

23. The federal government must immediately seek the return of all records that are outside Canada that relate to Indian Residential Schools and associated institutions, and work to transfer these records to Indigenous Peoples.

24. Churches must immediately return all records that contain information about Indian Residential Schools and associated institutions to Canada and work to transfer these records to Indigenous Peoples.

Ensuring Ethical and Professional Standards for Site Searches

25. The federal government, in consultation and collaboration with Indigenous Peoples, must work with provinces and territories and relevant professional organizations to establish rules and regulations for professionals that are utilizing search technologies to find unmarked burials, including:

    - The creation of regulatory bodies to provide policy statements and guidelines as appropriate, including with respect to reasonable fees for work performed and the collection of data in accordance with best practices and scientific methods;

    - The establishment of ethical guidelines, criteria, and standards that respect Indigenous sovereignty, including Indigenous data sovereignty, and Indigenous laws and protocols;

- The establishment of a specialized certification process for technicians, archaeologists, anthropologists, forensic specialists, and any other individual or entity contracted to search for unmarked burials;
- The inclusion of powers to investigate complaints about unethical conduct, hold hearings, and issue written decisions;
- The establishment of penalties and revocation of certifications where appropriate; and
- Ensuring that enforcement powers are both sufficient and timely to address breaches of the established regulatory requirements.

Rematriating Lands

26. The federal government, in consultation and collaboration with Indigenous Peoples, must appoint an independent panel of experts to conduct a full investigation to trace the history and legality of the land transfers relating to the former Indian Residential School properties, cemeteries, and other associated sites. This panel of experts must provide a report of their findings and make recommendations for the rematriation of these lands.

Repatriation of the Children

27. The federal government, in consultation and collaboration with Indigenous Peoples, must enact an Indigenous Repatriation Act and develop an Action Plan for implementation. The Indigenous Repatriation Act must align with the *UN Declaration on the Rights of Indigenous Peoples*.

28. Provincial and territorial governments, in consultation and collaboration with Indigenous Peoples, must review and amend existing laws, or enact new laws, to support the repatriation of Indigenous human remains to align with the *UN Declaration on the Rights of Indigenous Peoples*.

Supporting Indigenous-Led Healing

29. The federal government, in consultation and collaboration with Indigenous Peoples, must establish additional healing lodges and centres in Indigenous

communities to fulfill the State's international legal obligations to provide meaningful reparations for the mass human rights violations committed.

30. Federal, provincial, and territorial governments must provide, without discrimination, sufficient health and wellness supports for Survivors, Indigenous families, and communities impacted by the search and recovery efforts for the missing and disappeared children. This requires the development and implementation of distinctions-based, trauma-informed health supports within existing health-care systems.

Apology and Action as Reparations

31. Federal, provincial, and territorial governments, churches, the RCMP, universities, and any other organizations that supported and/or operated Indian Residential Schools and associated institutions must apologize for the multiple harms they committed against the missing and disappeared Indigenous children, their families, and communities. For these apologies to meet the criteria of Indigenous Peoples and the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence they must:

    - Establish a full and accurate public record of the historical injustices and ongoing harms of genocide, colonization, and mass human rights violations; and
    - Commit to further substantive material and symbolic reparations and actions in accordance with international human rights law.

Memorialization and Commemoration

32. Federal, provincial, and territorial governments, in consultation and collaboration with Indigenous Peoples, must enact commemoration laws for the missing and disappeared children and their burials. To be consistent with international legal principles, these laws should include provisions that:

    - Respect Indigenous self-determination, and uphold Indigenous laws, oral histories, and memory practices;

- Protect collective memory against historical negationism and the spread of hatred towards Indigenous people and communities;
- Set rules of public conduct for commemorative events or at memorial sites;
- Regulate educational curricula; and
- Establish dedicated programs to support individuals and families to attend the burial sites of their missing or disappeared relatives, and to place grave markers, cairns, and monuments at these sites.

