

**An Evaluation of Canada's Truth and Reconciliation Commission  
(TRC) through the Lens of Restorative Justice and the Theory of  
Recognition**

By

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**ABSTRACT**

Canada's Truth and Reconciliation Commission (TRC) was established as one of the responses seeking to address the harm done by the Indian residential school system. While the main goals of the TRC include discovering truth and promoting healing and reconciliation, it is necessary to critically interrogate its design and activities in order to gain insight into its potential to allow Canada to move beyond trauma and build a just future. To accomplish this challenging task, my thesis employs qualitative research design and applies the conceptual framework of restorative justice, Charles Taylor's theory of recognition, and Nancy Fraser's tripartite theory of social justice in an attempt to assess the TRC's restorative and cognitive potential. The main finding of this thesis is that the TRC is not fully restorative and possesses limited potential to contribute to the decolonization of Canada.

## CHAPTER 1: INTRODUCTION

This thesis evaluates the Indian Residential School Truth and Reconciliation Commission of Canada (TRC) through the lens of restorative justice and the theory of recognition. The research question addressed in this thesis is as follows: To what extent do the design and practices of Canada's TRC incorporate principles of restorative justice and is the TRC likely to succeed in providing adequate recognition to Aboriginal peoples for the injustices of residential schools?

Through treaty settlements reached with Aboriginal groups beginning in the 1800s, the government of Canada was invested with responsibility for the education of Aboriginal children. Therefore, policies related to the education of Status Indians fell under the jurisdiction of the federal government and these policies were later expressed in the establishment of the Indian residential school system (Episkewin 2009). During the residential school era, 1830s to 1990s, First Nations, Métis, and Inuit children, along with their relatives and communities, suffered wrongs committed against them by the Canadian government and the churches. These wrongs include but are not limited to: widespread sexual, physical, emotional, and spiritual abuse; bullying (student-on-student abuse); the aggressive assimilation of Aboriginal children into Euro-Canadian culture; substandard living conditions at Indian residential schools; and neglect resulting in death and disease. Various mechanisms such as class action lawsuits, the Alternative Dispute Resolution (ADR) process, apologies and compensation packages by the government and churches have been introduced in attempts to redress residential school experiences and acknowledge the harm done. The heretofore lack of conflict resolution success demonstrates the complexity and seriousness of the legacy of residential schools, as well

as the unsuitability of the previous processes to heal the resulting damage. The Truth and Reconciliation Commission (TRC) of Canada, which was established in 2006 under the Indian Residential School Settlement Agreement (IRSSA) as a truth-seeking mechanism with the purpose of promoting reconciliation, therefore needs to be examined for its potential to address injustices which were committed during the residential school era.

Truth commissions, which some scholars describe as institutions of restorative justice and recognition (see, for example, Minow 2000; Kiss 2000), may serve as effective mechanisms for resolving conflicts arising from historical injustices. Justice scholars, such as Gibbs (2009) and Guest (1999a, 1999b), in turn, argue that restorative justice bears resemblance to traditional Aboriginal justice practices and presents a useful framework for conflict resolution for the historical injustices experienced by Aboriginal peoples. Some of the goals of restorative justice include victim empowerment, recognition of harm done, truth-seeking, apology by the perpetrator, and an admission of responsibility for repairing the damage caused. In the past, truth commissions have been established to address human rights violations and political violence, such as South Africa's apartheid and Chile's and Argentina's disappearances and mass murder (Hayner 2001). Upon initial examination, truth commissions appear to incorporate several restorative justice principles into their practices. However, closer assessment of the design and implementation of the Canadian TRC is required in order to ascertain whether or not it does, in fact, possesses the potential to deliver restorative justice and provide the adequate recognition of Aboriginal cultural identities by the Canadian government and non-Aboriginal Canadians. This thesis will thus examine the Canadian TRC and analyze the restorative and recognitive potential of its design and practices.

My positionality in this Master's thesis is that of a non-Aboriginal researcher, and more specifically, a recent immigrant. I was first drawn to research issues that affect Aboriginal peoples when I began my studies at the University of Manitoba and enrolled in an introductory Native Studies course. I then began learning about Aboriginal history and broader systemic issues, such as poverty, discrimination, and substance abuse, which Aboriginal peoples are facing today. Later in my academic studies, I took interest in criminology, restorative justice, and genocide. I was then able, to a certain extent, to understand the nature of interaction between Aboriginal and non-Aboriginal peoples in Canada and became sensitized to the fact that Aboriginal people have largely been disadvantaged throughout colonial history, through assimilation and subjugation. Most recently, during the course of my Master's program, I became aware that Canada's TRC was being established with the purpose of addressing residential school experiences. I perceived this as an opportunity to evaluate the potential of the TRC in its abilities to rebuild the relationship between Aboriginal and non-Aboriginal peoples and to help restore dignity and respect for Aboriginal peoples, which were diminished during the colonial era. Taking into account my moral values and my background of research on Aboriginal issues, restorative justice, and truth commissions, I believe that Aboriginal peoples deserve justice and that Canada's TRC must be critically examined in its objectives to reconcile the past. Given my status as an immigrant and a settler, I consider it is my responsibility to be involved in the process that may have the potential to renew positive relationships between Aboriginal and non-Aboriginal peoples. As Taiaiake Alfred (2009:182) argues, all non-Indigenous peoples of Canada, including old families and recent immigrants, are settlers who have the responsibility to make "[amends] for the

crimes that were committed from which [they] have gained their existence as people on this land and citizens of this country.” The TRC’s Chair, Murray Sinclair, pointed out in his November 2010 speech at the University of Manitoba that it is not the responsibility of Aboriginal peoples to carry the burden of righting the wrongs of Indian residential schools, but it is also the responsibility of settlers to participate in the process of restoring Aboriginal identities and communities.

In this respect, my standpoint in this research could be best described as a critical sociologist seeking to undertake the task of evaluating the TRC, which, in turn, may contribute to the broader goal of decolonizing Canada. I also believe that I have much to learn from this research, with respect to Aboriginal history, restorative justice, and truth commissions. By enriching my perspective on these topics, I hope to become a better student and citizen. I also plan to continue my research on Aboriginal issues and restorative justice in the future by enrolling in a Ph.D. programme. Even though I have not personally experienced residential schools and my knowledge of Aboriginal history, justice, traditions, and other elements of Aboriginal culture is more indirect than that possessed by Aboriginal scholars and Survivors<sup>1</sup> of residential schools, I have put forth utmost effort to provide a fair, thorough, and respectful representation of relations between Aboriginal and Settler peoples in Canada. The following chapter, which provides an abbreviated and partial account of residential school injustices, incorporates the works of various Aboriginal scholars and writers in order to enrich my own interpretations of Canadian history with Aboriginal voices, perspectives, and narratives on residential school experiences.

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<sup>1</sup> Throughout this thesis, I refer to the persons affected by Indian residential schools as “Survivors,” which is also the TRC’s preferred way of identifying former students of Indian residential schools.

## CHAPTER 2: HISTORICAL CONTEXT

The history of relationships between Aboriginal peoples and the Canadian government is complex and multi-faceted. Until the late 18<sup>th</sup> and early 19<sup>th</sup> century, Aboriginal peoples and the government were military allies and trading partners, and these relationships were, for the most part, considered mutually beneficial by both parties (Fisher 1992). However, these seemingly positive relationships have since been damaged by attempts to colonize and appropriate Aboriginal lands for settlement (Neu and Therrien 2003). One of the ways in which Aboriginal peoples have historically faced attempts of aggressive assimilation is through the Indian residential school system. This chapter outlines injustices committed against Aboriginal peoples by the Canadian government and churches and reviews the mechanisms put in place in an attempt to address these injustices. The relevance and importance of this chapter lies within its goal to provide as thorough and accurate an account as possible of wrongful acts that Aboriginal peoples faced at the hands of the federal government and churches. This chapter is a necessary component of the thesis in that it contributes to our understanding of the extent of the harm done to Aboriginal people, their families, and communities. In order to explore the restorative and recognitive potential of the TRC to address and repair the harm done, it is first important to understand *what* it is that needs to be repaired.

During the process of writing this chapter, various challenges presented themselves. One of the challenges relates to the difficulties of presenting a complete residential school history and creating a single narrative of residential schooling in Canada. The history of residential schooling is long and complex and includes many perspectives, stories, and narratives from Survivors and Aboriginal and non-Aboriginal

scholars. Furthermore, residential schooling was experienced differently in various parts of the country and individual student experiences may vary greatly depending on factors such as the time period and which school students attended. For example, the reported patterns of mortality and abuse in residential schools are not uniform and vary from school to school. Similarly, the residential school attendance patterns differ across the country, and are proportional to the number of residential schools and Aboriginal population in each province or territory. Therefore, I make every attempt not to homogenize the experiences of Aboriginal children in residential schools, but instead consider them in their unique contexts.

This chapter begins by reviewing a history of Indian residential schooling in Canada, followed by reflections on the legacy of residential schools, and finally examines some of the recent developments that were used in attempts to redress residential school experiences, namely the Alternative Dispute Resolution process and the Indian Residential Schools Settlement Agreement, which includes compensation, apology, and the establishment of the TRC.

### **Precursors to Indian Residential Schools**

The Indian residential school system was established in the early 1800s, initially in the form of day schools on Indian reserves, which were later replaced by boarding and industrial schools in the 1850s, and eventually by residential schools in the 1920s (Chrisjohn et al. 2006). This system was conceived during a period when the relationship between the Canadian government and Aboriginal peoples was changing (Llewellyn 2002). Until the late 18<sup>th</sup> century, this relationship was characterized by mutual benefit and cooperation, and Aboriginal and non-Aboriginal nations interacted primarily through

military alliances and trading partnerships (Fournier and Grey 1997; Miller 2000). The Canadian government also considered Aboriginal peoples as partners in the process of colonizing North America, especially in terms of the aid they provided to French and British newcomers, helping them adapt to the new environment. As a result, Aboriginal peoples were considered to possess rights that were somewhat equal to those of newcomers, but only for as long as their cooperation was useful. However, once the fur trade wound down and Canada faced no further threats of military attacks from the south, Aboriginal people began to be viewed as a burden upon the Canadian state and an obstacle on the path to prosperity and economic development. As Fournier and Grey (1997:53) explain, Aboriginal Peoples had nothing more to offer to the settlers and “just as the native peoples’ military usefulness ebbed, so did their commercial value.”

Certain social and economic factors played a role in disadvantaging Aboriginal peoples and making them vulnerable to European assimilative influences. The destruction of the buffalo, on which many prairie Aboriginal communities relied for their livelihood, rendered them more dependent on European economic modes of production (Episkenew 2009). As Dyck (2004) notes, Aboriginal communities in the prairies were forced to sustain themselves through farming and agriculture. Diseases such as smallpox, in turn, wreaked havoc and weakened Aboriginal communities, making them susceptible to European domination, and thus silenced resistance and fueled assimilation. Episkenew (2009:22) argues that the devastation of Aboriginal communities by diseases was effective in convincing them that “resistance against colonial oppressors was futile.”

Scholar such as Younging et al. (2009:ix) argue that by assimilating Aboriginal children into Euro-Canadian society and dispossessing them of their cultural identities,

the Canadian government was anticipating that it would expropriate Aboriginal lands and “settle [them] within a single generation.” More precisely, the government saw residential schools as an appropriate tool to solve the “Indian problem” and convert Aboriginal people into brown-skinned Canadians, who would naturally lose their ties to the lands and would also cease to be “wards of the state” (Llewellyn 2002:256). As a result of this, the Canadian government would enjoy unlimited access to the land and resources, without having to concern itself with fiduciary relationship to Aboriginal people (Episkenew 2009). As the former Superintendent of the Indian Affairs Duncan Campbell Scott noted, the “Indian Problem” would be solved through complete and total assimilation, “by absorbing Native children into the body politic, until there would be no Indian question, and no Indian Department” (quoted in McKegney 2007:85). Aboriginal children would thus be resocialized, re-educated, and would “be taught to think, act, and believe as civilized Christians” (Episkenew 2009:45).

Aside from its objective to acquire land and resources, the government misrecognized Aboriginal cultures as barbaric and primitive, which played a significant role in giving rise to and sustaining the residential school system and with it the institutionalized abuses that continued throughout the residential school era (Episkenew 2009:3; Miller 2000). Scientific racism, systemic racism, and the “myth of White superiority” contributed to the misrecognition of Aboriginal peoples and oppressing them by casting them as less developed and less civilized than Euro-Canadians. Social Darwinists, for example, argued that Aboriginal people have not yet naturally reached the same levels of development as the newcomers, and therefore residential schools were necessary to artificially rescue Aboriginal people from savagery. As Miller (1996:185)

points out, “the problem was that the bureaucrats and the educators tended to assess Indian ways against the standard of their own society,” and differences between the two cultures were seen as unnatural. Similarly, systemic or institutional racism, ensured that Aboriginal students in residential schools were, on average, treated worse than non-Aboriginal children in urban schools (Episkenew 2009). Prohibition of Aboriginal cultural elements, such as Indigenous ceremonies that posed a threat to the political order, serves as a perfect example of the systemic racism the students were facing. Institutional racism made it possible for the Canadian government to justify its assimilationist policies that resulted in the residential school system, which had horrifying effects on the emotional, physical, spiritual, and sexual well-being of students.

### **“The Early Years:” Residential School Experiment in New France**

Although the residential school system was at its peak in the early 1930s, when eighty-eight schools were dotted throughout much of the country (Wesley-Esquimaux and Smolewski 2004:3), the actions and intentions to assimilate Aboriginal people into the dominant culture stem from an earlier historical period. Residential schools were first established in a failed experiment by French missionaries in the early 17<sup>th</sup> century, when they considered Aboriginal peoples “through the lens of intolerance and evangelical fervour” (Episkenew 2009:33). The goal of these boarding schools was to teach Aboriginal people Christianity and to civilize them by way of “moral training.” For French missionaries, education was synonymous with religion. As a result, Aboriginal children were taken to the boarding schools and separated from their parents for purposes of proselytization and education.

The main objective of French missionaries was to proselytize Aboriginal children so that they “would return to proselytize among their own people” (Fournier and Grey 1997:50). As opposed to the government’s rationale for assimilation, which included the acquisition of land and resources, missionaries’ attempts at assimilation were ideological and often lacked economic and material motives. Nevertheless, this experiment was doomed for various reasons. The didactic teaching methods of the missionaries were unsuitable as they were drastically different from Aboriginal experiential teaching methods of “looking, listening, and learning” (Miller 1996:16). Furthermore, Aboriginal parents were unwilling to be separated from their children for extended periods of time. As a result, resistance to residential schools grew and, consequently, too few children were enrolled in the schools and the schools were eventually closed. Even though this experiment was unsuccessful, the idea that the boarding schools were the most effective ways to assimilate Aboriginal children into Euro-Canadian culture was not fully abandoned and persisted throughout the residential school era.

The failed experiment does not serve as an indication that Aboriginal peoples were opposed to all forms of European education; Aboriginal peoples *were* opposed to proselytization by the newcomers, but desired education that would allow them to be more competitive with Euro-Canadians in a changing economic environment in which Canadians and Aboriginal peoples were no longer playing the role of trading partners (Fournier and Grey, 1997; Miller, 1996). In his journal, Chief Little Pine relates his conceptions of Aboriginal education in Canada:

I hoped that before I died I should see a big teaching wigwam built at Garden River, where children from the Great Chippeway Lake would be received, and clothed, and fed, and taught how to read and how to write; and also how to farm and build houses, and make clothing: so that by and bye they might go back and

teach their own people, I said: I thought that Garden-River ought to be made the chief place from which religion might gradually go on, and increase, and extend year by year until all the poor ignorant Indians, in the great hunting grounds of the Chippeways, should enjoy the blessings of Christianity. [...] I am an old man, and I often pray to God that I may see my people on the Great Chippeway Lake, enjoying the blessing of religion and education before I die (*Little Pine's Journal* 1872).

Given their initial educational aspirations, it is unfortunate that in residential schools Aboriginal people received higher doses of religion than education and as Anthony Thrasher argues, former students “got their education in school and then could not make any use of it” (quoted in McKegney 2007:84). The residential school system demonstrated “wanton disregard for the identity formation of their students” because they sought to eradicate children’s Indian identity (Episkenew 2009:52). As Jennie Blackbird recalls, her inability to speak her Native language had a profound negative impact on her:

The thing that shocked me the most was when I was told I could not speak my Native language. I was birthed into this language, yet was told I was being rude. This really pierced me...My inner emotions could not accept this, but I could not express myself enough in English, to say what was in my heart (quoted in Graham 1997:36).

After the failed attempt by the French to rescue Aboriginal peoples from savagery, as the missionaries conceived it, the idea of residential schooling was revived in the early 19<sup>th</sup> century. The resistance to proselytization, however, had not necessarily diminished since the failed residential school experiment. In her dissertation, Tannis Peikoff (2000:93) argues that although responses of Aboriginal peoples to proselytization were not uniform across the province of Manitoba and ranged from total acceptance to complete rejection of Christianity, “most Aboriginal people rejected conversion.” She notes that Aboriginal people of Red River were not passive during the attempts by missionaries to convert them to Christianity. The missionaries, therefore, worked hard to

convince Aboriginal people of the superiority of Christianity and inferiority of Aboriginal spiritual practices. These direct tactics by missionaries, however, have failed to achieve their objectives of conversion. Some of the frustration in the conversion attempts by missionaries was caused by Aboriginal people's unwillingness "to accept the repeated condemnation of their culture and traditions" (ibid:97). Despite some of the failed attempts by missionaries, "the Church was an agency of social control that helped to sustain both a cultural and economic dominance over the indigenous people" (ibid:9).

### **Goals and Objectives of Indian Residential Schools**

Fournier and Grey (1997:54) point out that both the state and churches envisioned their primary goals to be assimilation of Aboriginal peoples and their conversion to Christianity, a process in which "the churches could harvest souls at government-funded schools while meeting the shared mandate to eradicate all that was Indian in the children" and eventually commandeering Aboriginal lands and resources. Chrisjohn et al. (2006) note that the government's responsibility for education was perceived as a great burden and was therefore delegated to churches. Neu and Therrien (2003:102) add that one of the reasons that the government formed an alliance with churches was because of the churches' desire to explore "remote areas, using missionary funds for construction and departmental funds for maintenance" of residential schools. As Dyck (2004) notes, the goal of the federal government was to place Aboriginal children into residential schools at an early age in order to facilitate cultural assimilation more effectively and ensure prompt displacement of Aboriginal peoples from their lands. Fournier and Grey (1997:56) argue that at an early age, children were vulnerable to "massive brainwashing to replace their 'pagan superstitions' with Christianity." Brainwashing and proselytization

is evident in Maria Campbell's recollections, a First Nations writer and former residential school student:

We prayed endlessly, but I cannot recall ever doing much reading or school-work as momma said I would – just the prayers and my job, which was cleaning the dorms and hallways. I do recall most vividly the punishment I once received. We weren't allowed to speak Cree, only French and English, and for disobeying this, I was pushed into a small closet with no windows or light, and locked in for what seemed like hours. I was almost paralyzed with fright when they came to let me out (quoted in Johnston 2007:13).

Indeed, assimilation and integration were the ultimate goals of residential schools (ICTJ 2008; Buti 2001). To teach Aboriginal people to be an integral part of Euro-Canadian Society meant lessened state responsibility for their well-being. The legislation that was passed to coerce Aboriginal children into residential schools included the Indian Act of 1876, the Gradual Civilization Act of 1857, the Indian Advancement Act of 1884, and the 1869 Act for the Gradual Enfranchisement of Indians. Duncan Campbell Scott, who eventually was appointed as Deputy Superintendant of Indian Affairs in 1913, was the key figure in developing and implementing assimilative legislation designed to eradicate the “Indian Problem” (Neu and Therrien 2003). Scott’s ultimate objective was to erase Indigenous populations as an ethnic category and to gain full control of their “customs, habits and behaviours,” and eventually the vast amounts of land that were in their possession at the time (*ibid*:100).