33. Federal, provincial, and territorial governments, in consultation and collaboration with Indigenous Peoples, must review and amend existing heritage legislations to provide protection for, and expedite the designations of, former Indian Residential Schools and associated sites as heritage and/or historic sites.

34. Federal, provincial, and territorial governments, in consultation and collaboration with Indigenous Peoples, must explore the viability of establishing a national or regional cemetery for the missing and disappeared children who are exhumed but cannot be identified.

Fighting Denialism and Rewriting Canada's History

35. The federal government must combat Indian Residential School denialism by:

- Tracking the dissemination of disinformation and misinformation about Indian Residential Schools, missing and disappeared children, and unmarked graves and burial sites;
- Regulating and requiring search, social, and digital companies to stop and immediately remove the dissemination of misinformation, disinformation, and falsehoods about Indian Residential Schools, missing and disappeared children, and unmarked graves and burial sites;
- Providing support for Indigenous people and communities that have been subjected to online hate and harm; and

- Establishing penalties, effective monitoring, and enforcement mechanisms.

36. The federal government must include provisions in Bill C-63: *An Act to Enact the Online Harms Act* to address the harms associated with denialism about Indian Residential Schools, including the missing and disappeared children and unmarked burials.

37. The federal government must amend the *Criminal Code*, making it an offence to wilfully promote hatred against Indigenous Peoples by condoning, denying, downplaying, or justifying the Indian Residential School System or by misrepresenting facts relating to it.

Reparations from Media, Universities, and the Medical Profession

38. Media organizations must make reparations for their role in supporting settler colonialism and by denying and limiting truths about the Indian Residential School System. These should include:

    - Establishing investigations into their past complicity in mass human rights violations against Indigenous Peoples;
    - Performing audits and studies relating to their media coverage of Indigenous people and communities;
    - Issuing apologies;
    - Respecting Indigenous community protocols and confidentiality agreements;
    - Developing and implementing ethical standards for trauma-informed reporting about Indigenous people and communities; and
    - Any other reparation measures, identified in consultation with Indigenous Peoples.

39. Universities must make reparations for their role in supporting settler colonialism and perpetrating harms against Indigenous Peoples, including children at Indian Residential Schools and other associated institutions. These should include:

    - Establishing investigations into their past complicity in mass human rights violations against Indigenous Peoples;
    - Performing audits and studies relating to their research, reports, and academic publications on Indigenous people and communities, including medical experimentations;
    - Identifying the professional benefits accrued to the university and individual academics and professors;
    - Issuing apologies for human rights breaches and their involvement in State-sponsored crimes against humanity; and
    - Any other reparation measures identified in consultation with Indigenous Peoples.

40. Medical organizations and professional associations must make reparations for their role in supporting settler colonialism and perpetrating harms against Indigenous Peoples, including children at Indian Residential Schools and other associated institutions. These should include:

    - Establishing investigations into their past complicity in mass human rights violations against Indigenous Peoples;
    - Performing audits and studies relating to their involvement in medical experimentations;
    - Identifying the professional benefits accrued to the medical institutions and individual medical practitioners;
    - Issuing apologies for human rights breaches and their involvement in State-sponsored crimes against humanity; and
    - Any other reparation measures identified in consultation with Indigenous Peoples.

Implementation and Monitoring

41. The federal government, in consultation and collaboration with Indigenous Peoples, must immediately establish an Implementation Committee to provide oversight on the implementation of all Obligations in this Final Report.

42. The federal government must provide annual reports to Parliament, and to National Indigenous Organizations, on its progress in implementing the Obligations contained in this Final Report.

APPENDIX A

Commission of Investigations into Missing and Disappeared Indigenous Children and Unmarked Burials

Implementing Obligation 2

> The federal government, in consultation and collaboration with Survivors, Indigenous families, and communities, and Indigenous Leadership, must establish through legislation an independent, Indigenous-led national Commission of Investigation into Missing and Disappeared Indigenous Children and Unmarked Burials.