Through the implementation of coercive legislation, the Canadian government attempted “to mould, unilaterally, every aspect of life on reserves and to create whatever infrastructure it deemed necessary to achieve the desired end – assimilation through enfranchisement” (Milloy 1999:21). Enfranchisement was an attempt by the federal government to dispossess Aboriginal peoples of their lands, which would then be

converted into private property that could be bought and sold freely (Dyck 2004). Furthermore, the Indian Advancement Act transferred power from many of the tribal chiefs who were deemed “unable to discharge their duties” to Ottawa, thereby further augmenting Ottawa’s power on Aboriginal lands. Shortly after reserves were established, the residential school system started to evolve. The 1844 *Bagot Commission Report* and the 1879 *Davin Report*, in turn, advocated assimilation of Aboriginal people by way of placing their children into total institutions – off-reserve industrial and boarding schools.

The Canadian government envisioned Industrial (or “manual labour”) schools to provide necessary skills and technical training, such as farming and agriculture, to the Aboriginal population to allow them to adapt to Euro-Canadian society and survive under the newcomer’s government. Boarding schools, in turn, were intended to give children basic language and mathematical education, alongside the religious and “moral training” given by the church officials. Children would initially enroll in boarding schools and later make their way into industrial schools. In industrial schools, children were treated as miniature adults, and provided with basic technical skills under the assumption that all children would eventually end up as tradespersons, such as mechanics and farmers, with little hope for higher education.

The logic behind these schools dictated that children could be assimilated much more effectively if the influences of cultural traditions were completely removed and children were immersed into an environment where they could be re-socialized to become brown-skinned Canadians. In his memoir “Indian School Days,” Basil Johnston (1989:45) recalls that these schools were often successful in producing this kind of environment and became lonely places for children and “thoughts of family … had

served to inflame the feelings of alienation and abandonment and to fan the flames of resentment." He further describes the negative emotions that children were experiencing:

The feeling of abandonment, never far from the surface, now welled up and was intensified by each boy's inability to understand why his parents had given him up and turned him over to the priests. No one had bothered to explain, "You're here because your parents are dead and we've been asked to look after you until..."; or, "You were sent to us to look after because your father is dead and your mother cannot care for you" [...] Even if such explanations had been given, it is doubtful that the hurts felt on Christmas would have been assuaged by one degree (p. 80).

Chrisjohn et al. (2006) argue that residential schools were built with:

The potential for emotional devastation ... in terms of such regular features as: initial separation from parent and family; prolonged isolation from parents, family, and people; the period of adjustment to institutional rules; and the fault-finding and racial slurs addressed to them by staff (pp. 93-94).

Aboriginal students in off-reserve boarding schools, and later in residential schools, were forced to part ways with their spiritual beliefs, languages, customs, and traditions (Chrisjohn et al. 2006). In fact, as Alice Blondin-Perrin (2009) notes from her experience in St. Joseph's Roman Catholic mission school, the children

Were not taught anything about the land, water, or Dene spirituality. We were only taught the white man's way, and a very narrow version of even that. The government and missionaries wanted to civilize and assimilate us, turn us into white people, make us learn their language and customs. I am very sad that I lost my native language in residential school. All my life I felt like I was looking into the windows of Native peoples' homes because I was not able to participate in any discussions, or laugh at their jokes. It was like a slap in the face. The reality of only speaking English set in when I could not communicate among my own people (p. 25).

Scholars such as Knockwood (2001) and Episkenew (2009) argue that under threat of severe punishment, residential schools forced children to speak only English, while prohibiting all Aboriginal languages and labeling them "mumbo-jumbo," constituted aggressive assimilation. For some children, the loss of languages would be

permanent. As former residential school student Eleanor Brass points out, “[I] tried to learn to speak Cree but [I] was unsuccessful” (quoted in Grant, 2004:6). McKegney (2007:13-14) argues that residential schools produced “languageless generations,” cultural discontinuity, and the attacks on Aboriginal languages that “[would] torment Indigenous voice for generations.” Alice Blondin-Perrin (2009) recalls that the Aboriginal languages and more broadly, cultures, were often suppressed until extinction:

We heard the priest and Grey Nuns speak French all the time, but to them our languages were not important, and therefore had to be eradicated. It was to root out the Indian in all of us, even though we were living human beings with brown skin and our own Dene languages. But they never explained anything to us, or why they were doing this. All their decisions created long-term language barriers, problems, and grief for me. I would never be able to sit and talk with the Elders. I lost my language (p. 23).

Furthermore, instruction in residential schools was in English or French, and at times in Latin, which added to confusion and misunderstanding among Aboriginal children and further impeded their learning.

Eurocentric assimilation strategies were also apparent in their attempts to dispossess Aboriginal people of their customs and traditions, which were prohibited during the school year. Instead, children’s school days were organized around evangelical activities, strict schedules, and traditional European gender roles (Fournier and Grey 1997; Miller 1996; Episkenew 2009). Residential schools were characterized by military-like structured routine, to which many children found very difficult to become accustomed. Traditional Aboriginal dress was replaced with Euro-Canadian clothes, such as school uniforms, in an attempt to remove Aboriginal identities. These attempts to strip Aboriginal identities often resulted in the inability of Aboriginal peoples to function as part of their families and communities upon return from residential schools. Episkenew

(2009:51) notes in order to convert them to Christianity, teachers in residential schools exhibited their racist stereotypes of the children by portraying them as savages and inferior human beings, thereby making children “feel ashamed of their very identities as Indigenous peoples.” Knockwood (2001) recalls from her experience at Shubenacadie Residential school that

Shame was associated with learning, particularly in history and catechism where Indians were depicted in a derogatory way as savages and heathens. A picture of the Hurons scalping three missionaries was in one of the texts but was never discussed. [...] One indication I had that I was different racially from the priest, nuns, farmers and maintenance workers and their families was that we were called derogatory names such as “savage,” “heathen,” “pagan” and “wild Indian” by some of the nuns” (p. 52).

Métis and Inuit children often experienced schooling in similar ways as did First Nations children.

### **Governing the Education of Métis and Inuit Peoples**

Education was a treaty right for First Nations children and although the government assumed no responsibility for educating Métis and Inuit children, they “were nevertheless there and were treated the same as all the children were” (RCAP 1996a:335; Logan 2001). The government was reluctant to fund Métis education in residential schools and Métis therefore depended on treaty funds to which some of their parents had access (Chartrand et al. 2006). Some Métis were denied schooling based on their lack of Indian status and this resulted in the unequal access to education among Métis. At times, Métis were admitted to residential schools when there were not enough First Nations children to fill up the school. However, if the numbers of First Nations children increased in certain residential schools, the “Department of Indian Affairs would request that Métis students be moved to schools where low attendance threatened the closure of those schools”

(Logan 2001:72). If attending, Métis suffered many of the same injustices faced by status Indians in residential schools, namely cultural, sexual, and physical abuse.

Residential schools also affected Inuit children, even though the Department of Northern Affairs did not establish northern education system until 1947 because colonization of northern Canada occurred later than it did in southern Canada (King 2006). All schools in the north “were considered ‘federal day schools’,” which were different from total institutions such as residential schools (*ibid*:7). Even though federal day schools were in existence only for just over two decades (until 1970), Inuit children suffered abuses no less serious in nature than those that occurred in residential schools. As King (2006) and Grant (2004) note, sexual, physical and emotional abuse was widespread in the federal day schools, carrying serious consequences for the children, such as alcoholism, sexually transmitted diseases, and pregnancies. Federal day school education was considered harmful by many former Inuit students, such as Anthony Thrasher, who writes that “[children are] educated in the white way but [their] past will be dead” (McKegney 2007:85). The *Where Are the Children?* (2009) exhibit depicts Inuit experiences in federal day schools as similar to those in Indian boarding schools,

The children who arrived at the schools had known only a traditional way of life. Attempts were made to ensure that the curriculum was relevant to the northern culture; however, educational material was based on southern Canadian culture. Competitive values introduced in the classroom were not consistent with Inuit values of sharing and reciprocity. Claims were made that residential schools undermined parental influence and created shame in Inuit students against their customary way of life (p. 12).

### **Indian Residential Schooling: Quality of Education**

It was not until 1910 that industrial and boarding schools were deemed a failure in the eyes of the Canadian government for their inability to re-socialize Aboriginal children

and an overhaul of the residential school system was perceived to be necessary. While industrial and boarding schools were funded mainly by way of yearly grants, the new 1910 funding model allocated additional funds on a per-capita basis (Episkenew 2009; Miller 1996). Despite the increase in funding, the quality of education in residential schools did not improve and, as Milloy (1999) argues, residential schools were still heavily underfunded. However, the churches recognized the fact that higher student enrolment would result in more government funding for church-run residential schools. The federal funding also meant that the government was attempting, albeit unsuccessfully, to take greater control of Aboriginal education and put in place regulations and standards for residential schools. Under the per-capita model, the churches administering education were now competing for student enrolment, which resulted in rivalries between Catholic, Anglican, Methodist, Christian, United, and Presbyterian churches. The focus on education and training took a backseat to profiting from student enrolment. Educating students ceased to be churches' priority, while increasing student enrolment became the prime goal in the pursuit of government funding. The new funding model also erased the differences between industrial and boarding schools and amalgamated them into a single-tier system – residential schools.

A related point about the quality of education in residential schools concerns the credentials and training of the teaching staff. Chrisjohn et al. (2006:93) argue that “academically, the schools and its teachers were marginal,” since children spent their days being religiously indoctrinated and performing hard labour. Due to the underfunded nature of the residential schools, the churches were able to hire only poorly qualified teachers, which resulted in the provision of a second-class education to Aboriginal

students (Funk-Unrau and Snyder 2007). Even if students did successfully graduate from residential schools, which only a small fraction did, there was little potential for enrolment in post-secondary institutions, therefore forcing them to “serve as an underclass in Canadian society” (Episkenew 2009:53). Basil Johnston (1989), former student of Spanish Residential School, writes that the school met only minimum criteria of educational standards:

[In accordance with provincial educational standards,] no more than two certified teachers were required [to be on staff in Spanish Residential School]. Other teachers would be conscripted from the ordained faculty, all of whom had thirteen years of post-secondary school education. Even the scholastics on staff possessed the equivalent of a B.A.; and in the event of a pinch, the lay brothers could be seconded to teach. The institution [Spanish Residential School] was asking for no more than a nominal sum to hire two certified teachers. The other instructors would provide instruction without stipend (p. 169).

Furthermore, due to the lack of funding, residential school-teachers were not given adequate educational resources and strategies and therefore resorted to violence in order to maintain control of children (Episkenew 2009). As Grant (2004:76) points out, many residential school-teachers lacked proper communication skills and patience required for working with children and punishment “was the only avenue of communication between staff and students.”

Compulsory residential school attendance, which was made possible by and enforced under a 1920 Indian Act amendment, constituted a disservice to the Aboriginal population by forcing the children to attain low-quality education as compared to that in white schools (Episkenew 2009:46). Furthermore, since the funding was inadequate, children were forced to perform tasks such as selling farm products on the market, which would go towards repairs to the school buildings and into the teachers’ pockets. Episkenew points out that during the industrial school era, “each student worked in a

trade that supported the operation of the schools" (*ibid*:49). Personal accounts of former residential school students suggest that during financially uncertain times the focus on education in residential schools shifted even further away from their academic curriculum. Isabelle Knockwood recalls that during her attendance at Shubenacadie Indian Residential School, children's "day-to-day activity ... revolved around manual rather than academic work" (2001:57). Indeed, it was a system that failed to supply Aboriginal children with tools that would allow them to become integral members of Canadian society. Residential schools by and large failed to fulfill Aboriginal peoples' vision to become competitive with the non-Aboriginal population. In fact, as Celia Haig-Brown notes, there was no high school program in some residential schools and, as a result, many children were left with only grade eight educations upon graduating from residential schools. Leo, one of the students at Kamloops Indian Residential School, notes that lack of motivation to continue education beyond grade eight was apparent among many students:

I think once you left there, you're sixteen or seventeen, most of us. When I found out there was going to be no high school... we didn't care about education any more. We just wanted to work for a living... [The priests] never talked to me at all. Never said, 'How would you like to come back?' or 'We'll make arrangements.' . . . not like nowadays [when they] try to put you ahead ... You didn't have any counsellors and the old folks didn't care one way or another (quoted in Haig-Brown 1988:66).

Aboriginal students were not receiving proper education that would prepare them for successful futures; instead, the residential schools ensured that they would be disadvantaged as adults, too. Peter Smith, former Mohawk Institute student, writes about residential school education:

They gave you a minimum of education. If you were a very intelligent person you could get over this. Some boys they would go to school. I didn't go to high

school. E G [student] had no guidance – well, they didn't have guidance counsellors at that time. Rev. Snell said afterwards they should have prepared him for college, but they never gave the person any direction. He was never given guidance saying: This is what you can do, and this, and this. He just became a mechanic (quoted in Graham 1997:360).

Poor quality of education comprises only a fraction of injustices that Aboriginal people faced in residential schools. Abuse was also a very serious and widespread issue.

### **Abuse in Residential Schools**

Residential schools were institutions where many students were physically, emotionally, and sexually abused. While the Canadian government was invested with a duty to fulfill a parental role for children in residential schools, it failed miserably. Punishments, at times severe and degrading, were meted out to students who spoke in Native languages or deviated from the behavioural standards set by the schools (Milloy 1999). Fred Kelly, who attended St. Mary's Residential School, recalls undue punishment children incurred:

Immediately upon entry into the school, the staff began to beat the devil out of us. Such was my experience. We were humiliated out of our culture and spirituality. We were told that these ways were of the devil. We were punished for speaking the only language we ever knew. [...] We came to believe that 'Indian' was a dirty word, oftentimes calling each other by that term pejoratively (Kelly 2008:24).

Johnston (1989:138) writes that punishment at Spanish residential school often was "swift and arbitrary, administered by means of various weapons at hand – a ruler, a rod, a bell, a pointer, the open hand, [or] a closed fist." Shirley Sterling, who attended Kamloops Indian Residential School in 1950s explains, "the nuns strapped [children] all the time for speaking Indian, because [they] couldn't speak English" (1992:89). Isabelle Knockwood (2001:32) recalls that bed-wetting was "a major crime" usually "punishable by humiliation and horrible beatings" with a strap or the pointer.

Isabelle Knockwood recalls that children who had newly arrived at Shubenacadie residential school “would [have] bruises on their throats and cheeks that told [the rest of us] that they have been caught speaking Mi’kmaw” (quoted in McKegney 2007:120). Many children who attended residential schools were punished so severely that many inflicted injuries resulted in permanent disability or even death. Agnes Grant (2004:8), for example, writes that a former fellow student, Eleanor Brass, “suffered from back pains all her life, which she attributed to the severe beatings she received.” One of the former residential school students, Lorna General, recalls the severity of punishments, which could be considered torture:

They used to give us shock treatments for bed-wetting. A lot of us never wet our beds but we still had to do it anyway [...] They used to bring in a battery – a motor of some sort or some kinda gadget, and he’d put the girl’s hand on it and it would jerk us and it would go all the way through us from end to end – it would travel. And we would do that about three times. The girls who were brave enough would put their hands on that flat thing. We always had an outhouse, and hearing that toilet flush was a shock, because then you’d remember where you were in the night, and you’d have that knotted feeling about being away from home (quoted in Graham 1997:378).

Furthermore, Chrisjohn et al. (2006:50) argue that the federal government purposefully “[withheld] medical attention from individuals suffering the effects of physical abuse.” Former residential school student Sister Dorothy Moore explains that “any type of illness had to be repressed” because children were also often punished *for* being sick, as evident in the practice of force-feeding children their own vomit (quoted in Grant 2004:78).

Milloy argues that one of the reasons that punishment was so extensively used (and misused) in residential schools is because Aboriginal children were misrecognized as lacking discipline, and physical punishment was seen as the only way to contend with perceived misbehaviour. The horrific and stigmatizing nature of punishments in

residential schools constituted emotional abuse, which became a widespread issue among children. Martha Hill, former student of the Mohawk Institute, recalls “[my brother] had to lay on the bench and I’m sitting there and every time [staff] brought the strap down I cried all the harder because he was whipping my brother” (quoted in Graham 1997:35). Chrisjohn et al. (2006:50) argue that aside from physical punishment, emotional abuse was inflicted by cutting children’s hair or shaving their heads, “public, race-based vilification of all aspects of Aboriginal forms of life, [and] verbal abuse, belittling, and threatening.” Emotional abuse was a systemic issue, and much like sexual and physical abuse it carried life-long consequences for many students.

Other punishments, such as confinement and deprivation of food, were also common, as were whippings and punches to the head (Chrisjohn et al. 2006). Various inquiries and reports by the Indian Affairs officials, such as agent W. Graham and the medical inspector O. Grain, informed the government that abuse was taking place and it chose to ignore these reports, as it did with the many other inadequacies of residential schools. Abuse was at times so extreme that children were running away from schools. Eleanor Brass provides an example of a harsh punishment delivered at the File Hills Boarding School, where a student was caught after running away:

He tried to run away but he was caught and brought back to school. The then principal took him upstairs, made him strip and lie across the bed on his stomach, and started to strap him. We were all in our dormitory and began to bawl when we heard poor little John crying in pain till he couldn’t cry anymore. [...]. It seemed that when he started strapping anyone, he didn’t know when to stop. [...]. Poor John was raw and bruised from the back of his neck to his ankles. He couldn’t bear any covers on his back for weeks. No doctor was called and no one except we children knew what went on (quoted in Deiter 1999:29).

What is worse, children received more punishment if they made attempts to report abuse to authorities. As Willie Blackwater recalls, “[school staff] gave me a severe strapping

and called me a dirty lying Indian" (Fournier and Grey 1997:67). Anthony Thrasher, in turn, recalls his residential experience to be horrifying at times, including instances of "whippings ... with a three foot chain made of silver" (quoted in McKegney 2007:68).

One former Williams Lake Residential School student speaks about undue punishments:

One time I was strapped for laughing in chapel. Someone said something to me that made me laugh! The other time, I said something to the Sister. When I went into the class, the Sister was there, calling down the class for something. Calling us "redskins," "chocolate-faces." Finally I stood up and said "What about you – you've got red cheeks yourself!" For that I was strapped on the bum. I got twelve strokes on the hands. Then they locked me up in a closet and all morning. It was dark! Good thing I wasn't scared of the dark! They made me kneel down at meal time. For two weeks I had to do that. Kneel down during all meals. Just for saying "you've got red cheeks yourself!" (Quoted in Furniss 1995:110).

The government officials were opposed to investigating the abuse, laying criminal charges, or dismissing staff, since new staff was hard to come by due to the meager salaries offered at residential schools. As a result, incidents of abuse continued well into the second half of the 20<sup>th</sup> century. For the government, churches were cost-effective ways of taking care of the "Indian problem," and this symbiotic relationship between the churches and the government meant lax regulation for the churches' actions.