Internationally, efforts to locate and identify missing and disappeared persons are often referred to interchangeably as "search mechanisms" or "truth recovery mechanisms." Both these terms emphasize the importance of revealing the truth of what happened to the missing and disappeared as a key part of reparations. Search and truth recovery mechanisms such as commissions of investigation are set up to oversee and conduct forensic investigations and truth-finding processes. There is an urgent need in Canada for an independent search and truth recovery mechanism. In establishing the Commission of Investigation into Missing and Disappeared Indigenous Children and Unmarked Burials (Commission of Investigation), the following key considerations regarding the potential governing legislation, mandate, and potential areas of investigation are offered to support the consultation and engagement process.

Key Considerations for the Legislation

Key considerations for the legislation may include:

- Upholding Indigenous sovereignty and laws by explicitly recognizing that Survivors, Indigenous families, and communities can freely choose whether to work with the Commission of Investigation or conduct their own independent investigations;
- Clarifying that the Commission of Investigation is mandated to act in service to Survivors, Indigenous families, and communities in accordance

with their free, prior and informed consent to identify, locate, repatriate, memorialize, and commemorate the missing and disappeared children and unmarked burials;

- Providing the Commission of Investigation with full access to records and powers to compel the production of records, witness testimony, and any other information deemed relevant to its investigations;
- Providing the Commission of Investigation with powers to secure and access sites for investigative purposes, including forensic investigations and to coordinate approaches with domestic and international criminal justice investigations;
- Providing the Commission of Investigation with stable, sustainable, and flexible federal funding for 20 years, with an option for extension; and
- Establishing the mandate, structure, and function of the Commission of Investigation independent of government.

Key Considerations for the Mandate

Key considerations for the mandate may include:

- A flexible mandate, which may initially focus on investigating the disappearances and deaths of Indigenous children and then expand to include investigations into other missing and disappeared Indigenous people;
- Developing distinctions-based and collaborative approaches to support the search and recovery of the missing and disappeared First Nations, Inuit, and Métis children;
- Establishing a specialized police taskforce to investigate the circumstances that led to the deaths of missing and disappeared children or the desecration of any burial sites of these children. Priority should be given to staffing this police taskforce with Indigenous police officers;
- Facilitating the appointment of a Special Prosecutor to prosecute cases relating to the death of Indigenous children while in the care of the State and churches at Indian Residential Schools and associated institutions;

- Providing forensic human rights investigation services into the missing and disappeared children to those individuals leading search and recovery efforts;
- Tracing the missing and disappeared children through a review of the records at the request of Survivors, Indigenous families, and community members;
- Establishing a National Tracing System Database to support its work;
- Analyzing the results of investigations to determine the circumstances surrounding individual deaths and burials as well as the systemic patterns of genocide and crimes against humanity perpetrated against Indigenous children at Indian Residential Schools and associated institutions;
- Investigating governments, churches, and other institutions that participated in the neglect, mistreatment, and criminal acts that caused children's deaths at Indian Residential Schools and other associated institutions;
- Developing and sharing information, expertise, and emerging practices on all aspects of search and recovery work;
- Educating the public about the missing and disappeared children and unmarked burials, Indigenous-led investigations, and the work of the Commission of Investigation;
- Liaising with government, churches, and other institutions to remove barriers for Indigenous-led investigations;
- Making submissions to international organizations, bodies, special procedures, mechanisms and working groups and pursuing international legal remedies and monitoring mechanisms, as appropriate; and
- Researching and producing public reports on the Commission of Investigation's work, including new areas of investigation into the individual circumstances as well as the systemic patterns of the deaths and disappearances of Indigenous children.

Potential Areas of Investigation

In the past two years, several areas emerged as requiring further investigations in relation to the atrocities committed against Indigenous people and children. The following four areas have been identified for investigation:

1. The deaths and burials of Indigenous children at health institutions, including Indian hospitals, sanatoria, and psychiatric institutions;
2. The deaths and burials of Indigenous children at other institutions, including orphanages, institutions for children with disabilities, homes for unwed mothers, reformatories, and juvenile detention centres;
3. The human experimentation on Indigenous people, including children; and
4. The deaths and disappearance of babies born at Indian Residential Schools and other associated institutions.