Lax regulation and shortage of staff also meant that it was easier for abusive and mentally unstable staff to secure employment in residential schools and therefore to carry out abusive behaviour towards students. Milloy (1999) and Miller (1996) note that neither the government nor the churches employed rigorous background checks on prospective employees at residential schools. Sexual abuse was perpetrated by a wide range of church members, including teachers, priests, and even doctors, nurses, and principals of the schools. Basil Johnston (2007) vividly remembers sexual abuse to which he was a victim in Spanish Residential School:

Within six weeks of being committed to Spanish, I was sodomized by two fifteen-year-old boys. Soon after, immediately following a mass that I served, I was fellated by Father J. Barker. Over the next three and a half years he asked for me to assist him at a mass whenever he was in the school. At the end of mass he always pleasured himself with my penis. From 1940 to 1943, I worked in the chicken coop. There I was subjected to Brother Manseau's loathsome kisses. I was also invited to touch a lay teacher's penis (quoted in McKegney 2007:xi).

Fournier and Grey (1997:48) also provide accounts of sexual abuse in residential schools. For example, nuns and priests at Kuper Island residential school were known for “peeping at the girls in the shower and grabbing their breasts,” raping them unmercifully, and threatening to kill them if they spoke to authorities about the abuse. Willie Blackwater’s graphic recollection of sexual abuse by the dorm supervisor Arthur Henry Plint clearly demonstrates the extent of abuse:

[Plint] had a door from the office right into his bedroom. He took me there and dropped his robe, and faced me, naked. I tried to run. He pushed me onto the bed and told me to shut up or I’d be in deep trouble. He told me to take my pyjamas off and started to masturbate me, then he put his mouth on my penis and made me do the same to him, until he ejaculated in my mouth. He laughed and told me if I puked on his bed I’d get hurt (quoted in Fournier and Grey 1997:67).

Knockwood argues that instead of being “examples of Christian love and forgiveness, [nuns and priests] were for us objects of terror” (2001:47). One judge noted after convicting Arthur Henry Plint for sexual abuse that “the Indian residential school system was nothing more than institutionalized pedophilia” (quoted in Fournier and Grey 1997:72). The abuse went unchecked unless victims brought forward indisputable evidence and overcame mortal fear for their lives. The fact that children at residential schools were often viewed as non-credible witnesses often resulted in reports of abuse being discredited. Thus, children were powerless against the system that perpetuated the abuse, and parents were often either unaware of this issue or did not believe their children when they informed their parents about the abuse. As with physical abuse, the

government did little to stop sexual abuse except in the most extreme cases when it was made visible to the general public.

### **Neglect and Disease in Residential Schools**

In addition to widespread abuse, there were other significant problems with conditions in residential schools. Scholars such as Episkenew (2009), Miller (1996, 2000), and Milloy (1999) note that many residential schools were characterized by dismal living conditions, which included over-crowding, inadequate shelter, quality of food and diet, and clothing, and resulted in high prevalence of diseases and subsequent deaths. Inappropriate clothing was a serious problem in residential schools and a major factor in instances of hypothermia and frostbite, which resulted from cold winter weather when the children were forced to work outdoors in extremely cold temperatures while wearing only summer clothes (Miller, 1996). Poorly fitting footwear, in turn, often resulted in “crooked feet with permanently misshapen toes” (Knockwood 2001:39).

Susie Doxtator, a former Mt. Elgin Residential School student, talks about the substandard living conditions:

In the winter time I didn’t like it either because we didn’t have no quilts to be warm, for bed. We used to sneak up to the attic and they had great big fur rugs up there and we used to bring down to cover us. When you got sick they didn’t believe you – you had to be half dead before they believed you were sick. [...] There was supposed to be a nurse, but if anything was wrong all she knew was vaseline – if you had a headache she’d give you vaseline (quoted in Graham 1997:439).

Graham (1997:37) notes that “lack of attention to proper health care” constituted a form of abuse. Sylvia Soney, former student of the Mohawk Institute Residential School, notes the inadequacies of medical care,

Health [care] was pretty dismal. If you were fortunate enough to have good health and didn’t get sick, you were OK. If you got sick I don’t think too much happened

– you might be sent to bed. There was a little sick room off our dormitory and if somebody got really sick, or had one of the kid diseases, they might go in there. Once when I was working on the boys' side – this was probably the year I left – and I had a girlfriend and her brother – I don't know what happened to him – he was laying in bed – it seems like it's all he did all day, laying in bed, and there was white mucus coming out of his eyes. I don't think he was ever cared for medically (quoted in Graham 1997:394).

Sick children were largely neglected and left to die in the very system that was supposed to “civilize” them and care for them. Decrepit school buildings often served as ideal environments for the multiplication of diseases and infections, such as tuberculosis, influenza, measles, typhoid, and many other health problems were rampant in residential schools (Graham 1997). As Miller (1996:308) points out, “the schools and their non-Native officials have to bear most of the responsibility” for the poor health of the students. Epidemics were quite common during the residential school era, ranging from lice to serious impetigo-like skin conditions and trachoma (Graham 1997). Fournier and Grey (1997) note that death rates at residential schools from diseases such as tuberculosis ranged from 11 percent at the Alberni School to 69 percent at the File Hills Boarding School. Other health problems included being underweight, “spinal meningitis, erysipelas, diphtheria, syphilis, and measles epidemic” (Graham 1997:27).

Unsanitary conditions in residential schools served to perpetuate health problems among students. Various government authorities, such as residential school inspectors, internal and external medical staff, and Indian Affairs departmental officials have long noted that residential schools were not conducive to learning, much less to the positive health of students. As the former Chief Medical Officer of the Indian Department Dr. P.H. Bryce noted in his 1907 *Bryce Report*, residential schools constituted a “national crime” committed by the Canadian government and the churches (Milloy 1999). Much

like with abuse, the federal government willfully ignored frequent reports and recommendations made by authorities and chose not to improve deteriorating conditions in residential schools due to the costs, which often resulted in students running away from schools and back to their homes on reserves. Fournier and Grey (1997:57) note that despite multiple reports of child abuse and neglect, the Department of Indian Affairs continued to defend the boarding schools, declaring they were succeeding in “the emancipation of the Indian from his inherent superstition and gross ignorance.”

The children’s diets in residential schools, as Milloy (1999) points out, often consisted of the half of the amount recommended for children of school age. The quality of food was often extremely low, which resulted in sickness and malnutrition, especially when combined with overwork. Graham (1997) and Grant (2004) point out that the majority of former students were constantly hungry. Sylvia Soney talks about food and diet at the Mohawk Institute:

The food was horrible. We never got meat. We used to get soup with a big piece of fat in it – it was gross – and they’d take this piece of fat and put it on the hot water pipes to cook. I don’t remember getting any fresh vegetables or fruit. There was an apple orchard next to our playground, and the only way you’d get any of them was to climb the fence, and then it was considered stealing and you’d get into trouble. But they were the Mohawk Institute orchards (quoted in Graham 1997:393).

Chrisjohn et al. (2006:50) write that the food quality was at times so substandard that it could be considered “unfit for human consumption.” The Mohawk Institute children often received porridge, which tasted awful, for breakfast every day and for supper most of the week. Ronald Deleary, former student of Mt. Elgin Residential School, recalls that,

The food was bad – we had mush every morning with bugs in it – we only ate down to the bugs! We never had any eggs though they had thousands of chickens. We did have a bun every Sunday, but when I first went there I never got my bun, because I had traded it away and always owed it to someone. We had whole milk

once a year and we never got any meat. The officers ate good though. Christmas was the only time we got meat – then we got chicken. We'd have parsnips and beets boiled til they had no flavour. I hated those beets (quoted in Graham 1997:458).

Even though the children reported poor food quality, it seemed to magically improve during the times when the schools were inspected by Aboriginal government officials such as Six Nations Council, and then worsened immediately after the inspections. Students were forced to eat rotten meat and vegetables, while staff often enjoyed fresh food purchased at the market, which was cooked separately from students' (Grant 2004).

### **Resistance to Residential Schooling**

With regards to political involvement, Aboriginal parents and communities were relatively powerless and unable to make profound political changes that were necessary to shut down or, at the very least, to improve conditions in residential schools (Neu and Therrien 2003). Similarly, Dyck (1997) argues that even though “Indian parents and leaders had endeavoured to monitor and influence the operations of successive residential schools that functioned at different times in this particular city but had, by the middle of the 20th century, been generally ignored by both church and state” (p. 340). Various factors played a role in disempowering Aboriginal people. First, the lack of Aboriginal peoples’ political power stemmed from their socially and economically disadvantaged conditions before and during the residential school era. Widespread poverty resulted from the destruction of Aboriginal ways of living through dispossession of Aboriginal lands and other resources such as buffalo. By being forced into becoming farmers and shifting from hunting to agriculture, many Aboriginal communities could not compete with the already well established Euro-Canadian settlers and as Miller (2000) points out, Aboriginal agriculture did not constitute an adequate means of subsistence for Indigenous

communities. Dispossessed of their lands and traditional economies, Aboriginal communities depended on the Crown's modest annuity payments and that could not generate the necessary resources to mobilize against the government.

Rita Joe (1991), Mi'kmaq writer and Survivor of Shubenacadie Indian Residential School, suggests that Aboriginal people were continuously struggling with treaty rights negotiations and land claims, both of which were consuming significant amount of political resources. In other words, residential schools comprised one of the many challenges Aboriginal people were facing at the time. The political power of Aboriginal people was further pared down by the federal government through reconfiguration, amalgamation, division, and relocation of tribes to reserves (McKegney 2007). Within their communities, on the other hand, Aboriginal people were facing an internal struggle, which Taiaiake Alfred called "a form of socio-political schizophrenia" within Native communities. This concept refers to the constant struggle between

Two value systems that are fundamentally opposed. One, still rooted in traditional teachings, structures social and cultural relations; the other, imposed by the state, structured politics [...]. Native political systems are creatures of the federal government, incapable of promoting real change based on actual indigenous thought and tradition (1999:1, 70; see also McKegney 2007).

In this view, the federal government was able to effectively curtail the political resistance of Aboriginal communities through cooptation, thereby ensuring its continuous presence in Aboriginal governing structures (Dyck 1997).

Miller (2000) suggests that the Canadian government historically considered Aboriginal political organizations to be "interest groups" rather than legitimate representatives of Aboriginal people. This undermined the ability of Aboriginal people to negotiate better conditions at residential schools and to ensure better quality of education

for their children. McKegney points out that First Nations band council members were often “subject to the outside validation of the Indian Agent, as was the determination of individual band membership and Indian status” (2007:115). The Indian Agent was also in charge of controlling “the band’s economic planning and its funds,” meaning that the band’s power could at any time be suppressed to counter its attempts to challenge residential school conditions (Aboriginal Justice Implementation Commission 1999). Furthermore, because of limited access to legal resources, Aboriginal people were unable to effectively resist legislation, such as the Indian Act prior to 1951, that authorized mass abduction of children into residential schools, promoted the assimilative practices of residential schools, and allowed the abuse and neglect to continue.

Often, resistance to residential schools took place within schools. In her work, Celia Haig-Brown (1988) sums up the foundations of resistance within the schools:

The students found time and space to express themselves and to produce a separate culture of their own within the school. Much of this culture was built around opposition to the severity of the rules and regulations guiding the students' daily lives. Another major facet of the resistance was expressed in the development of a sub-culture – one distinct from that being promoted by the religious orders (p. 98).

Despite the effort of the churches and the Canadian government to eradicate Aboriginal spirituality, some children were able to speak Aboriginal languages and practiced certain rituals covertly while attending schools. While attending St. Joseph's Residential School, Shirley Pheasant (Williams) discovered a way to practice her Ojibway language secretly:

[W]hen we used to go to bed, I used to cover myself with the sheet over my head and here I would practice speaking my language. I would imagine that I was back home at the kitchen table speaking to my parents. I didn't know I was whispering and one night the sister was inspecting the rows and she heard me and swiftly lifted the covers off me. When she did that she startled me. She asked, “Are you praying?” and I immediately said without realizing what I was answering, “Yes Miss.” She left and never questioned me any more! (Quoted in Thomas 2003:47).

Haig-Brown (1988) suggests that some students also chose to openly resist the abuse at residential schools. Sophie, Survivor of Kamloops Residential School, used tactics of “verbal and non-verbal defiance” to deal with physical abuse:

That's why the name calling, I used to call the nun [in Shuswap] . . . that's 'dirty behind nun'. And the thing I remembered when she used to strap me ... I knew I was going to get five or ten straps on each hand and I knew it was going to draw blood—but I would remind myself, 'It's not going to hurt. Just so I can make you angry, I'm not going to let you know it hurts . . .' and I would just stare at her in the face ... and I wouldn't even let a drop, a tear come down. God, that used to make her mad. She'd even take me and shake my head and say, 'The devil is in you so strong. How am I going to beat the devil out of you?' (P. 102).

Isabelle Knockwood (2001:127) points out that more generally, resistance to residential schools “was inside our heads, even though it produced little outward sign at the time.” Knockwood goes on to indicate children’s resistance to authority in residential schools:

Once when Wikew [staff] told us, “Don’t you dare move a muscle,” I was wiggling my toes under the blanket thinking, “You ain’t my boss and I’ll wiggle all I want.” At the same time, I was looking straight at her, wearing the Indian mask which I had discovered over the years she couldn’t read (2001:127).

In his work, McKegney (2007) illustrates instances in which Anthony Thrasher was able to subvert and overcome oppression and assimilation by way of employing

Small acts of defiance that actualize the transgressive agency retained by students within even the most oppressive and authoritarian environments. More uniquely, Thrasher chips away at the foundation of church authority by desanctifying the sacred with humour. He injects a playfulness into his reminiscences that penetrates the solemnity of religious authority and, in effect, satirizes the system of assimilative control (p. 89).

During their summer vacations, some children were able to revive or sustain Aboriginal traditions and languages at home. In Shirley Sterling’s residential school experience, she was able to speak her native language while visiting her parents during the summer. Some parents resisted residential schools by refusing to send their children back to school in the fall, or demonstrated active resistance by visiting their children’s

schools unannounced in order to validate the children's claims of abuse and neglect, and retrieved their children if the claims proved to be true. In extreme cases of resistance, children were known to set schools on fire when faced with a lack of other options for dealing with horrific conditions at residential schools (Miller 1996). These accounts of resistance, though incomplete, expose the flaws in the design of total institutions such as residential schools and point out potential avenues of resistance.

Despite their ambitious assimilationist goals, residential schools failed to overcome and eradicate the crucial elements that comprise Aboriginal cultures. As such, the influences of children, their parents, and families were grossly underestimated by the Canadian government and the churches. Yet, notwithstanding the ultimate failure of the residential school system, its devastating legacy extends far beyond its demise.

### **The Legacy of the Residential School System**

In the late first half of 20<sup>th</sup> century, the government began to view the residential school system as a failure, which was “wasting time and spending large sums of money and getting no results” (Milloy 1999:186). It failed to accomplish its objective of complete assimilation of Aboriginal people. The Special Joint Committee of the Senate and the House of Commons (1946-1948), to which the churches were opposed, was established to review the Indian Act and to determine which revisions were necessary. Even though the Indian Act was thoroughly revised in 1951, the churches did succeed in keeping their involvement in educating Aboriginal children and securing further government funding (Bartlett 1977-78:586). However, the government was taking better control of the residential school system. By the 1950s, residential schools were no longer mandatory and the government was operating two-fifths of these schools. Aside from the legislative

changes, there was growing pressure and resistance from First Nations communities and parents to stop building new schools and close the schools that were already operating. As well, Aboriginal groups' political consciousness and creation of organizations such as the National Indian Brotherhood (NIB) were increasing and demanding greater control of Aboriginal education. Meanwhile, more and more Survivors of residential schools began to "break their silence about the physical, sexual and emotional abuse they suffered" (Fournier and Grey 1997:61).

Behind them, residential schools left devastating trauma, which manifests itself in symptoms such as "increased violence, increased suicide rates, increased substance abuse, and increased family disintegration" that Aboriginal people are facing to this day (Smith 2009:30). Georgina Gregory speaks about how her experience in the File Hills Boarding School has negatively affected her:

I didn't know what hate, resentment, or rebellion were at that early age. They became a part of me later on. Today, I still have many lonely dreams and nightmares always involving the old boarding school. I cannot even visit the old site without having a pang of fear or some chill. I also still have the tendency to call every white person "Mr." or "Miss" depending upon who I am addressing. It took me years and years before I could admit I was an Indian even to myself. I suppose this was natural after being raised in an environment that held little or no respect for Indians (quoted in Deiter 1999:66-67).

The legacy of residential schools is at least partially responsible for disproportional over-representation of Aboriginal people in Canadian correctional institutions (Jaccoud 2006; Nielsen et al. 2006). Furthermore, poverty and unemployment rates resulting from inadequate training and education in residential schools are significantly higher for Aboriginal than for the non-Aboriginal population. Scholars such as Schissel and Wotherspoon (2003), Chrisjohn et al. (2006), Knockwood (2001), McKegney (2007), and Neu and Therrien (2003) argue that residential schools constitute a form of genocide, or

social engineering, as they by and large contributed to the destruction of Aboriginal cultures, which resulted in the inability of former residential school students to parent their children, in the development of sexual dysfunctions such as sexual inadequacy or addictions, and psychological disorders such as post-traumatic shock response (PTSR) (Episkenew 2009). As residential Survivors Patricia Monture-Angus explains,

Because of the treatment in residential schools, I didn't understand how to raise my children. It's an awful feeling when you let your children grow up in your midst and you cannot hold them in your arms, with the warm tender love that you are capable of. I lacked all that information, all those skills (quoted in Bennett et al. 2005:23).

McKegney (2007:13) notes that “the viciousness of physical and mental punishments ... remain ‘vividly’ in the child’s mind” long after escaping, dropping out, or graduating from residential schools. Fournier and Grey (1997:63) write that residential schools experiences resulted in self-destructive behaviours among Aboriginal Peoples including “alcohol and drug use, eating disorders,” anger issues, and inability to form intimate relationships Philip Michel, residential school Survivor, speaks of his loss of spirituality:

I was very angry, very mixed up. I drank. I was angry and took it out on people when I was drunk. I drank and used drugs to forget. When I left school I did everything they told me to do. I lost my spirituality. I was o.k. physically but I was out of balance. My emotional and spiritual health was suffering. My spiritual being was destroyed. I had to get into balance.

I've lost a lot of friends. A quarter are dead today; they couldn't stand it. They put me through seven years of hell for no reason – just because I was a Roman Catholic Indian (quoted in Grant 1996:247).

In addition, many Aboriginal “languages [that are now] in danger of dying out” serve as examples of the government’s goal to eliminate Aboriginal culture and “bring modernity and progress to Indigenous peoples” (Chrisjohn et al. 2006:252; see also Episkenew 2009:5). Grant (1996) argues that after attending residential schools, many of the children

were left not only without their Aboriginal identities, but also without a concrete Euro-Canadian identity, which contributed to the alienation and ostracism of the former residential school students from their communities (Grant 1996).

### **The Aftermath: Addressing Residential School Experiences**

While most residential schools were phased out by the late 1960s, the last school closed in 1996. However, simply closing residential schools could not silence this horrific past. The insurmountable evidence against the churches and the federal government prompted apologies from some of the churches and limited compensation payments from both the government and the churches in the early 1990s. Survivors sought compensation through numerous class action lawsuits launched against the federal government in the late 1980s and throughout the 1990s (Castellano et al. 2008). The 1996 Royal Commission on Aboriginal Peoples produced further evidence that compelled the government to issue a Statement of Reconciliation (SoR) in 1998 and to begin dealing seriously with the issue of residential schools.