APPENDIX B

TRC Call to Action 73

Implementing Obligation 4

> Call to Action 73 must be expanded to include cemeteries and burial sites associated with the other institutions to which children were taken or transferred.

The Truth and Reconciliation Commission of Canada's Call to Action 73 called on the federal government to work with churches, Survivors, and Indigenous communities to establish and maintain an online registry of Indian Residential School cemeteries. As demonstrated in *Sites of Truth, Sites of Conscience*, children were taken or transferred to various other associated institutions where they died and may be buried. The expanded online registry should include:

- Site plans;
- Plot maps;
- Aerial photos; and
- Other information that may support search and recovery efforts.

Independent researchers, on behalf of families and communities, should be able to submit information to be added to this registry as it is gathered. Long-term, sustainable funding is needed to ensure that this online registry is updated regularly and remains available to all Survivors, Indigenous families, communities, and their representative organizations who are leading searches and investigations. The online registry should be maintained by the Commission of Investigation into Missing and Disappeared Indigenous Children and Unmarked Burials, once it is established.

APPENDIX C

Funding

Implementing Obligation 5

> Funding must be flexible and support search and recovery efforts for any purposes deemed necessary by the Indigenous community or organization leading the search.

States that have violated their international legal obligations, resulting in substantive harms, have political, legal, and ethical obligations to make reparations. Reparations are most effective when they include both material and symbolic measures. Material measures relating to the search and recovery efforts for the missing and disappeared children and the unmarked burials necessarily include the provision of funding to Indigenous communities and organizations. This funding must be provided for, but not be limited to, the following purposes:

1. For national, regional, and community gatherings to be held so that those conducting searches can exchange knowledge and emerging practices and create networks of support;
2. For the revitalization of Indigenous laws generally, and, specifically, for Indigenous laws relating to funerary and burial practices and to support internal and inter-Nation decision-making;
3. To engage researchers or research services to provide support navigating privacy and access to information processes and to review and analyze archival records;
4. To hire professionals to translate French records;
5. To hire experts to conduct site searches, including to create site search plans, to review and analyze results both at first instance and for secondary or peer review, and/or to review site search plans and quotes to assess reasonableness;
6. For exhumation, DNA testing, forensic analysis, and repatriation of the children for reburial, where desired;
7. For legal advice and services;

8. To hire communication staff or consultants to create communication plans, including to negotiate media protocols that include confidentiality requirements and restrictions on the capturing of video, photographs, and drone imagery at burial sites;

9. To hire culturally competent and respectful security personnel to safeguard sites before, during, and after searches;

10. For the maintenance of former Indian Residential School cemeteries and associated sites where the burials of Indigenous children are located;

11. For the memorialization and commemoration of the missing and disappeared children and their burial sites, including:

    - National, regional, and community gatherings to honour the missing and disappeared children;
    - Placing grave markers and/or burial cairns;
    - Public art or commemorative monuments; and
    - Funds for Indigenous family members to travel to visit their loved one's burial sites.

12. To provide trauma-informed, culturally relevant health and wellness supports for Survivors, Indigenous families, and communities and search teams. Funding must be prioritized for Indigenous organizations and Indigenous Elders and Healers;

13. For the establishment and ongoing operation of First Nation, Inuit, and Métis healing lodges and centres that can develop culturally relevant, trauma-informed services for Survivors, Indigenous families, and communities searching for the missing and disappeared children and burials;

14. To train and increase the number of Indigenous data analysts, archaeologists, anthropologists, engineers, technicians, and related positions to support search and recovery efforts and investigations. Funding must be made available to universities, colleges, and technical institutes, working in partnership with Indigenous communities leading the searches, to develop and offer a dedicated program for Indigenous people to receive training and certification in remote-sensing technologies and data interpretation.

1 Letter from Grand Council Chief Reg Niganobe of the Anishinabek Nation to José Francisco Cali Tzay, UN Special Rapporteur on the Rights of Indigenous Peoples, March 7, 2023 (on file with the Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools [OSI]).