Immediately after the SoR, the number of class action lawsuits increased dramatically, fueled by the statements' perceived inadequacy. As Phil Fontaine, former National Chief of the Assembly of First Nations and residential school Survivor notes, the SoR resembles a "statement of regret rather than a full, sincere apology" (CBC 2008a). O'Connor (2000) and Younging et al. (2009) argue the SoR invoked dissatisfaction from Survivors because it did not directly acknowledge the government's role in establishing and maintaining the residential schools. Although the SoR led to the establishment of the Aboriginal Healing Foundation, it did not result in any type of material compensation to Survivors and led to it being regarded as empty words.

The government soon began to realize that the lawsuits and out-of-court settlements were an extremely expensive means of dealing with residential school experiences (Fournier and Grey 1997). Subsequently, the federal government attempted to create an expedited alternative to the formal court proceedings by establishing an Alternative Dispute Resolution (ADR) process in 2002. The process was voluntary and one of its goals was to process claims faster than civil courts (Stout and Harp 2007). The ADR process was also less formal in that an independent adjudicator, instead of a court judge, would consider the claims. Although it was a seemingly favourable option for Survivors, the ADR process failed for various reasons.

Firstly, the ADR process was a creation of the government and established without input from or negotiation with Aboriginal groups, such as the Assembly of First Nations (AFN). As a result, the government could unilaterally dismantle this system (Stout and Harp 2007). Secondly, the ADR process placed a cap on the amount of compensation that the claimant could receive and dealt only with claims related to physical and sexual abuse, while ignoring systemic and institutional issues of discrimination, racism, and emotional and spiritual abuse. In addition, the ADR process was replete with denial on the part of the federal government, which was evident in claimants being charged with the onus to prove that the abuse did, in fact, occur, and was intentional. Many Survivors found the process overly complicated and unreasonably lengthy, alienating, and burdensome and for some Survivors, fighting against the bureaucratic ADR machine simply was not worth the effort (*ibid*). The government felt the apparent failure of the ADR process and began seeking negotiations with the AFN to develop a new process to address the residential school experiences. This new process,

the 2006 *Indian Residential Schools Settlement Agreement* (IRSSA), was signed between Canadian and Aboriginal governments and “legal representatives for Survivors, Inuit, and church entities” (Castellano et al. 2008). The IRSSA adopted a three-pronged approach, which included the establishment of a Truth and Reconciliation Commission (TRC), the compensation package consisting of Common Experience Payment (CEP) and the Independent Assessment Process (IAP), and a public apology by the government.

In contrast to the ADR process, the CEP constitutes a more “‘global’ LSP [lump sum payment] that would be extended to every former student, not just those able to prove specific incidents of physical/sexual abuse” (Stout and Harp 2007:6). The CEP is intended to compensate Survivors for general experiences of residential schools, paying \$10,000 for the first year and \$3,000 for each subsequent year of residential school attendance. The CEP provides greater recognition than the failed ADR process in that by virtue of being a student in a government-recognized residential school, the claim is considered eligible. The IAP, in contrast, is designed with the purpose to settle Survivors’ claims of physical and sexual abuse, and is based on “a point system to award compensation,” which is similar in structure to the ADR process (Stout and Harp 2007:7). While the CEP has its advantages, such as universal eligibility of Survivors of residential schools, there are two main problems with it. First, the burden of proof is still on Survivors to prove their residential schools attendance and if former residential school students are not listed on the schools’ records *as* students, then they will not be eligible for the CEP. Secondly, by focusing on compensating only First Nations students who attended residential schools, the CEP ignores experiences of Métis students, as well as Inuit who attended day schools and suffered abuse. As a result, a portion of former

students is excluded from the compensation payments and therefore remains unrecognized as legitimate claimants of residential school experiences.

The IAP process is also ridden with problems. Federation of Saskatchewan Indian Nations' Chief Lyle Whitefish states that "the [IAP] application is so lengthy and convoluted ... it's very hard and difficult for these (former) students to begin to write down their abuses during the schools" (Fiddler 2010:2). Due to the complexity of language in the IAP, the necessity of hiring a lawyer becomes apparent, and, in doing so, Survivors' testimonies of residential experiences, including abuse, become translated into legalese that can be meaningfully used for the proceedings in the legal system, but may not accurately capture the full extent of Survivors' experiences. In the process, Survivors' testimonies become "itemized, calculated, and individualized, [and] monetary amount is assigned" based upon the perceived degree of harm suffered (Woolford 2010a). To this end, the voices of Survivors have now been transformed into manageable and convenient parcels of residential school experiences. As a result, the IAP tends to individualize Survivors' experiences by implicitly denying the collective nature of abuse.

Canada's Prime Minister Stephen Harper issued a public apology in 2008 to acknowledge the residential school system as an attempt by the government to eradicate Aboriginal cultures. The apology followed the establishment of CEP and IAP, which speaks to the lack of sincerity of the apology, because it was made *after* the guilt of the Canadian government was already established and accounted for. As a result, the apology would not give way to further lawsuits, since compensation processes had already closed those avenues. The TRC, in turn, was established with the purpose of promoting truth and

reconciliation, and must be critically evaluated in its ability to heal the harm and promote the recognition of Aboriginal cultural identities.

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This chapter examined the history of the Indian residential school system, including its origins, operation, and aftermath. The goal of this chapter was to provide an account of wrongful acts that children suffered while attending residential schools, while incorporating the voices and experiences of Survivors by including their accounts of residential school experiences. This was an important step to understanding the kinds of wrongs that Survivors have suffered. As well, this chapter reviewed some of the recent mechanisms of redressing residential school experiences and concluded with describing inadequacies of such mechanisms. The next chapter considers conceptual framework of restorative justice, the theory of recognition, and truth commissions, and examines their potential to address historical injustices.

## CHAPTER 3: CONCEPTUAL AND THEORETICAL FRAMEWORKS

Prior to assessing the potential of Canada's TRC to repair the harm, it is first necessary to consider restorative justice, the theory of recognition, and truth commissions in general. The first section provides a discussion of restorative justice, along with its limitations, and identifies an overlap between restorative and Aboriginal justice practices. The next section discusses Charles Taylor's theory of recognition, which is argued to complement restorative justice theory. Lastly, the section on truth commissions discusses the goals, operations, and challenges of truth commissions, and focuses on their potential to be considered institutions in which restorative justice and recognition may take place. More broadly, the objective of this chapter is to discuss the conceptual and theoretical frameworks that ground the practices of truth commissions.

### **Restorative Justice**

Restorative justice scholars such as Johnstone and Van Ness (2007), Marshall (2003), and Pranis (2007) argue that there is no single, all-encompassing definition of restorative justice, but only an “eclectic accretion of cultures, practices and experiences” (Pawluchka 2010:4). However, there have been various attempts to create a working definition of restorative justice. For example, Tony Marshall (2003:28) argues that restorative justice is a “process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future.” Another way to conceptualize restorative justice is through a three-pronged definition of key restorative justice principles. First, restorative justice conceptualizes a wrongdoing as a cause of harm that needs to be repaired. The second principle, in turn, relates to the admission of the responsibility by the offender and empowers the victim to express how

the harm could be addressed. Thirdly, restorative justice seeks “to build and maintain peace” through healing and righting wrongs (Van Ness 2009; Zehr and Mika 1997).

A second method of conceptualizing restorative justice that Strang and Braithwaite (2001) and Van Ness (2009) offer is rooted in the argument that restorative justice’s values and principles stand in opposition to those of retributive justice. More specifically, restorative justice employs non-punitive measures to resolve conflicts. Theorists such as Zehr (1985) recognize that affixing guilt and inflicting punishment on the offender, in many instances, is an ineffective measure to address a wrongdoing, and may breed further violence, such as vengeance and retaliation, while isolating victims and offenders from the justice process. Furthermore, punishment of offenders through incarceration may leave victims without important answers about the wrongdoing they have experienced.

In addition to challenges associated with defining restorative justice, questions arise with respect to the degree that restorative justice does and does not resemble traditional Indigenous ways of doing justice. While not all Aboriginal justice practices are restorative, justice scholars such as Griffiths (1996) and Nielsen (1995) view restorative justice as a process that emerged from Aboriginal justice traditions. As Zion explains, for example, “[American] Indian law is based on healing” (2005:70; see also Sullivan and Tifft 2006). Ross (2006:12) argues that one of the points of overlap between restorative and Aboriginal justice values is that instead of punishing the wrongdoer, the focus is on “teaching and healing of all parties involved.” Sawatsky (2009), in turn, argues that Aboriginal justice has recently focused on restoring Aboriginal identities damaged through historical injustices such as assimilation. Some of the means of

restoring Aboriginal identities are through decolonizing Western justice and healing Aboriginal communities (Smith 1999). Henderson and McCaslin (2005:5) explain that Aboriginal peoples have been attempting to move away from Eurocentric notions “about the good and the just,” such as conceptualizations of crime, and how to address it. The decolonization of justice entails dismantling colonial oppression of Aboriginal justice traditions and definitions of crime by employing Aboriginal knowledge, customs, language, and values in working to heal people and communities.

Aboriginal justice practices, much like restorative justice, are mainly characterized by the participation of victims, offenders, community members, and a mediator, while the harm is viewed as an injury done to a person by another person. Gibbs (2009:54) elaborates that one connection between Aboriginal and restorative justice paradigms is evident in the “recognition of the interdependence of victims, offenders and their communities.” Accordingly, the relationships between the offender, victim, and the community may be harmed as a result of the wrongdoing and rebuilding those relationships is crucial in the process of making the community whole again. Diane LeResche refers to this outlook on healing and restoration as “sacred justice,” which signifies the “way of handling disagreements that helps mend relationships and provides solutions. It deals with the underlying causes of the disagreement... *[S]acred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged*” (quoted in Ross 2006:27, emphasis original). While the victim’s needs guide the restorative processes, the perpetrator takes the responsibility for his or her behaviour and once the harm is repaired, the perpetrator is welcomed to rejoin the community.

Taking into account the overlap between restorative and Aboriginal justice practices, the former is not always the preferred mode of Aboriginal dispute resolution processes. As Nielsen (1992) and Milward (2008) argue, Aboriginal responses to wrongdoings range from banishment and exile to torture, which stand in opposition to restorative justice practices. As Cunneen points out, for example, certain Indigenous tribes in Australia employ methods of “sanctioning and punishment [that] may involve inflicting serious physical injury” (2007:126). Given this caveat, however, the reviewed literature suggests that Aboriginal peoples in Canada employ mainly non-retributive approaches to the dispute resolution, such as community-based strategies that have goals of restoring relationships between the victim, perpetrator, and the community members.

Based on a review of the literature on restorative justice and Aboriginal justice, at least six main themes have emerged. The remainder of this section focuses on the discussion of the key themes of restorative justice, which I have selected to include based on their overlap with Aboriginal justice practices and relevance to the work of truth commissions. Consequently, these themes form the basis for my analysis of the “restorativeness” of the Canadian TRC.

### *Victim-centeredness*

Restorative justice scholars such as Llewellyn and Howse (1999), Roche (2006), Woolford (2009), and Zehr (1985) agree that restorative justice practices usually tend to have the goal of empowering victims to tell their stories and paying special attention to their needs. Restorative justice practitioners such as Robert Yazzie (2005) posit that in order to repair the damage inflicted by a wrongdoing, the needs of affected parties must be taken into consideration, and victims need to be provided with supports to address

power imbalances during restorative encounters (see also Melton 2005). Providing victims with a safe environment that includes the presence of supportive individuals such as victims' families, relatives, and friends, may help them share their experiences without feeling intimidated by the presence of the perpetrators (Zehr 2002). By positioning victims as the focal point of the process, restorative justice practices recognize victims' unique role in resolving the conflict and "lead to victims becoming the key stakeholders in the justice process whose needs are the primary concern of justice" (Zernova 2007:42). Consequently, by accurately understanding the needs of victims, it may become possible to address appropriately the consequences of wrongful acts. McEvoy et al. (2002) and Van Ness (2009) argue that restorative justice is also concerned with empowering communities to resolve conflicts. In the sense, this signifies the communal responsibility to address the aftermath of injustices and prevent their future occurrences.

Keeping in mind the above conceptualizations of victim-centeredness and community empowerment, during the encounters between residential school Survivors and perpetrators restorative justice practitioners would have to ensure that Survivors have a culturally appropriate setting in which they can share their stories fully and freely. This could mean providing Survivors with access to their support systems, such as their families and friends, and ensuring that all attending parties are prepared to listen respectfully to Survivors' stories. This would allow the previously powerless Survivors to express their needs as victims and make their voices heard. In addition, Aboriginal communities would also need to be empowered with the necessary resources, such as healing programs, to help Survivors in their home communities overcome trauma resulting from residential school experiences.

*Inclusiveness and engagement*

Various definitions of restorative justice (see, for example, Braithwaite 2003) state that it is fundamentally inclusive and involves the participation and engagement of all the affected parties during restorative encounters. As Llewellyn (2002:299) argues, for example, restorative processes should “ensure that the individuals and institutions responsible for the abuse have an opportunity to participate in repairing the harm they caused.” Inclusiveness is also said to be one of the key principles of many Aboriginal justice practices (Sawatsky 2009; Ross, 2006). Restorative encounters, such as healing circles, also allow all parties to express the ways in which they have been affected by a wrongdoing.

The significance of inclusion of restorative encounters is explained by Van Ness and Strong (2006), who argue that restorative justice is guided by four primary values: encounter, amends, inclusion, and reintegration. On this view, victims, offenders, and community members who have been affected by an act of wrongdoing arrange a meeting (encounter) at which all affected parties may be present (inclusiveness) in order to discuss the impact of the wrongful act and to develop the course of action to address harm done by the perpetrator, who is responsible for redressing the harm (making amends). Lastly, “all parties are given the means and opportunity to rejoin their communities as whole, contributing members,” which refers to the reintegrative potential of restorative justice (Pawluchka 2010:6). Following this definition, in the case of Indian residential schools one would expect an inclusive restorative encounter to involve government and church officials as perpetrators, and residential school Survivors and their families as victims, as well as members of the general public, Elders and tribal

council members, and others who may consider themselves affected by residential schools. Hypothetically, the list of participants in restorative justice processes can be quite extensive (Cawsey Inquiry 1991).

#### *Negotiations of restorative processes*

Restorative processes are inherently negotiated and agreed-upon phenomena in that the parties affected by a wrongdoing participate in charting the course of how justice is to be carried out for their specific case (Huculak 2005). More specifically, the goal is to come to the consensus, through a collective decision-making, on how to resolve an injustice (Zehr and Mika 1997). This negotiative quality can contribute to victim empowerment by giving them an opportunity to take control and ownership of the justice process. Therefore, in order to gain insight into negotiative quality, it is necessary to examine the extent of victim consultations, which typically take place prior to the commencement of restorative processes.

To facilitate victim involvement in the initial stages of the resolution of an injustice, restorative justice practices may “provide victim representation on governing bodies and initial planning committees” (Sawin and Zehr 2007:49). In doing so, restorative processes serve as tools of empowerment in the sense that previously powerless individuals, such as survivors of human rights violations, are given an opportunity to influence the process by which justice is administered (Woolford 2009). In the case of Indian residential schools, for example, mechanisms that are developed with the purpose to redress residential school experiences would involve dialogues with Survivors to determine what needs to be done to repair the harm. In addition to their

initial input, Survivors' continuous engagement would be essential in ensuring that their stated justice needs are being addressed.

*Restoration of victims' identities, respect, and dignity*

Restorative justice processes, much like many Aboriginal justice practices, seek to restore victims' identities that have been damaged by injustices, such as crime, human rights violations, or even genocide (Frederiksen 2008; Llewellyn 2002). One of the ways in which this restoration may occur is through rebuilding respect for victims by way of educating the general public about the wrongs committed against them (Ame and Alidu 2010). By giving victims an opportunity to share their experiences and the wider public a chance to listen and participate may advance understanding and awareness of harms done and contribute to the restoration of positive social identities for victims. Also, perpetrators' acts of publicly acknowledging the harm may help promote the recognition of these identities by the broader public and restore the dignity and respect for victims (Allan and Allan 2000).

Gibbs (2009) and Guest (1999) argue that there are certain features of restorative justice that invest it with the potential to address historical injustices, such as residential schools. For example, Aboriginal and restorative justice conceptualize a wrongful act in terms of how it lowers the social status of victims, and in order to repair the harm, “the victimizer must restore the victim’s previous status – namely, of being equal with all others in the society” (Guest 1999:338). Because during the residential school era Aboriginal people suffered the loss of their cultural identities, dignity, and respect, Gibbs (2009:50) suggests that the use of restorative justice in “Indigenous historical grievances offers the possibility of restoration of [that which has been lost].” More specifically, the

process of reaffirming and validating experiences of Survivors may vindicate their rights as victims and help restore their self-respect and cultural identities. In order for the restoration to be possible, perpetrators must acknowledge Survivors' experiences (Llewellyn and Howse 1999).

### *Symbolic/material reparations*

One of the key elements of restorative and Aboriginal justice practices includes encouraging perpetrators to take responsibility to repair the harm done by a wrongdoing (Yazzie 2005). As Valandra (2005) suggests, in the process of righting the wrong, reparations must be borne by the perpetrator. By accepting responsibility for a wrongdoing, perpetrators acknowledge wrongs of the past, recognize their duty to repair the damage, and admit their guilt or complicity in the commission of the offence.

Some of the steps that a perpetrator may take to repair the harm include acknowledging the fact that the injustice occurred, issuing an apology symbolizing "an action designed to restore the dignity," and providing reparations to the victims (Gibbs 2009:51). Reparations may take material forms, such as compensation or direct payments to victims, or symbolic forms, such as the establishment of memorials, national events, and museums that serve to remind future generations of past injustices (Sharpe 2007). Maier (2003) argues that reparations are delicate tasks and should be developed with input from victims and perpetrators. For example, in order to promote public knowledge of Aboriginal history in Canada, a Task Force on Museums and First Nations was established in the early 1990s, composed of the Canadian Museum Association (CMA) and the Assembly of First Nations. One of the objectives of the Task Force was to "develop an ethical framework and strategies for Aboriginal nations to represent their

history and culture in concert with cultural institutions” (Phillips and Johnson 2003:156).

Similarly, the South African TRC made recommendations for providing symbolic reparations to the victims of apartheid, which included “identifying a national day of remembrance and reconciliation, developing museums, memorials and monuments” (Maepa 2005:68).

*Truth-seeking and overcoming the denial of injustice*

At its core, restorative justice is concerned with discovering the truth about the past (Zehr 2002). The healing power of truth told by victims and perpetrators, according to Hayner (2001), stems from the disclosure of narratives and facts about the injustice. Similarly, Llewellyn and Howse (1999) argue that truth-telling is closely tied to an admission of guilt by the wrongdoer, without which the restoration and reparation of the harm cannot occur. Additionally, truth told by perpetrators is an important component of restorative justice because it helps prevent vengeance on the part of victims and thus has been associated with long-term goals of fostering peace and harmony. This, according to Joseph (2005:263), is linked to the recognition of past injustices, reconciliation, and “reconstructi[on] of a society based on peaceful coexistence.”

Truth-seeking processes, which may take various shapes as can be seen in the South African TRC (Chapman and van der Merwe 2008), are intended to contribute to the creation of an accurate representation of wrongful acts. As well, truth-seeking, which is often carried out by truth commissions, helps victims find answers to important questions, such as: What happened? And why did it occur? The disclosure of truth about the past may help prevent similar injustices in the future. While the truth revealed by perpetrators is one of the key elements of restorative justice, Valandra (2005:35) points

out that truth-telling by victims can act as a response to historical injustices, such as colonial oppression. By telling their stories, victims are often able to break out of the identities imposed on them through colonization and “no longer suffer within the silence of pain and anger.” Through the practices of truth-telling, victims of assimilationist policies are able to re-create their own narrative of events, thereby shedding colonial stereotypes.