2 Internationally, efforts to locate and identify disappeared persons are often referred to interchangeably as "search mechanisms" or "truth recovery mechanisms." Both these terms emphasize the importance of revealing the truth of what happened to the disappeared as a key part of reparations. Here, "search and truth recovery mechanisms" is used to describe an institution, such as an office or commission of investigation, set up to oversee and conduct forensic investigations and truth-finding processes.

3 *United Nations Declaration on the Rights of Indigenous Peoples*, UN General Assembly (UNGA) Resolution 61/295, 61st Session, Supplement no. 49, UN Doc. A/61/49, September 13, 2007.

4 UN Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada: Report of the Special Rapporteur on the Rights of Indigenous Peoples*, UN Doc. A/HRC/54/31/Add.2, July 24, 2023, 17, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/139/12/PDF/G2313912.pdf?OpenElement.

5 Isabelle Knockwood, with Gillian Thomas, *Out of the Depths: The Experiences of Mi'kmaw Children at the Indian Residential School at Shubenacadie, Nova Scotia*, 4th ed. (Halifax: Fernwood Publishing, 2015), 17–18.

6 Working Group on Enforced or Involuntary Disappearances (WGEID), *Report of the Working Group on Enforced or Involuntary Disappearances on Standards and Public Policies for an Effective Investigation of Enforced Disappearances*, UN Doc. A/HRC/45/13/Add.3, August 7, 2020, 18, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/202/81/PDF/G2020281.pdf?OpenElement.

7 Derek Congram, Ambika Flavel, and Kim Maeyama, "Ignorance Is Not Bliss: Evidence of Human Rights Violations from Civil War Spain," *Annals of Anthropological Practice* 38, no. 1 (2014): 62.

8 Inter-American Commission on Human Rights, *Compendium of the Inter-American Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts*, April 12, 2021, 75–76.

9 C. Collins, ed., *An Innovative Response to Disappearances: Non-Judicial Search Mechanisms in Latin America and Asia* (New York: Global Initiative for Justice, Truth and Reconciliation, 2022), 17, https://pure.ulster.ac.uk/ws/files/101225433/SearchComissions_Final_Research_Doc_PDF_13.5.22.pdf.

10 Collins, *Innovative Response to Disappearances*, 28.

11 Collins, *Innovative Response to Disappearances*, 28–29.

12 For example, El Salvador established the National Commission on the Search for Adults Disappeared during the Armed Conflict and the National Commission on the Search for Children Disappeared during the Internal Armed Conflict in El Salvador. See Collins, *Innovative Response to Disappearances*, 69–82. Peru established the Office for the Search for Disappeared Persons (30–47). In Asia, Sri Lanka has established the Office of Missing Persons (106), and Nepal has established the Commission of Investigation on Enforced Disappeared Persons (112).

13 Collins, *Innovative Response to Disappearances*, 13.

14 *International Convention for the Protection of All Persons from Enforced Disappearance*, UNGA Resolution 61/177, December 20, 2006; UN Committee on Enforced Disappearances, *Guiding Principles for the Search for Disappeared Persons*, May 8, 2019, 1–9, https://documents.un.org/doc/undoc/gen/g19/134/11/pdf/g1913411.pdf.

15 The committee and the working group co-exist and work collaboratively to assist states to address enforced disappearances. Both identify international best practices and lessons learned from states across the globe. For more information, see WGEID, "About Enforced Disappearance," Office of the UN High Commissioner for Human Rights, accessed September 12, 2024, https://www.ohchr.org/en/special-procedures/wg-disappearances/about-enforced-disappearance#; WGEID, *Report of the Working Group on Enforced or Involuntary Disappearances.*

16 WGEID, *Report of the Working Group on Enforced or Involuntary Disappearances*, 4.

17 UN Committee on Enforced Disappearances, *Guiding Principles*, 3.

18 See Chapter 1. Pilar Riaño Alcalá, "Searching, Exhuming, Identifying and Burying the Victims of Mass Violence in Colombia Wall Stories: Peter Wall Institute," Peter Wall Institute for Advanced Studies, February 14, 2022, 2. The author points out the tension that exists between Western forensic knowledge and practices and Indigenous and Black knowledge and mortuary practices.