### *Challenges and limitations of restorative justice*

The practice of restorative justice presents certain cautions and caveats. For example, Gibbs (2009:46) notes that the role of the state in restorative justice processes must be carefully considered, especially in instances in which the state is both the perpetrator and “dispenser of justice.” Gibbs also argues that in restorative justice, crime needs to be defined in a moral sense, such as “a wrongful act” or “injustice,” as opposed to viewing it in strictly legalistic terms, as the state tends to do. As he argues, in the case of New Zealand Maori, “*determining* the standard of justice rather than relying on the State to provide one” ensures that justice becomes an agreed-upon process rather than one that is forced upon the victims (*ibid*:50, original emphasis).

Fournier and Grey (1997:153) argue that restorative processes must contain certain elements in order for them to have the potential to successfully address residential school injustices. First, extensive community consultation must take place to discover victims’ justice needs. Secondly, participants such as Elders and spiritual leaders in restorative justice processes involving residential school Survivors need to be carefully considered, since “they too are products of residential schools and intergenerational abuse.” This refers to the importance of ensuring victims’ perceptions of safety while

participating in restorative processes, which may allow them to express freely the degree of harm done to them.

McEvoy and Eriksson (2006:329) point out that one criticism of restorative justice relates to its lack of a guarantee to the right to a fair trial, which includes “access to a lawyer, the right to appeal, the principle of double jeopardy and a range of other offender-focused trial concerns.” However, this perceived limitation of restorative justice is valid only when comparing retributive justice to restorative justice, while taking retributive justice as the norm (Daly 2006). More precisely, restorative practices aim to address the issue of fairness in a different fashion than do trials. To ensure that restorative justice encounters are fair to all stakeholders, certain mechanisms, such as “ground rules,” are put in place before restorative encounters commence. These rules are agreed upon by the participants and implemented at the beginning of a restorative encounter in order to outline how the restorative meeting will be run. For example, they may include behavioural guidelines such as “no name-calling, no interrupting, no yelling, the parties will remain seated, no threats etc.” (Llewellyn and Howse 1999:67; see also Schiff 2007).

Kathleen Daly (2006:138) suggests that one of the challenges of restorative justice is achieving “restorativeness.” For example, she states that the evidence of restorativeness includes “the degree to which the offender was remorseful, spontaneously apologized to the victim, and understood the impact of the crime on the victim” and whether the victim “has understood the offender’s situation; and the extent of positive movement between the offender, victim, or their supporters.” However, it may be difficult for the offender to find common ground with the victim, and it may also take a significant amount of time for the victim to recover and for the victim and offender to

resolve their differences. More generally, Dyck (2006:530) argues that most restorative justice programs, such as victim-offender mediation and similar processes, are unable to address the historical and structural factors that have contributed to the commission of the wrongdoing. In order to be effective, restorative justice practices need to “recognize structural illnesses, [while] taking a long-term, process-oriented approach” to addressing injustices. Probing beyond the surface of an injustice would allow restorative justice to be backward-looking and address underlying causes of harmful behaviour, such as “racism, sexism, classism, addiction, homophobia, violence, repression/control and dependence” (*ibid*).

Despite the discussed limitations and challenges of restorative justice, Kathleen Daly notes that all justice practices possess their limits and we should not become disillusioned with restorative justice if it fails to live up to its ideal. Instead, restorative practices can be strengthened through awareness of these limitations. Also, restorative justice practices are context-dependent, making it necessary to examine the effectiveness of restorative justice in specific cases, such as Canada’s TRC, rather than to simply rely on general criticisms. In the next section, I shift my focus to the discussion of Charles Taylor’s theory of recognition and its significance in the process of addressing residential school experiences.

### **The Theory of Recognition**

Restorative justice and the theory of recognition both view recognition as an essential component of repairing the harm done in the process of restoring victims’ identities (Llewellyn 2002; Frederiksen 2008; Allan and Allan 2000). While restorative justice practices strive to provide adequate recognition to the victims through processes such as

acknowledgement, apology, and compensation, Charles Taylor's theory examines the foundations of recognition and offers a philosophical rationale for why acts such as acknowledgment, apology and compensation are morally necessary. In this sense, Taylor's theory offers a deeper and richer theoretical basis for the principles of restorative justice.

Taylor's central argument is that recognition of cultural identity is "a vital human need" that is essential to the group survival (1992: 26). However, his concern is for more than cultural survival, as he calls for "reciprocal recognition among equals" and the acknowledgement of cultures' worth (p. 64). He argues that the various cultures need to adequately recognize each other's identities in order for social equality to exist. For example, because Aboriginal peoples were subordinated during the colonial era through institutions such as the residential schools, the social equality that should ideally exist between Aboriginal and non-Aboriginal peoples was diminished.

Taylor also argues that recognition is something to which every member of society is entitled and withholding recognition constitutes a form of oppression, which is evident in Canada's history of colonialism. Once the relationship built on cooperation between Aboriginal peoples and the Canadian government began to crumble and transform into one characterized by coercion and domination, Aboriginal people gradually came to be viewed by the government as groups of uncivilized savages in need of salvation from their primitive ways (Miller, 2000). In this manner, Euro-Canadian society was able to "entrench [its] hegemony by inculcating an image of inferiority in the subjugated" (Taylor 1992:66). As a result of such profound misconceptions, Aboriginal identities were devalued in worth and significance, which led to the diminishment of

respect and dignity for Aboriginal cultures. As Taylor explains, “nonrecognition or misrecognition can inflict harm [by] imprisoning someone in a false, distorted, and reduced mode of being” (25).

The Canadian government perceived Aboriginal cultures as less valuable than Euro-Canadian cultures, and has since continued to measure the worth of Aboriginal cultures against Euro-Canadian standards, while failing to recognize the uniqueness and originality of Aboriginal cultural identities. This process of measuring cultural worth of one group against the standards of another is a form of what Taylor calls misrecognition. Cultural values and identities, as Taylor argues, must not be negotiated through social processes with “outsiders” such as colonizers, but instead must originate by way of dialogue within self-identified groups. These relationships, according to Taylor, occur in intimate spheres and serve as “the key loci of self-discovery and self-affirmation,” while the public sphere serves as a site where recognition among equals may take place (1992:36). An important part of this self-identification process is language as a form of cultural expression, which is transmitted via interaction with other group members. During the residential school era, Aboriginal children were partly, and often fully, dispossessed of their ability to speak Native languages. By separating children from their parents and home communities and by forbidding them to speak Native languages in many schools, the residential school system promoted the loss of this important cultural element, which signifies the misrecognition of Aboriginal cultures. Non-recognition of Aboriginal peoples, in turn, took place outside of residential schools. Historically, the Canadian government has been engaging in acts of non-recognition of Aboriginal rights through dispossessing them of their lands, often failing to recognize Aboriginal

governments as legitimate, and refusing to endorse Aboriginal justice, child welfare, and education systems.

Scholars such as Schissel and Wotherspoon (2003) and Claes and Clifton (1998) argue that the complete assimilation that residential schools pursued constituted cultural genocide<sup>2</sup>. This, in their arguments, is evident in the government's intention "to remove the people from earth as a people" to achieve the objective of breaking down cultural fabric of Aboriginal people and their communities (Leenaars et al. 1999:348). The objective of the complete assimilation is apparent in former Superintendent of the Department of Indian Affairs Duncan Campbell Scott's conception of departmental policy towards Aboriginal peoples, which would facilitate "absorption [the Indian race] into the general population" (quoted in Episkenew 2009:30-31). Aside from dispossessing Aboriginal peoples of their cultures, elements of genocide were also visible in the government's "legislated attacks on Indigenous political, economic, religious, and family institutions made with the aim of dissolving the many First Peoples and incorporating the remaining individuals, severed from their culture, into White settler society" (Powell 2010:3). Leenaars et al. (1999) argue that without unique cultural identities, ethnic groups such as Aboriginal peoples would cease to exist *as* Aboriginal peoples. Through successful assimilation, Aboriginal identities would be destroyed and,

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<sup>2</sup> These scholars argue that the Indian residential school system constituted cultural genocide, which is a term that mitigates the impact of residential schools by focusing on the destruction only of cultural aspects of Aboriginal life. In formulating their definitions of cultural genocide, they seek to adhere to the Article 2 of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. However, this Convention is typically interpreted in a manner that ignores the cultural dimensions of genocide and focuses instead on biological destruction. Under this rubric, the removal of children from families is argued to prevent the reproduction of group members, so long as the children are not permitted to return to the group at a later date. In contrast to such legal definition of genocide, some sociological definitions allow one to view the Indian residential school system as genocidal due to its objective to socially and culturally destroy Aboriginal peoples as distinct groups, thereby erasing all the differences between Euro-Canadian and Aboriginal cultures (Powell 2010; Woolford 2009).

although surviving physically, Aboriginal peoples would be dispossessed of their traditional heritage and would become culturally identical to Euro-Canadians.

To the Canadian government, Aboriginal peoples as distinct ethnic groups were a dying race. Episkenew (2009:25) explains that the colonizers “believe[d] in the inevitability of their culture’s dominance and the corresponding demise of Indigenous cultures.” As a result, the misrecognition and perceived superiority of Euro-Canadian cultures is one of the factors that led to the assimilationist policies like the residential school system. One of the tenets of Taylor’s theory is that cultural identities are unique in and of themselves and must be recognized as such in order for social equality to exist. From the theory it follows that the government carried out immoral and ethnocentric acts by seeking to assimilate Aboriginal peoples into mainstream society, which resulted in barriers to Aboriginal peoples’ potential to achieve the “goals of self-fulfillment and self-realization” (Taylor 1992:31). Misrecognition resulted in political, economic, and social inequality for Aboriginal people. For example, the Canadian government did not recognize Aboriginal people’s right to vote until 1960 and their political participation has historically been extremely limited (Moss and Gardner-O’Toole 1987). Furthermore, social disadvantages are evident in Aboriginal peoples’ limited degree of control over severely underfunded child welfare services in their communities and from which children are transferred into non-Aboriginal foster care, resulting in further loss of Aboriginal cultures and identities (Blackstock 2008; Bennett et al. 2005). Other disadvantages stemming from the misrecognition include poverty, inadequate housing, as well as over-representation of Aboriginal peoples in Canadian correctional facilities (Linden 1998; Bennett 2010).

Arguably, the termination of the residential school system may, among other factors, signify the recognition that the assimilation of Aboriginal peoples is an injustice committed against them. However, Miller (1996) and Milloy (1999) argue that the recognition of the injustices did not emerge exclusively from the government's realization that the system itself was morally wrong. Instead, other factors such as the schools' inability to assimilate children and parental resistance to residential schools compelled the government to abandon the residential school experiment. In addition, increasing Aboriginal political organization and political activism on the part of groups such as the NIB and the Federation of Saskatchewan Indians, insurmountable evidence of abuse as outlined in the 1996 RCAP Report, and the lawsuits stemming from the evidence of abuse, forced the government to recognize the serious injustice of residential schools. The Canadian government's past reluctance to acknowledge residential school experiences is evident in some of its previous attempts, such as the ADR and the Statement of Reconciliation, whose failure could be at least partially attributed to their built-in element of the denial of guilt.

Based on the above discussion, the theory of recognition can be applied in the context of residential schools in two distinct ways. First, it can be used to account for the origins of injustices perpetrated by the Canadian government and churches against Aboriginal peoples, which stem from the misrecognition. Secondly, the theory of recognition augments the framework of restorative justice by offering a deeper understanding of residential school injustices. More specifically, Taylor's theory adds a cognitive meta-theoretical dimension to restorative justice practices by emphasizing and advocating the importance of respect, dignity, and "universal human potential that all

humans share,” all of which are crucial elements in establishing or re-establishing human identity and promoting social equality (Taylor 1992:41). Incorporation of the theory of recognition in the evaluation of Canada’s TRC allows for a more advanced understanding about what needs to be done to restore former identities of Survivors.

Taylor’s theory, however, has come under some criticism. For example, Coulthard (2007) raises several issues with Taylor’s theory of recognition. First is that Taylor’s approach fails to address the root causes of misrecognition. Coulthard (2007:446) argues that Taylor’s theory may be instrumental in explaining “redistribution schemes like granting certain rights and concessions to Aboriginal communities via self-government and land claims process,” while leaving intact colonial-capitalist exploitation. To Coulthard, Taylor ignores the economic dimension of capitalism, which in his view is responsible for perpetuating racial inequality. The residential school system was, indeed, a product of a broader structural force – colonialism – and in order to provide recognition to Aboriginal peoples, this force would need to be dismantled. Coulthard also criticizes the lack of attention to the struggle for recognition in Taylor’s theory. He argues that without a struggle, recognition is imposed on “subjects” who are passive in accepting it from the dominant society. As a result, these “subjects” do not challenge the power of entities such as the state. In Coulthard’s view, drawing on the work of Franz Fanon, it is necessary for the “subjects” to win recognition on their own terms. Finally, Coulthard challenges the applicability of Taylor’s use of the Hegelian notion of “reciprocal recognition among equals” in the context of colonial domination (2007:450). For Coulthard, the Hegelian notion of reciprocal recognition between a slave and a master does not apply in colonial context, as there is no mutual dependency for

recognition between colonial and colonized nation states. Such recognition is not sought by the dominant group, for it is not necessary for it to be recognized by the subordinate group. According to this argument, the Canadian government does not require recognition from Aboriginal peoples, since such recognition is irrelevant and would carry little significance for the Canadian government. Instead, the recognition of the government's dominance is forced upon Aboriginal peoples. While I believe that Coulthard's criticisms of Taylor's theory are accurate and valid, it is necessary to apply Taylor's theory to TRC processes in order to assess the ability of the theory to promote the recognition of Aboriginal cultural identities and to account for the injustices Aboriginal children suffered in residential schools. In the concluding chapter, I return to Coulthard's critique and apply it to the TRC's work.

In my examination of Canada's TRC, I consider three main criteria with respect to recognition. The first question relates to the recognition of residential school experiences: To what degree does the TRC promote the recognition of the harm done to Aboriginal people for residential school experiences? Promoting awareness of the harm done may contribute to the restoration of the dignity and respect for Survivors. Secondly, I pose the question relating to the restoration of Aboriginal identities: Does the TRC attempt to promote the distinctness and uniqueness of Aboriginal cultural identities and to endorse their equality to the cultural identities of non-Aboriginal peoples? The last question, in turn, deals with addressing the broader issue of colonialism: Does the TRC have the potential to address the underlying causes of residential schooling and to look beyond the harm done by the residential school system and instead frame it as a systemic issue? In resolving injustices of residential schools, it would be necessary to examine the

precursors that led to the subordination of Aboriginal people that ensured the continued dominance of European settlers. But before examining the justice on offer through the TRC, it is first necessary to consider truth commissions more generally, offering a sense of the conceptual development of this increasingly popular justice mechanism.

### **Truth Commissions**

Since the 1970s, truth commissions have become viable and legitimate options for addressing historical injustices (Llewellyn 2007; Hayner 2001). Scholars such as Kiss (2000), Minow (1998) and Maepa (2005) have drawn connections between truth commissions, restorative justice, and recognition.

Hayner (2001) argues that truth commissions are commonly established to achieve five main goals, which are:

To discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past (p. 24).

Llewellyn (2007:357) notes that one of the main reasons for establishing truth commissions is because they serve “as the mechanisms best able to respond to past abuse and violence with a view to building a just future.” The South African TRC, for example, was designed with the purpose of “restor[ing] the balance [and] the dignity of the people” after the apartheid regime (Minow 1998:81). More generally, truth commissions are non-judicial bodies which are charged with a “wide range of responsibilities, including providing an accurate account of atrocities, granting amnesty to those who confessed to their role in political crimes, and making recommendations for reparations” (Guttmann and Thompson 2000:24). For Mitchell (2006:112), one of the overarching goals guiding the work of truth commissions is fostering peaceful coexistence and promoting

reconciliation, which can be achieved partially through truth-seeking, thus creating a world “without the felt threat of future conflict.”

#### *Restorativeness of truth commissions*

Truth commissions may implement restorative practices in their designs and proceedings in a variety of ways. For example, in their work, truth commissions often emphasize the principle of inclusion, which encourages the participation of victims, perpetrators, and all those affected by an injustice. Truth commissions also strive to engage the general public in order to stimulate wider discussion, debate, and participation of community members. This can sometimes be accomplished through public events and broadcasting of proceedings, which carry the goal of providing the transparency of justice and truth-seeking. Crocker (2000) underlines the importance of transparency and accountability of truth commissions by arguing that their ability to address past injustices is directly proportional to public access to their proceedings and publications. On this view, engagement of the general public is connected to being “[confronted]...with the human face of unknown or silenced victims” (van der Merwe 2008:27). South African TRC’s public hearings and its *Final Report* serve as two examples of what was made accessible to the general public (*ibid*; South African Government Information 2008).

Transparency of the work of truth commissions is also an important factor in facilitating the process of recognition and acknowledgement of past injustices. Allan and Allan (2000:471) suggest that by revealing truth about the past and raising awareness about past injustices, truth commissions are able to educate the general public, thereby contributing to the creation and strengthening of a “human rights culture.” The process of official acknowledgement of past injustices, in turn, may have a broader societal effect

when it reaches out beyond the immediate environment of a truth commission's proceedings and may promote broader societal change by identifying and transforming "institutional practices or structural conditions" that may have served as some of the causes of injustices (Stanley 2001:539). Mitchell (2006:120), in turn, suggests that public proceedings may "advance understanding and reduce animosities between ethnic, regional, and political groups who lack knowledge of other groups' suffering."

Recognition in the context of truth commissions can take two distinct forms: recognition of the past wrongs and recognition of the victims' identities and the need to restore them, along with a sense of dignity and respect. Let us initially focus on the first type of recognition. Truth commissions may promote the recognition of wrongful acts and the harm done through the official acknowledgement of past events and what Minow (2000:238) calls "deliberate policy of maximum publicity," which is aimed at minimizing the widespread denial of past injustices. The acknowledgement of injustices may also promote healing of survivors' emotional wounds, which, in Cunneen's (2001:91) view, is closely tied to the admission of guilt and could begin when there is a "full and public record of victims' pain."

With respect to the second type of recognition, namely the recognition of victims' human identities and restoration of their dignity and respect, are related to the role of truth commissions in making victim testimonies public, which may lead to the increase in public awareness of the victim suffering (Villa-Vicencio 2003). Boraine (2000:152), for example, argues that one of the objectives of the South African TRC was to "restore the human and civil dignity of victims by granting them an opportunity to relate their own accounts of the violations" through testimonies. Frederiksen notes that truth commissions

may endorse the recognition of past injustices by “uncover[ing] a deeper truth about the past, revealing the systematic nature of the injustices perpetrated during the period under scrutiny and lending credence to victims’ stories of abuse” (2008:3). For example, Maepa (2005:67) argues that the TRC attempted not only to address the needs of victims, but also focused on “the root causes [of injustice] to ensure non-repetition.”

Justice as recognition “entails acknowledging the distinctive identity of the other [and] striving to repair damage done to him or her through violence, stigmatization, and disrespect” (Kiss 2000:73). Du Toit (2000:136) argues that it is precisely the ability of victims to “frame their stories from their own perspectives” that compels the perpetrators to recognize how victims suffered from the wrongdoing. Frederiksen (2008) writes that truth commissions have the potential to bring about social change because they

Look beyond individual instances of abuse—the focus of trials—to identify broader patterns of state-sanctioned and institutionalized oppression and violence and to recommend legal and institutional reforms aimed at preventing the recurrence of such crimes in the future (p. 3).

Llewellyn (1999), for example, argues that some truth commissions, such as the South African TRC, may contribute to the democratization of society and alleviate power imbalances resulting from oppressive regimes by determining and addressing the root causes of those regimes.

One of the ways in which truth commissions incorporate restorative justice elements is in their search for truth. At its core, the work of truth commissions seems to rely on the connection between truth and recognition. The underlying assumption of truth commissions is that truth discovery, which is the necessary prerequisite of the process of recognition, will promote individual healing and the healing of the nation as a whole. Mitchell (2006:120) points out that the truth-seeking function of truth commissions is

evident in their objectives to obtain “disclosures of fact and admissions of guilt, which can be significant for victims of politically motivated crimes,” such as those in which the government was the perpetrator and chose to be silent or denied past injustices. Minow (1998), in turn, suggests that truth possesses therapeutic qualities and may bring closure to victims and their families. By providing the perpetrators with an opportunity to express truth about the wrongful acts, the healing process for the victims may take place. Kiss argues that by discovering truth, truth commissions help “understand the motives and perspectives of the persons responsible” for past injustices (2000:74). Also, the needs of victims are addressed more thoroughly when there is a deeper “understanding and appreciation of [their] needs” and injuries that they suffered (Hayner 2001:28).

Much like restorative justice practices, truth commissions tend to acknowledge the importance of the role of the perpetrators in the process of truth-seeking, since they may hold important answers about injustices. Similarly, the role of victims in truth commissions encourages their active engagement in seeking justice. While truth may be complex and take many shapes, Chapman and van der Merwe (2008:13-14) argue that in the South African TRC, personal narrative forms of truth, such as storytelling, “allow[ed] survivors [to] make meaning and sense out of their experiences [and] contribute[d] to psychological healing after trauma.” Another kind of truth that is identified in the TRC is referred to as restorative truth, which is defined as “validating the experience of people and thus restoring the dignity of survivors” (*ibid*: 14). These types of truths are widely reflected in restorative justice practices.

Kiss (2000) believes that truth commissions’ victim-centered approach complements their cognitive function and in this respect, truth commissions could be

conceived of as institutions of restorative justice. One of the ways in which truth commissions could be considered victim-centered is in their focus on addressing victims' needs and empowering them to tell the truth. Truth commissions' victim-centeredness is often evident in their public hearings, which serve as mechanisms to encourage victims to tell their stories and accounts with regards to the impact that a wrongdoing has had on them. For example, Elshtain (2003:61) argues that the South African TRC afforded the victims a voice through "an official forum where they have told their story," which becomes the story the whole country acknowledges.

Allan and Allan (2000) suggest that because victims' testimonies are often told in an environment that is empowering, positive, supportive, and which tends to promote the affirmation of victims' experiences, the testimonies may play a therapeutic role in truth commissions. As Van der Merwe (2003:121) argues, truth commissions empower victims by "designing [a process] that specifically ensures their participation." For example, Llewellyn and Howse (1999:386) argue that the South African TRC demonstrated victim-centeredness when it "attempted to listen to the victims and address their needs." Other victim-centered elements of truth commissions include the provision of support services to the victims, respectful listening of their accounts of injustices, as well as rituals, songs, and prayers.

The work of truth commissions often overlaps with restorative justice practices in that they often recommend reparations for the harm done to the victims. Backer (2009) argues that while truth commissions have predominantly recommended monetary compensations, symbolic reparations have also been implemented in attempts to repair the damage and promote the process of national healing. These may include, among

others, commemoration activities, providing victims' families with reburials, and exempting families of disappeared from military service, and lustration of perpetrators from the government. Bhargava (2000:57) points out that symbolic reparations are at least as important as material reparations and they are significant in their role of serving as vehicles of official acknowledgement and in "launching [of] a new order bound by a new set of rules and, possibly, a system of rights." In South Africa, for example, reparations include the establishment of national remembrance days, museums, monuments, and memorials. The TRC also combines monetary and symbolic reparations that include "money, services, and public art [that represents] the kinds of steps that can be pursued in the search for restorative justice" (Minow 1998:91).

One of the ways in which truth commissions tend to implement restorative justice elements in their work is in employing non-punitive approaches to addressing injustices. Kiss (2000) argues that truth commissions differ from other institutions of transitional justice, such as criminal trials and tribunals, in that instead of using punitive and retributive measures, they recognize "the humanity of both victim and offender, and seek personal and institutional transformation" (p. 80). Prosecutions are often ineffective in addressing injustices because they focus on punishing the perpetrators and neglect the needs of victims. Zachar (2006:78), for example, goes so far as to argue that the principles on which truth commissions operate stand in opposition to those of retributive justice and that "anyone who prefers retributive justice and views it as a moral imperative is unlikely to accept TRCs." Similarly, Barkan (2000:xxxviii) notes that in nations where injustices have occurred, non-retributive measures, such as reparations and compensation,

have at times been successful in addressing injustices, while “punishment, in contrast, generally failed.”

Truth commissions may be considered restorative because they are often products of negotiations between various groups who have a stake or a vision of how justice should be carried out. Negotiations are important in the context of truth commissions because they may give voice to the people affected by the injustice and provide them with a degree of ownership and control over the justice process, which could potentially serve as an important step in a transition toward democratization. The South African TRC, for example, was the product of negotiations between the government (African National Congress) and groups within civil society, which helped “defin[e] the boundaries of the shape the commission would take” (Christie 2000:81). These groups included academics, human rights activists, and representatives from various NGO organizations, whose participation “ensured that a wide variety of views [were] articulated” (ibid:81). Similarly, the Guatemalan Historical Clarification Commission was established as a result of peace talks and “under intense pressure from human rights and victims groups” (Hayner 2001:214). However, truth commissions are not always products of broad-based negotiations. In countries like Haiti, Sri Lanka, Chad, and Uganda, Argentina, and Chile, truth commissions were established by presidential decree, without conferring with others, which was done to establish truth commissions promptly and “avoid political infighting by a weak or split legislature” (ibid). Appointment of commissioners, in turn, also varies by country. In Guatemala and Ecuador, as well South Africa, commissioners were chosen through a consultative process with the nominations coming from the public and human rights organizations. This, in the sense, allowed for a

greater degree of representation of the public interest in the truth commissions' proceedings.

#### *Non-restorative qualities of truth commissions*

Taking into account the restorative potential of truth commissions, scholars such as Roche (2006) and Stanley (2001) argue that despite having been designed in accordance with restorative principles, truth commission do not always live up to fully implementing restorative justice elements in their work. For example, Allan and Allan (2000:474) argue that the South African TRC afforded little face-to-face time between victims and perpetrators, which is one of the key elements of restorative justice. In their view, the TRC would have carried more healing potential if it "included a meeting between survivors, if it was their choice, and perpetrators." Furthermore, perpetrators were not required to provide material compensation directly to the victims, which for some victims meant that perpetrators' reparative actions lacked sincerity. The TRC also failed to provide the victims who testified before the commission with adequate support and empowerment during the hearings. Crocker (2000:106) argues that the lack of support for victims' testimonies was evident in their subsequent reports of "flashbacks, sleeplessness, and depression." Testimonies about heinous crimes, such as rape, may inflict further psychological damage on victims, namely retraumatization and revictimization, even if counseling and support services are provided to them (Kerr and Mobekk 2007). In this respect, there may not be an easy solution to resolving this issue. These shortcomings of the TRC point to the difficulties of implementing restorative justice in the context of human rights violations.

On a more general level, truth commissions may encounter difficulties in their search for truth (Hayner 2001). For instance, the official documentation of injustices is often unavailable to truth commissions. This inability to obtain the official records may hinder the processes of recognition and validation of victims' experiences. Truth commissions in El Salvador, Argentina, and Chile encountered problems in their attempts to access information related to past injustices. In contrast, Stanley (2001) and Hayner (2001) point out that the South African TRC was able to obtain only partial truth because of inherent systematic biases of truth-telling by victims and perpetrators. Furthermore, Chapman (2009) argues that truth commissions are usually better suited to discover "macro" (structural causes of injustice) than "micro" (personal narratives) truth, both of which are required to understand injustices thoroughly. Though macro truth can be extremely important, as evident in the Guatemalan CEH that discovered that 83 percent of victims were Mayan, truth commissions are typically not designed to "determin[e] the details of thousands of cases" (*ibid*:105). This may result in the lack of detail regarding "identification of the individuals, groups, or units ... that committed particular crimes" (*ibid*).

One of the criticisms of truth commissions sometimes face is with regards to the inappropriateness of reparations, both with material and symbolic (Minow 1998). For example, the meaning of material reparations could be misunderstood if they are not coupled with an official acknowledgement of past injustices. As such, reparations may lack context and may even be perceived by the victims as attempts to "buy" justice. The danger with any type of reparations is that they could also "elevate things over persons, commodities over life, money over dignity" (*ibid*:131). Symbolic reparations also have

their limitations, namely in the cases when they are considered less important or secondary to material compensation and therefore may become neglected. Material compensation, in turn, may be perceived by the victims as too meager, therefore minimizing their experiences and the harm done. Also, the recommendations made by truth commissions for reparations may be ignored, which leads to “disillusionment [and] not reconciliation” (Kerr and Mobekk 2007:144). Chapman (2009) and Stanley (2001), for example, argue that certain truth commissions, such as the South African TRC, were unable to provide funding for victim compensation payments as was originally planned. Albie Sachs, constitutional judge in South Africa, states that the reparations that victims may sometimes find desirable extend beyond the immediate effects of monetary or symbolic reparations. More specifically, the victims may wish for a broader societal transformation, which includes “the constitutions, the vote, with dignity, land, jobs, and education” (quoted in Minow 1998:132).

Another challenge that truth commissions sometimes encounter is with regards to the scope of their mandates. More specifically, Chapman (2009) and Crocker (2000) argue that the work of truth commissions is greatly affected by the power dynamics of those involved in negotiating their design and processes. Chapman explains that,

Often the architects of the violence and abuses … retain political influence and power. Those ceding their positions of power frequently attempt to impose conditions that will restrict a specific commission’s powers and the kinds of issues that it will be able to investigate. Or the mandate may reflect the priorities and concerns of those drafting the mechanisms under which the commission was established – people who may deem it in their country’s interest to have a short transition period (p. 100).

In order to prevent the uncontrolled influence of the powerful elites on truth commissions, Crocker suggests that they should be established and carry out their

operations as democratic bodies. He argues that the public deliberation plays the key role in ensuring that truth commissions serve the interest of the people as a whole and not any single group in particular. This, in his view, can be achieved through the public consultations and representation of a diverse range of voices guiding the negotiations leading up to the creation of truth commissions. Once a commission is up and running, the public accessibility and transparency of its proceedings are the crucial elements in its function as a participatory institution.

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By way of conclusion, this chapter considered restorative justice, its principles and values, and ways in which it resembles Indigenous justice practices. The section on the theory of recognition, in turn, outlined the importance of recognition and restoration of cultural identities of victims, a vital role of promoting the distinctness and uniqueness of these identities, along with a critique of the theory of recognition. The last section considered truth commissions and their potential to serve as institutions in which restorative justice and recognition may occur. In a later chapter examining Canada's TRC, restorative justice elements and the theory of recognition will both be employed in an attempt to assess the restorative and cognitive potential of the TRC to redress residential school experiences. By examining the TRC through the lens of restorative justice and the theory of recognition, it may become possible to discover whether the TRC could be considered an appropriate mechanism to repair the harm.

## **CHAPTER 4: METHODOLOGY**

This chapter outlines the methods that were employed in answering the main research question in this thesis. A qualitative research methodology was used in the process of data collection and analysis. This chapter begins by outlining how the conceptual and theoretical elements of restorative justice and recognition were coded. Next, the research design is introduced, which consists of the collection and analysis of primary data, namely the field notes and in-depth qualitative interviews, as well as secondary data.

### **Restorative Justice and Recognition: A Coding Scheme**

At this point, it is necessary to clarify the coding categories that were developed so that the conceptual framework of restorative justice and the theory of recognition could be applied to the data sources to determine the ways in which restorative justice and recognition are present or absent within the TRC design and its early implementation.

Participation and engagement (inclusion) of TRC's processes. This restorative justice element refers to the inclusion of all parties affected by a wrongdoing in justice processes. In the case of the TRC, inclusiveness will be measured by examining the degree of participation of Survivors, their families and community members, as well as perpetrators such as the government officials, church officials, and Indian residential school staff, in the TRC-related processes.

Symbolic reparations. Since the Canadian TRC is not designed or intended to administer material reparations to Survivors, the focus will be on examining the elements of the TRC that were planned with the purpose of providing symbolic reparations to Survivors. In general, the TRC's symbolic reparations, as examined in this thesis, will be comprised of non-monetary attempts to symbolically atone for the damage done by Indian

residential schools. Some of the examples of the TRC's symbolic reparations include, but are not limited to, commemorative practices, the discovery of burial sites of former residential school students, and the national and community events.

Victim-centeredness. The focus here is on the empowerment of Survivors to tell their stories of how residential schools have affected them. Empowerment could take the form of providing Survivors an opportunity to tell about their residential school experiences, and support when they do so. Support may include the presence of family members and relatives, friends, and community members, or a culturally appropriate setting in which to tell their truths. In addition, I examine the community support resources that are available to help Survivors heal after they shared their traumatic experiences at TRC events, namely during statement-taking and Sharing Circles.

Negotiation of restorative processes. Because restorative justice practices are, at their core, negotiated processes, it is important to consider the extent to which all parties affected by the Indian residential school system have had an opportunity to contribute to the process of creating and maintaining the TRC. More specifically, it is necessary to ask the question: To what degree is the TRC a negotiated institution and what parties provided their input? Also, what parties have been excluded? In order to address these questions, it is important to consider the TRC in the broader context of the negotiations leading to the IRSSA.

Truth-telling and overcoming the denial of injustice. Restorative justice is concerned with discovering truth about past injustices, which includes uncovering important details about why an injustice was committed, when, and by whom. The main question that I pose here is: Is the TRC able to establish an accurate record of the past? This, in part, involves the

ability and willingness of Survivors (and all those affected by residential schools) and perpetrators to disclose truth about residential school experiences. Perpetrators may include, but are not limited to, school teachers and senior school staff, church officials, and the government representatives. Their stories of residential school abuses may contribute to creating a more complete picture of residential school experiences and therefore have the potential further the healing of emotional wounds and bring closure to Survivors. The TRC's design will also be examined for elements that encourage perpetrators to come forward and tell the truth about the past. Lastly, I analyze the TRC's investigative ability to uncover truth about residential schools.

Restoration of victims' self-respect and dignity through acknowledgement. Restoration of Survivors' self-respect and dignity may come from respectful listening and acknowledgement of their accounts about residential school experiences and the damage inflicted on Aboriginal identities. The TRC is therefore assessed with respect to its ability to provide the adequate acknowledgement, validation, and affirmation of Survivors' experiences, as well as vindicate Survivors' status as victims. Furthermore, I assess the mechanisms that the TRC employs to compel perpetrators to acknowledge the harm done to Survivors and their identities.

Recognition of Aboriginal identities. With respect to Charles Taylor's theory of recognition, the TRC will be assessed in terms of its ability to promote the public understanding of Aboriginal identities as unique and distinct, and emphasize their worth and equality to non-Aboriginal identities. In doing so, the TRC may be able to counter the misrecognition that Aboriginal peoples have suffered during colonialism and more specifically, during the residential school era. In order to assess TRC's cognitive

potential, I examine the mechanisms through which it is able to facilitate direct (public attendance of TRC events) and indirect (media coverage) public learning and broader societal recognition of Aboriginal cultures and identities.

### **Secondary Data Sources**

Part of the data examined and analyzed in the next chapter of this thesis has been extracted from secondary sources. Academic secondary data sources include journal articles, manuscripts, and published and unpublished conference papers. To obtain electronic documents, the following databases have been searched: *CSA Illumina Sociological Abstracts, EBSCOhost, WilsonWeb Social Sciences, Sociology: A SAGE Collection, Criminology: A SAGE Collection*, and *JSTOR*. The following websites have also been used in the process of searching for academic articles and abstracts: *Restorative Justice Online* ([www.RestorativeJustice.org](http://www.RestorativeJustice.org)), the *Aboriginal Healing Foundation* ([www.AHF.ca](http://www.AHF.ca)), *the Legacy of Hope Foundation* ([www.legacyofhope.ca](http://www.legacyofhope.ca)), and *Google Scholar* ([www.scholar.google.ca](http://www.scholar.google.ca)).

### **Primary Data Sources**

Primary data for this thesis have been collected in three phases. The first phase consisted of the field notes taken at the TRC national event in Winnipeg, Manitoba. These were primarily collected during the four sessions of the Commissioners' Sharing Circles, which were open to public and took place June 16<sup>th</sup> to June 19<sup>th</sup>, 2010. These Sharing Circles were mediated by the TRC Chair Justice Murray Sinclair and Commissioners Marie Wilson and Chief Wilton Littlechild. These Sharing Circles were designed to provide opportunities for Indian residential school Survivors to share their experiences and memories of residential schools. The main purpose of this data collection phase was

to obtain a first-hand perspective on residential school experiences and how they have affected Survivors and their families. During the analysis of the field notes, the main task was to focus on the “restorativeness” of the Sharing Circles and to examine their role in promoting recognition of past injustices.

While attending Sharing Circles, my focus was on documenting and interpreting the degree to which participants, including Survivors, were empowered to tell their stories about residential school experiences and to share their perspectives on the potential ways to resolve the injustices they suffered. This involved examining the roles of the TRC support staff and participants’ family members in creating safe and respectful environment for Survivors. In a similar fashion, my other goal was to discover the ability of the TRC to restore the dignity and respect for Survivors through recognizing and acknowledging their residential school experiences. More generally, I concentrated my attention on the indicators of potential successes and failures of the TRC as an institution of restorative justice and recognition (according to the above coding scheme), as described by Sharing Circles participants.

The second phase of primary data collection consisted of four in-depth qualitative research interviews, comprised of open-ended and follow-up questions. Kvale and Brinkmann (2009) point out that qualitative research interviews are more products of skill and craft, rather than a technique or method. In these interviews, knowledge is socially produced through interaction between the interviewer and the participant. The interviewer engages with the participant to obtain his or her perspectives on and interpretations of certain phenomena relevant to the interviewer. As a result, qualitative interview data can potentially be “ambiguous and contradictory and the findings may not be

intersubjectively reproducible” (*ibid*: 58). These interviews are able, however, to supply exploratory data on phenomena that are relatively new and have not yet been widely researched (Wilkinson 2009). An evaluation of the TRC, which is what this thesis is aiming to accomplish, may be considered an exploratory study. Because qualitative research interviews are generally related to conversations and are interactive in nature, previous knowledge of the interview topic was necessary in order to effectively uncover the participants’ subjective perspectives on the TRC’s design. Therefore, the interview questions were developed based on the review of literature on truth commissions, restorative justice, the theory of recognition, and residential schools (see Interview Schedule, Appendix B).

The main rationale for conducting qualitative interviews in this thesis stems from the potential of these interviews to yield the kind of data that may not have been available through primary or secondary text-based sources. The interview participants were selected based on their expertise in the four main areas: Aboriginal justice, restorative justice, truth commissions, and Indian residential schools. As a result, the interviews allowed me to obtain relevant data on subjective experiences, opinions, and perspectives with regards to restorative practices and recognition potential of the Canadian TRC. This yielded data that pointed to the potential future successes and failures of the TRC.