19 Freddy Peccerelli presented at the first National Gathering on Unmarked Burials in Edmonton, Alberta, in September 2022. On June 7, 2023, a delegation of members of the Committee for the Rights of the Victims of Bojayá were invited to several Indigenous communities and also met with OSI staff.

20 The committee is made up of a number of organizations from the territory itself: women, youth and Indigenous organizations, ethno-territorial authorities, and relatives of the deceased and injured.

21 During the previous and following days of the massacre, more than 20 others were killed in the territory, and several bodies were thrown into the river. Indigenous Embera people also live in this area, but none were killed because they had left the town to take refuge in other remote communities.

22 Leyner Palacios, OSI meeting with the Colombian delegation, Toronto, Ontario, June 7, 2023 (on file with the OSI).

23 Luz Marina Cañola, singer of alabados and health promoter, OSI meeting with the Colombian delegation, Toronto, Ontario, June 7, 2023 (on file with the OSI).

24 In the Afro-Colombian tradition, rezandera(o)s are Knowledge Keepers who pray for the dead during funerary rituals.

25 Ereigiza Palomeque, OSI meeting with the Colombian delegation, Toronto, Ontario, June 7, 2023.

26 José de la Cruz Valencia, OSI meeting with the Colombian delegation, Toronto, Ontario, June 7, 2023.

27 Steven Grattan and Cady Voge, "Bojaya Massacre: After 17 Years, Victims' Remains Returned," *Al Jazeera*, November 15, 2019, https://www.aljazeera.com/features/2019/11/15/bojaya-massacre-after-17-years-victims-remains-returned.

28 Grattan and Voge, "Bojaya Massacre."

29 Pilar Riaño Alcalá, in collaboration with José de la Cruz Valencia, Natalia Quiceno, and Camila Orjuela, "'We Gave Them Names': Exhumations, Peace Agreement and Social Reparation in Bojayá, Chocó," in *Histories of Perplexity: Colombia, 1970s–2010s*, ed. A. Ricardo López-Pedreros and Lina Britto (New York: Routledge, 2024).

30 "Exhumar, Identificar, Enterrar y Acompañar en Bojayá, Chocó," Los muertos de Bojayá son nuestros muertos, accessed September 12, 2024, https://bojayacuentaexhumaciones.com/.

31 Fredy Peccerelli, "The Long Journey for Truth in Guatemala: Multidisciplinary Forensics for Human Identification," Keynote Address, National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Edmonton, Alberta, September 13, 2022.

32 Peccerelli, "Long Journey for Truth in Guatemala."

33 Peccerelli, "Long Journey for Truth in Guatemala."

34 Peccerelli, "Long Journey for Truth in Guatemala."

35 Fredy Peccerelli, Virtual meeting between the Forensic Anthropology Foundation of Guatemala and the OSI, February 21, 2023.

36 The UN Committee on Enforced Disappearances' Principle 4.4 states that, "in cases involving disappeared persons or persons participating in the search who are members of [I]ndigenous [P]eoples or other ethnic or cultural groups, there is a need to consider and respect specific cultural patterns when dealing with the disappearance or death of a member of the community. An effective search should involve the provision of translators of the languages of the communities and bicultural interpreters." UN Committee on Enforced Disappearances, *Guiding Principles*, 3. The Working Group on Enforced or Involuntary Disappearances states that, "in investigative processes, the respective cultural and ethnic background of affected communities should be taken in consideration, and any operations that may lead to re-victimization or secondary victimization should be strictly avoided." WGEID, *Report of the Working Group on Enforced or Involuntary Disappearances*, 41.

37 OSI, *National Gathering on Unmarked Burials: Upholding Indigenous Laws in the Search and Recovery of Missing Children*, Summary Report, March 2023, 8.

38 UN Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada*, 6.

39 UN Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada*, 18 (emphasis added).

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