Participants were briefed at the beginning of each interview on the interview themes. Similarly, participants were debriefed at the end of each interview by way of restating the goals of the interviews and reiterating some of the main points that came out of interviews. This gave participants opportunities to provide comments and feedback on

the data gathered during an interview. The complete list of interview participants includes:

- Monica
- Jane
- Ellen
- Jack<sup>3</sup>

The interviews have been conducted in one of two ways: by telephone or, when possible, in-person. Although in-person interviews are the preferred mode of interviewing, since they usually allow for establishing greater degree of rapport with participants than telephone interviews, a number of interview participants were not physically present in Winnipeg (where in-person interviews took place). In this case, telephone interviews were arranged. During in-person interviews, a voice recorder was used to record participants' responses. On the other hand, during telephone interviews the researcher took extensive notes to record interview data. Regardless of the mode of interviewing, participants were required to read and sign the Informed Consent Form (Appendix A).

Upon completion of interviews, data were transcribed promptly in order to preserve "the many details relevant to [his/her] specific analysis" and to retain "social and emotional aspects of the interview situation" (Kvale and Brinkmann 2009:180). During the process of analysis of the transcribed interviews, the focus was on interpreting the respondents' perspectives on restorative elements and the recognition potential of the TRC. In technical terms, interview analysis took the shape of "meaning condensation," in

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<sup>3</sup> Interview participants chose not to be identified by name in my thesis and therefore have been assigned aliases. Also, as per Research Ethics Board regulations, places and dates of these interviews are omitted from my thesis to protect privacy of these participants.

which the natural “meaning units” of the text have been grouped together into central themes, with accordance to the above coding scheme, and contributed to answering the main research question (*ibid*:180). As such, elements of restorative justice and the theory of recognition, served as central themes of interview data analysis. In concrete terms, the interviews were analyzed by considering the extent to which the theory of recognition and principles of restorative justice in the TRC’s design were explicitly or implicitly addressed by the interview participants.

The third phase of the primary data collection included the analysis of the government’s laws, acts, policies, agreements, reports, and regulations. As well, for the TRC-related documents, such as those outlining its mandate, goals and principles, plans and priorities, duties and responsibilities, powers and jurisdiction, and budget and resources, the TRC’s website ([www.trc.ca](http://www.trc.ca)) has been consulted. Other primary data sources include print and electronic news releases, personal communications (such as emails), TRC’s founding documents, such as working group discussions on its principles and design, and statements and position papers from Aboriginal leaders.

The process of analyzing primary and secondary data could be understood as an interpretive approach. This method of data analysis is based on social interactionism, phenomenology, and grounded theory, and consists of the researcher’s meaning-making, interpretation, and understanding of the theoretical and conceptual categories that emerge in the events that are studied (McIntyre 1998; Myers 1997). One of the key tenets of this approach is that meaning is socially constructed and is discovered and understood through the researcher’s interpretation. Simply put, the collected data was interpreted through and analyzed according to the abovementioned coding scheme, which had been

developed out of theoretical and conceptual frameworks. Accordingly, the collected materials were systematically reviewed with the purpose of determining the presence of (or absence of) restorative justice elements and the theory of recognition in the design of the TRC. This analysis was a necessary step in drawing connections between theoretical and conceptual frameworks and practical implications of the collected data, as well as in evaluating the findings critically.

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This chapter has outlined the methodology employed in this thesis. The combination of primary and secondary data sources has allowed me to expand the analysis and also to achieve the level of thoroughness required to determine the potential of the TRC to address Indian residential school experiences.

## CHAPTER 5: EVALUATION OF THE CANADIAN TRC

*“The history will repeat itself if we don’t do anything about it.”*

Indian residential school Survivor, TRC’s Sharing Circle, June 17, 2010.

This quotation, which was made in reference to the Indian residential school system and Canada’s broader colonial legacy, demonstrates the important role that the past plays in shaping the future. It is an appropriate opening to this chapter because it captures the Canadian TRC’s approach to addressing Indian residential school experiences. The TRC was designed to examine the past, but also to build and restore relationships damaged by past injustices. By examining its design and processes through the lens of restorative justice and the theory of recognition, this chapter considers the potential of the TRC to help heal the harm done and to help build peace and harmony between Aboriginal and non-Aboriginal peoples of Canada.

This chapter assesses the restorative and recognitive power of the TRC by examining its design and early activities. In terms of the TRC’s design, its mandate, structure, and the negotiations leading up to the founding of the TRC will be considered. Activities, in turn, include national and community events that the TRC is expected to complete during its five-year lifespan. At this point, it is necessary to note that at the time of writing this thesis, the TRC was only three years into its five-year mandate, making it impossible to evaluate how well it has achieved its intended outcomes, such as healing and reconciliation. Therefore, this chapter makes no direct attempt to address the question of whether the TRC’s intended outcomes have, in fact, been achieved. Instead, this chapter considers the extent to which the TRC incorporates principles of restorative justice and recognition that have the potential to promote healing and reconciliation.

### **TRC as a Negotiated Institution**

This section discusses the ways in which parties affected by residential schooling had fair opportunities to participate in the negotiations that created the TRC. Fundamentally, restorative justice processes are negotiated and agreed-upon phenomena in which parties affected by a wrongdoing collectively chart a course of action to repair the damage done by a wrongdoing (John Howard Society 1997). The number of individuals or parties affected by a wrongful act is never pre-defined in restorative justice, but is usually said to involve at least victims, offenders, and community members such as victims' families and the general public. Applying this restorative justice philosophy to the TRC, it would seek to give voice to all those who have a stake in repairing the harm and "involve the parties concerned in designing the processes so that they reflect and meet their needs and circumstances" (Llewellyn 2008:193).

Taking into account participatory parity, I maintain throughout this section that Survivors are the primary stakeholders in the process of resolving residential school experiences. In my view, Survivors have the moral right to guide the process of reconciliation and therefore this process ought to be created on their terms. In other words, Survivors should be given the full control and ownership of how justice is to be carried out. This is partly because residential schools created power imbalances, and restoring these imbalances would involve investing Survivors with power to express their justice needs. Similarly, it is the moral obligation of non-Aboriginal society to carry out Survivors' will, since all non-Aboriginal people in Canada are complicit in injustices against Aboriginal people (see Alfred 2009). Survivors' special status as victims gives

them priority, over and above other parties, in guiding the processes seeking to repair the harm done by residential schools.<sup>4</sup>

#### *Early stages of the TRC's design*

According to the IRSSA, parties to the Agreement include Survivors (as represented by the National Consortium and the Merchant Law Group), the federal government and its counsel, the churches, the Assembly of First Nations (AFN), Métis, and Inuit representatives. The TRC's mandate states that it was built upon principles developed by the Working Group on Truth and Reconciliation and the Exploratory Dialogues (1998-1999):

Accessible; victim-centered; confidentiality (if required by the former student); do no harm; health and safety of participants; representative; public/transparent; accountable; open and honourable process; comprehensive; inclusive, educational, holistic, just and fair; respectful; voluntary; flexible; and forward looking in terms of rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-Aboriginal Canadians (TRC mandate, "Principles").

The Working Group, which published a report titled *Healing and Reconciliation: Alternative Strategies for Dealing with Residential School Claims* (2000:v), traveled across Canada and conducted consultation with Survivors, Aboriginal and non-Aboriginal governments, the churches, Aboriginal healers, in order to collectively develop a plan to address the issue of residential schools. In this sense, the guidelines and principles that the Working Group developed, and upon which the TRC was later designed, are based upon a degree of dialogue between various parties about how to address residential school experiences, thus giving the previously powerless Survivors opportunities to provide their input into the process of residential school redress.

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<sup>4</sup> I would like to thank my thesis advisor, Dr. Andrew Woolford, for bringing this important detail to my attention.

In addition to the Working Group, the establishment and design of the TRC was influenced by the Canadian Bar Association's (CBA) report titled *The Logical Next Step: Reconciliation Payments for All Indian Residential School Survivors* (2005) and the AFN's *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools* (2004). The CBA's report emphasizes the use of restorative justice principles in the TRC's work, such as truth-telling, the acknowledgement of the harm done and the provision of reparations, and extensive consultations with Aboriginal leaders in establishing a truth and reconciliation process. The AFN report, in turn, was created in response to the failure of the Alternative Dispute Resolution process to adequately address residential school experiences (2004:2). Recommendations of this report are somewhat similar in substance to those of the CBA Report and underline the importance of developing a new system for monetary compensation payments for Survivors alongside "truth-telling, healing, and public education" (2005:3). The AFN Report, however, seems to incorporate more diverse perspectives than the CBA Report, and includes the work of experts such as university professors, judges, AFN representatives, Survivors, and lawyers, whereas the CBA Report includes predominantly legal perspectives. Overall, recommendations of both reports were utilized in designing the TRC and therefore represented voices from a somewhat diverse cross-section of groups in Canada.

#### *Limitations of the TRC's negotiations*

Ellen (interview, 2010) suggests that there are limitations with regards to participation of groups who were included in the process of negotiating the IRSSA and more specifically – the TRC. Because the IRSSA is an agreement to settle the claims

made by residential school Survivors, who were primarily First Nations, the negotiations “were largely not about day schools, not about Métis, not about Inuit, but about First Nations’ list of schools, [and therefore] lots of those folks [Métis and Inuit] weren’t at the table” when negotiations took place. For Ellen, the process of negotiations was also too government-controlled and too restricted in scope and, as a result, the TRC’s design was not fully restorative and not “reflective of the very principles that [the parties originally] wanted.” Furthermore, according to Ellen, the Settlement mediator, Frank Iacobucci, who was supposed to be a neutral party, was instead representing the interests of the federal government and failed to serve as an impartial mediator to the Agreement, which may have had a negative impact on the balance of power during the negotiations.

Although a multitude of individuals and groups, such as Survivors, experts on truth commissions, and the federal and Aboriginal governments, were consulted prior to the TRC, the negotiations have failed to engage perpetrators of residential school abuses, despite the presence of high-level church and government officials at these negotiations. Therefore, there may still be denial of guilt among individual perpetrators, which runs contrary to the element of acknowledgement and admission of responsibility by the perpetrators. This is an obstacle that the negotiations would not likely be able to overcome due to various factors. First, there may be fear of prosecution on the part of perpetrators, since they may not have been formally charged with a criminal offence prior to the TRC negotiations. Secondly, many perpetrators have passed away since the residential school system closed. Despite the above limitations, TRC negotiations make attempts to empower Survivors and to solicit input from Survivor groups with regards to what the TRC’s design should consist of, and therefore bear a degree of restorativeness.

*Beginning of the TRC's operations*

The TRC officially began its work on the five-year mandate on June 1<sup>st</sup>, 2008 and was originally chaired by Ontario Superior Court's Justice Harry LaForme and two commissioners, Claudette Dumont-Smith, who was a Senior Health Advisor to the Native Women's Association of Canada, and Jane Morley, a lawyer. The early stages of the TRC were plagued by “federal control [that] destabilized the Commission from the very beginning” and resulted in delays, political infighting, false starts, and the general lack of agreement on the TRC’s mandate (Changfoot 2010:8). The TRC was paralyzed when LaForme resigned on October 20, 2008 citing an “incurable problem” with the Commission. First, he argued that the TRC had no financial independence from the federal government. This criticism may be valid because an Indian and Northern Affairs Canada (INAC) spokesperson confirmed that the federal government treated the TRC as a “separate government department” and it therefore inherited the entire bureaucratic framework, including financial accountability, from the federal government (Carlson 2009). Secondly, LaForme argued that the “two original commissioners [Dumont-Smith and Morley] ‘repeatedly and openly’ rejected his authority and leadership” (*ibid*). LaForme also accused the two commissioners of siding with the AFN on prioritizing the TRC’s goal of truth-seeking over reconciliation. To LaForme, reconciliation signified a more important objective than truth-seeking and truth-telling. As a result, he complained that the AFN was meddling in the TRC’s affairs. He had a vision that the TRC must be an absolutely independent commission, free of interference from the governments.

The AFN and LaForme were also in disagreement about the appointment of the TRC’s interim Executive Director. Initially, and prior to LaForme’s appointment, the

TRC's chief of staff position was filled by Bob Watts, Phil Fontaine's (AFN's former national chief) chief of staff (Friesen 2008). However, LaForme found Watts unsuitable for the position, citing LaForme's vision of the TRC's independence and impartiality, and fired Watts in September 2008. Instead, LaForme appointed Owen Young to curtail the AFN's influence over the TRC. The AFN perceived the appointment of Young to be highly problematic because he was a former "Crown attorney, [who] had once prosecuted a group of Mohawks who had disrupted mining exploration" (CBC 2008). The AFN felt that Young was not an acceptable alternative due to his role in the prosecution of Aboriginal protesters. Eventually, LaForme stepped down, followed by Dumont-Smith and Morley who on January 30, 2009, made it known that they would resign as of June 1, 2009. The two commissioners cited their reason for resignation as a need for a fresh start for the TRC through the appointment of "a new slate of Commissioners" (Beaton 2009).

It is of value to note that INAC Minister, Chuck Strahl, officially made the TRC's appointments in consultation with the AFN. The IRSSA's "Schedule N" also states that "appointments shall be made out of a pool of candidates nominated by former students, Aboriginal organizations, churches and government," which signifies a process of collective decision-making with respect to appointments, and reflects the participatory nature of restorative justice. One of the issues that the TRC has had to contend with, however, is related to its independence from the AFN and the federal government. It seems that complete independence for the TRC may not be in its best interests because, at its core, it is a negotiated institution and parties to the IRSSA must have a voice in directing the TRC's work. The continuous guidance of TRC's proceedings may be necessary due to its lengthy lifespan and because the TRC is still in the early stages of

carrying out its mandate, future steering of its work will most likely be necessary to ensure that it is living up to and continuing to meet the expectations of the parties, including Survivors. At the same time, however, the question becomes: Who is entitled to direct the TRC's work? The TRC cannot be fully independent because it is inherently set to abide by the government's rules and regulations. In addition, if we regard the TRC as Survivor-driven, then Survivor groups are fully entitled to direct the Commission's work. As Survivor Bill Wuttunee argues, "the culture of aboriginal people is to make decisions on the basis of consensus [and equal power sharing], and that LaForme's approach violated that norm" (Greenaway 2008).

After a year of standstill, the TRC received a second start when a new Chair, the Honourable Justice Murray Sinclair, was appointed along with commissioners chief Wilton Littlechild and Marie Wilson. Under their direction, the TRC was slated to resume its work on June 1, 2009. Despite the new set of commissioners, the TRC was still hampered well into Spring 2010 by delays for which Sinclair blamed the federal government. He claimed that the government's bureaucracy regarding its hiring rules and "everything from the size of offices to the colour of carpeting" was getting in the way of TRC's work (Diebel 2009). Sinclair also blamed the TRC's slow start on the government's attempts to micromanage the TRC and its budget – a problem that LaForme also encountered during his time as TRC chair. With regards to hiring and contracting, Sinclair complained that the Commission is not carrying out its duties effectively because it needs to allow a period of six months to elapse before selecting candidates for the TRC's positions. As a result, many management positions at the TRC remained unfilled due to the requirement of the TRC to "comply with the public service's

cumbersome hiring rules” (Curry 2010a). Given the fact that the Commission has only five years to complete its work, the lack of consensus about administrative capabilities of the Commission poses a real challenge. In contrast to the unwanted federal government interference, Sinclair welcomed participation of the AFN in the TRC’s work, stating that “they’re always interfering with us, but that’s a good thing. We want their guidance. This commission belongs to the parties and we have an obligation to see the commission does what the parties intended it to do” (Friesen 2009).

Despite the stated involvement of parties in the negotiations of the TRC, Willie Blackwater argues that, in truth, Survivors had little say about what was included in the TRC’s mandate and how it will carry out its work. In his letter to Chuck Strahl, dated February 16, 2009, Blackwater, interim president of the National Residential School Survivors Society (NRSSS), writes that,

There seems to be a deliberate effort to exclude Indian Residential School Survivor[s] and their groups from the decision-making table. Decisions are almost always made without considering the impacts on survivors. Many ask; how can we commence this unique Healing Journey when those that have been hurt are totally excluded from the process? How can we move forward without the Indian Residential School Survivor?

Blackwater underlines the importance of Survivor participation in the TRC’s negotiations, stating that Aboriginal leaders and political groups, such as the AFN, do not necessarily represent the interests of Survivors, but instead have other agendas. In his view, Survivors’ contributions to the TRC are marginal, which leads to re-victimization. Furthermore, Blackwater urges the appointment of two more members to the existing three-member TRC panel, which may allow the TRC to get up to speed on carrying out its mandate and therefore make up for the considerable delays that it has been facing.

Mike Cachagee, NRSSS's executive director, shares Blackwater's concern and notes that "students living in Ontario, Quebec and Atlantic Canada are concerned they are being left out" of guiding the TRC's work (Curry 2009). More specifically, he argues that the TRC's ten-member Indian Residential School Survivor Committee (IRSSC) consists primarily of Survivors from the prairies, West, and North, while excluding those from Ontario and Quebec provinces. This, in turn, limits Survivor representation in the TRC's work. Cachagee also opposed Chuck Strahl's comment that Indian status is not a requirement for the position of TRC chair, to which Cachagee replied, "if you get a non-aboriginal person (as chairman), how can they empathize with something like that? LaForme was familiar with it. He'd seen it in his community" (quoted in Canwest News Service 2008). Similarly, Aboriginal groups, such as the AFN, worried that the federal government was behind the replacement of the TRC executive director Bob Watts by Aideen Nabigon. The primary concern of the AFN executive director Edward John was that the TRC needed an executive director who "understands residential schools, who understands survivors, and not just another mandarin from Ottawa" (CBC 2008).

It is of value to note that all the parties affected by residential school were given some opportunity to contribute to the establishment of the TRC. However, once established, the TRC at times appeared to be the object of a competition for control between the AFN and the federal government, rather than primarily serving the interests of Survivors. This is contrary to restorative justice practices, which aim to include perspectives of all parties affected by a wrongdoing. In the context of the TRC negotiations, the voice was given to the federal government, the AFN, and the churches, and to a lesser extent, Survivors.

## **TRC as an Inclusive Process**

Whereas the previous section considered establishment and negotiations of the TRC, this section examines TRC national and community events, through which it intends to carry out its mandate. The main goal here is to assess TRC events through the lens of inclusiveness as conceptualized in the restorative justice literature. Legal scholar Jennifer Llewellyn summarizes the significance of inclusiveness in restorative encounters:

Such processes provide opportunities for dialogue aimed at the development of a shared understanding of the consequences and implications of a wrong and a common commitment to address the harms related to the wrong [...]. Encounter provides an opportunity for parties to come to know and understand each other's perspectives and stories. It provides space for parties to work together constructively to envision and realize a better future (2008:193).

Much like Llewellyn, Jane points out that the opportunities for coming together open the space for “listening, learning, and recognitions [of the harm done]” (interview, 2010).

The common element of TRC national and community events is their vision to bring all parties, including Survivors, the government and church officials, together with the purpose of discovering truth and learning about Indian residential school experiences. In the context of the Canadian TRC, the national and community events appear, upon initial examination, to implement the principle of inclusiveness. However, a closer assessment of the events is required to determine whether they do, in fact, operate in accordance with restorative justice practices.

### *Inclusiveness of the TRC Mandate*

At their core, TRC events are intended to “witness<sup>5</sup>, support, promote and facilitate truth and reconciliation” (TRC Mandate). These events are set to take place in

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<sup>5</sup> This refers to the Aboriginal principle of “witnessing” (TRC Mandate). It is discussed in greater detail in a later section titled “The TRC and the restoration of Survivors’ identities, dignity, and respect”

various parts of Canada, with the first event having taken place in Winnipeg, Manitoba in June 2010, and the second to occur in Inuvik, NT in June-July 2011 and in Halifax, NS in the fall 2011<sup>6</sup> (TRC National Events website 2011a). According to the TRC mandate, its national events serve as a “mechanism through which the truth and reconciliation process will engage the Canadian public and provide education about the IRS system, the experience of former students and their families, and the ongoing legacies of the institutions.” The community events, on the other hand, are more numerous than the national events and the number of the community events is not predetermined. While the structure of TRC national events is somewhat rigid and follows a standardized “one size fits all” model, the community events offer flexibility and their structure is determined by the members of the communities. More specifically, these events, according to the TRC’s mandate, are “designed by communities and respond to the needs of the former students, their families and those affected by the IRS legacy including the special needs of those communities where Indian Residential Schools were located.” Overall, the TRC mandate seeks to include many of the groups affected by Indian residential schools. Upon closer examination of TRC events, however, it is apparent that the TRC faces challenges to its inclusiveness.

#### *Inclusiveness of TRC events*

The TRC national event in Winnipeg attracted four church entities that were in charge of running residential schools. Church members participated in various activities during the event, some of which include listening to Survivors’ stories about residential school experiences, running Interfaith and Listening Tents that provide information to the

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<sup>6</sup> Other TRC national events have not yet been announced at the time of completion of this thesis

public on current reconciliation efforts of churches in communities, and issuing apologies-on-request to Survivors (TRC National Event brochure). Thomas Novak of Roman Catholic dioceses in Manitoba says that the main role of the churches during the TRC national event “was [to] show up and show their support to the survivors,” challenge racism and celebrate Aboriginal cultures (quoted in Suderman 2010). This goal seems to be in line with that of the federal government, which is to promote healing and reconciliation (1000 Conversations website). It is unclear, however, whether the churches’ definition of reconciliation is similar to those of the TRC and the federal government, since none of the three entities define it in their mandates (Standing Senate Committee on Aboriginal Peoples 2010). For the churches, however, the meaning of reconciliation seems to be synonymous with forgiveness – something for which many Survivors are not ready, and it is not known whether they ever will be (Smith 2010).

The harm done by residential schools is unique because perpetrators include not only government and church staff, but also students who inflicted abuse on other students. This is often referred to as “student-on-student abuse” (AFN 2004). The AFN argues that the government should take responsibility for this type of abuse because the residential schools promoted conditions of neglect that made possible “the creation of violent and sexualized environments at Indian Residential Schools [that] materially and foreseeably increased the risk of abuse of the students in its care” (*ibid*:27). However, even though the IRSSA implemented the AFN’s recommendation to recognize the experiences of Survivors who suffered student-on-student abuse and to consider them eligible to apply for IAP, Murray Sinclair explains in a CJOB (2010) interview that “‘student on student abuse’ went unspoken during the deliberations behind the

negotiations that led to [the IRSSA]," and therefore excluded student perpetrators from the TRC mandate (see also INAC 2010).

Despite the initial exclusion of student perpetrators, Sinclair urges these individuals to participate in TRC events, because "many [Survivors] have to live near their abusers in small communities. [...] Some alleged abusers [former students] are elders, work for band councils, are community leaders or even family members" (Puxley 2009). For student abusers to keep silent about the past would likely "*perpetuate* the inter-family antagonisms that plague community politics, hiring, education, welfare, housing – and healing" (Ross 2008:6, original emphasis). However, given the dual role of these students as both victims and perpetrators of residential school abuse and neglect, it is unclear how the TRC intends to address this dilemma. At the same time, allowing these abuses to remain unaddressed may delay community healing.

TRC events seek to include community members such as Survivors' relatives, friends, and the general public, including non-Aboriginal and new Canadian peoples. Monica emphasizes the importance of including the general public in TRC events: "awareness [among the general public serves as the best] defense against future violations [towards] marginalized groups" (interview, 2010). The importance of public participation in TRC's processes also relates to the inaction of the public, which allowed residential schools to continue for generations. Despite this fact, many Canadians do not perceive themselves to be perpetrators of wrongs committed against Aboriginal people. Taiaiake Alfred (2009), in contrast, argues that all non-Aboriginal Canadians, old and new alike, have somehow benefitted from injustices inflicted on Aboriginal people during colonialism, which include the residential school era. The people of Canada, after all,

elected the government. Thus, it is the duty not only of the government and the churches to be part of TRC events, but also of the public.

Although there is no precise information about how many people attended the TRC national event in Winnipeg, estimates indicate that close to 40,000 people made an appearance during the four-day event (Narine 2010; Tracing Memory 2010). Monica is optimistic about the TRC's potential to bring about healing and reconciliation between Aboriginal and non-Aboriginal peoples. At the same time, she cites the "lack of knowledge ... about the Settlement and the TRC" (interview, 2010) as a continuing problem that needs to be addressed. To overcome this challenge, the TRC would need to somehow promote public knowledge of the importance of the TRC. In her view, high participation rates of the broader Canadian public serve both as an essential component and an indicator of the TRC's success: "there has to be a huge buy-in and the TRC is the framework that ... would allow for that" (*ibid*). Jack echoes Monica's opinion about the TRC and states that its "greatest failure will be if we [Survivors] don't teach and the Canadians do not learn [about the past]" (interview, 2011). TRC national and community events appear to have the potential to fulfill the role of engaging the wider public, because they take place across Canada. As Shawn Atleo, National Chief of the Assembly of First Nation said in an interview, "[TRC's] hearings need the support of the wider Canadian public if they are to be successful" (CTV 2010).

#### *Challenges to the inclusiveness of TRC events*

Survivors of Indian residential schools are encouraged by the TRC staff, headed by Murray Sinclair, to attend the national and community events, because Survivor participation is necessary to "help set our spirits free and pave the way to reconciliation"

(TRC Mandate). During the events, Survivors are given opportunities to share their stories, experiences, and memories of their time in residential schools with other event participants.

One of the obstacles to the wider Survivor participation in TRC events is Survivors' limited knowledge and awareness about the existence of the TRC and its processes. The Environics Research Group's National Benchmark Survey (2008:ii), shows that only one in five Aboriginal people in Canada is likely to be aware of the TRC. Figures seem to be identical for non-Aboriginal people's (including recent immigrants') level of awareness about the existence of the TRC. What is alarming about the limited levels of awareness is that they point to the potential to generate relatively low levels of participation of individuals who lack knowledge of the TRC. In contrast, a relatively high proportion (over 80%) of Survivors seem to be aware of the Common Experience Payment, for which the TRC is intended to provide a "context and meaning" (TRC Mandate). The lack of participation in TRC processes may result in a lack of understanding regarding monetary compensation for residential school experiences (the consequences of which are discussed later in this chapter). Limited participation in TRC processes also means many Survivors will not have the opportunity to share their stories, which are slated to become part of the TRC's National Research Centre. Murray Sinclair states that there are measures being taken to inform Survivors of the TRC and its significance, although he does not specify the nature and the extent of these measures (Winnipeg Free Press 2010).

In addition to the low levels of awareness among Survivors regarding the TRC, other problems prevent full Survivor participation. Sinclair argues that the Commission's

budget of \$60 million is inadequate to allow the TRC to provide opportunities for all willing Survivors to participate in the national events. The issue of Survivor logistics initially came up before the first national event was set to take place in Winnipeg in June 2010. Many Survivors indicated that they “[did not] have the means to participate [in the national event] due to costs associated with transportation and accommodations” (CBC 2010a). Furthermore, many Aboriginal communities are accessible only by air and winter roads and, as a result, Survivors residing there were unable to make the trip to Winnipeg. The TRC was able to provide only limited funding for Survivors to cover costs associated with travel. Even though band councils, the churches, the general public, bus companies and airlines, and local school board combined their efforts in assisting Survivors with travel arrangements, these efforts made possible the accommodation of only a fraction of Survivors. In order to allow for a wider participation of Survivors in TRC events, significant changes are needed with respect to the accessibility of events to Survivors.

One of the serious issues with regards to the inclusion, or more correctly, exclusion, of Survivors is the federal government’s reluctance to recognize experiences of Survivors who attended certain residential schools and federal day schools which did not meet the criteria outlined in the IRSSA. In order to be considered an eligible school, it must meet the following criteria: (a) children attending the school must have been removed from their community; and (b) the government must have been “jointly or solely responsible for the operation of the residence and care of the children resident there” (INAC 2010: 7). As a result, these criteria ignore experiences of many First Nation, Métis, and Inuit children, who suffered abuse and neglect in non-recognized government- and church-run educational institutions (Standing Senate Committee on Aboriginal

Peoples 2010). For example, as Chartrand et al. (2006:16) argue, the abuse, neglect, and assimilation experienced by Métis children “did not differ materially from those suffered by Indian or Inuit students” and even though Inuit children attended day schools (as opposed to off-reserve boarding schools), they often suffered conditions similar to those existing in government-recognized residential schools.

Though the process of adding non-recognized schools to the IRSSA is currently underway, Survivors continue to die at a rate of four per day and “with each passing day, we lose another opportunity [to hear stories] with the loss of an Indian residential school survivor,” Sinclair says (CBC News 2010b). Many Survivors are too old to travel great distances to tell their stories at TRC events. Having been deemed ineligible for CEP and IAP payments, the excluded groups may be skeptical of TRC’s processes and therefore might be reluctant to participate in TRC events. Despite the fact that many residential schools remain unrecognized, the TRC is currently set to visit as many communities as possible near former residential school sites in the northern part of Canada, with its final destination being the TRC national event in Inuvik in June/July 2011. Among the non-recognized groups, the struggle for recognition of Indian residential school experiences continues to this day, with Métis and the federal day school students filing lawsuits against the federal government.

#### *Exclusion of perpetrators from TRC events*

The participation of perpetrators is one of the key elements of restorative justice and many Indigenous justice practices. Melton (2005:108), for example, argues that Indigenous justice systems that are based on restorative models tend to view reparative processes in holistic terms, which are sometimes represented by “circles of justice [that]

connect everyone involved with a problem or conflict.” Llewellyn (2008:197) warns, however, that the TRC will inevitably encounter challenges with respect to including “individual and institutional wrongdoers.” More specifically, the voluntary nature of participation in TRC’s processes results in an unavoidable obstacle to the TRC’s work. This obstacle is represented by the legal framework under which the TRC operates. In other words, the TRC is limited by institutions such as the Canadian criminal justice system, which discourages perpetrator participation by threat of punishment. As a result, TRC national events encourage participation of only “high level government and church officials,” and exclude ordinary workers and residential school staff (TRC Mandate).

The community events, on the other hand, are more flexible with respect to the involvement of “church, former school employees and government officials in the reconciliation process,” but even in this case the language in the TRC mandate stops short of encouraging participation of perpetrators. At this point, it is not known how well the community events are attended by former staff, but in his letter to Presbyterian Church of Canada, dated January 27, 2011, Murray Sinclair writes to encourage “former residential school staff to share their memories with the TRC.” The issue with the participation of former staff is that they may not fully understand that the TRC is not a public inquiry, nor does it serve to determine guilt. Even if perpetrators did participate in TRC events, it makes one wonder what information former staff would be able to share without being indicted for criminal charges. Sharing only positive experiences of residential schooling, on the other hand, runs the risk of painting an overly favourable picture of children’s lives in residential schools.<sup>7</sup>

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<sup>7</sup> This point is discussed in greater detail in the section about truth-telling.

## **Victim-Centredness and Empowerment in the TRC's Context**

Restorative justice seeks to restore damaged relationships by addressing the needs of victims and empowering them to disclose truth about the harm they suffered. Victims' empowerment, according to Braithwaite (2003:87), is "especially important [in the cases] where the victim suffers structurally systematic domination," and may lead to a greater degree of control by Survivors over justice processes. In the case of Indian residential schools, Survivors have been disadvantaged and disempowered through colonial domination and perpetrators have maintained unequal power relations between the Canadian government and Aboriginal peoples. Therefore, measures need to be taken to restore the power balance between Survivors and perpetrators. In order for this to occur, there needs to be a careful assessment of victims' needs, which in the language of restorative justice is referred to as "victim-centredness." Empowerment in the context of restorative justice could also be understood in another, more macro sense. According to Shearing (2001), empowerment may lead to investing communities with the ability to resolve injustices. However, one must be cautious of the rhetoric of "empowerment," because it does not always work to serve better communities. More specifically, empowerment sometimes entails neo-liberal notions of "responsibilization without resources," which does not necessarily produce positive change (LaPrairie 1999, quoted in Shearing 2001:32). In what follows, I examine two types of empowerment through TRC events: community and individual empowerment.

### *Individual empowerment at TRC events*

To assess the ability of the TRC to empower Survivors, I examine the TRC national event that took place in Winnipeg. More precisely, I focus on the TRC

Commissioners' Sharing Circles, during which Survivors are provided with opportunities to express their accounts of residential school experiences.<sup>8</sup> These Circles are chaired by a mediator, usually a commissioner, who facilitates the process of truth-telling by Survivors. The TRC Mandate does include the language of Survivor empowerment, stating that one of the goals of TRC events includes "supporting and facilitating the self empowerment of former IRS students and those affected by the IRS legacy." During the Winnipeg event, Survivor empowerment was evident in the presence of support systems, which included Survivor families and friends, and also fellow Survivors who were able to attend the event and listen to stories of abuse and neglect. In my observations of the event, the space created for Survivors seemed respectful and supportive, and allowed for the emotional expression and release of Survivors' negative feelings and memories.

Many Survivors became distressed during and after their stories. To alleviate their negative emotions, health supports and counseling, provided by Health Canada's First Nations and Inuit Health Branch and led by the Indian Residential Schools Resolution Health Support Program, was readily available at the event and Sharing Circles in particular (NNAPF 2010). The goal of support workers and counselors, many of whom "are employed in aboriginal communities where they work with residential school survivors," was to attend to Survivors who were experiencing difficulties (CBC News 2010a). At the same time, the TRC made attempts to ensure that Sharing Circles were designed to serve Survivors as a "culturally appropriate setting to provide statement[s] of their IRS experiences" (NationTalk 2010). Sharing Circles began with opening ceremonies led by an Elder and "traditional spiritual supports such as smudge,

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<sup>8</sup> Individual (private) statement-taking process is not discussed in this thesis because it is not open to the public. Survivors who choose this method of telling their stories are accommodated by the TRC and sessions take place in special chambers that provide supports similar to those at Sharing Circles.

eagle feathers and water that had been blessed with prayers were also offered to [Survivors]" (Sison 2010). As well, dreamcatchers were hung from the tent's ceilings and a sacred fire was lit for the duration of the national event with the purpose of providing Survivors with a comforting setting.

### *Community empowerment*

TRC events comprise only part of the trauma that Indian residential school Survivors go through in telling their stories and re-experiencing the past. Because Sharing Circles and statement-taking are emotionally demanding processes, they may serve to exacerbate residential school trauma and produce negative mental health consequences when Survivors return to their communities after disclosing accounts of residential school experiences. In fact, it is in their everyday lives that Survivors are constantly haunted by the memories of residential school abuse and neglect. Therefore, community empowerment strategies are necessary for Survivors to deal with residential school trauma, regardless of whether they participate in TRC events.

The Aboriginal Healing Foundation (AHF), which was established on March 31, 1998 with a \$350 million grant and the purpose of creating "Aboriginal directed healing initiatives which address the legacy of physical and sexual abuse suffered in Canada's Indian Residential School System, including inter-generational impacts" (AHF FAQs). The AHF received additional funding of \$125 million through the IRSSA, which was intended to last until 2010/2011 fiscal year, with AHF programs completing their work in 2012. Mike DeGagné, AHF's executive director, argues that the AHF is a unique response to residential school abuse because the affected individuals "are dealt with best by community-based healing services like the ones we're offering" (CBC 2009). Many

Survivors acknowledge the help of the AHF and “the supports provided by the funding will be even more important as they start to tell their emotional stories at the Truth and Reconciliation Commission” (*ibid*). With the discontinuation of AHF funding, an end to the many of the programs that the AHF offered is inevitable.

Many Survivors and Aboriginal leaders, along with the TRC staff, express discontent and concern about the abrupt end of AHF funding. One of the Survivors, Ben Pratt, is “facing the prospect of testifying before the commission without support of the AHF” and he shares his perspective about the importance of Survivor testimonies in a CBC interview: “There is a lot of fear in [telling my story, but] … The more I talk about it, the better I feel inside” (CBC 2010b). Mike DeGagné points to the potential consequences of the funding cuts:

A lot of the people that access these services and attend healing sessions are actively in trauma. Some of them are talking about what they've been through for the first time -- they have held it in for decades. If you attend one of these sessions where they come and talk about what they've been through and what they're still going through, it'll tear your heart out. And now the funding that they rely on is being cut, in days (quoted in Rolbin-Ghanie 2010).

Allowing the AHF to run at least until the TRC completes its work would provide Survivors with critical resources while facing their difficult past. Upon termination of AHF funding, Health Canada is charged with the responsibility to provide support to Survivors in their communities, but its role had been criticized on multiple grounds.

Although Health Canada has been given the responsibility to take over some of the AHF's programs, Churchill NDP MP Niki Ashton argues that the end to the AHF funding has been devastating. In Churchill, Manitoba, eighteen counseling programs have been shut down, in Kenora, nine community-based initiatives closed their doors, and British Columbia lost seventeen healing projects (Thompson 2010). Yukon Liberal MP

Larry Bagnell echoes Ashton's concerns and adds that Health Canada's projects are different from those that the AHF provided and "while Health Canada has been working out agreements with some of the groups that were funded by the foundation, others might not be eligible for the agency's funding" (CBC 2010c). Charlene Belleau, manager of the Indian residential schools unit of the AFN, in turn, argues that "[The Health Canada plan is] a government-driven process where they determine the criteria" (Pemberton 2010). NDP Aboriginal Affairs Critic, Jane Crowder, argues that First Nations, Inuit and Métis leaders expressed concern that the government, who was complicit in perpetrating residential school abuse, is now in charge of disbursing healing money and that "[the leaders] cannot accept that government will now be in charge of deciding when and where healing should happen" (Crowder 2010; see also Standing Senate Committee on Aboriginal Peoples 2010). Belleau goes so far as to suggest that AHF's funding cuts fly in the face of Stephen Harper's 2008 apology, which promised to provide resources for Survivors and their families to deal with the legacy of residential schools, but instead cut support "in mid-stream of the settlement process [for residential school Survivors]" (*ibid*; see also Changfoot 2010).

The shifting of the responsibility for healing the legacy of residential schools from the AHF to Health Canada reflects concerns of LaPrairie (1999) and O'Malley (2001) regarding the responsibilization of communities to repair the harm, while lacking adequate resources (see Shearing, 2001). Even though during TRC events Survivors are often able to obtain support, such as spiritual services and counseling, while sharing their memories and experiences, support is often unavailable in their home communities after TRC events are concluded, leaving Survivors to deal with consequences of truth-telling

on their own. The withdrawal of AHF funds, combined with the increase in communities' responsibility for healing residential school trauma, works to disempower communities and leaves them vulnerable to dysfunctions resulting from residential school experiences. More specifically, the lack of resources creates dangerous conditions that could re-victimize Survivors through continuing trauma and denial of support services that would help Survivors heal the damage.

Many Survivors and Aboriginal leaders argue that the TRC is disempowering Survivors and is detrimental to their health because it is not adequately fulfilling its mandate with respect to "providing a context and meaning for the Common Experience Payment" (TRC Mandate). Because the administration of the CEP processes began to occur much earlier (2007) than the start of the TRC (2009), many Survivors who were awarded CEP were unable to draw meaningful connections between monetary compensation and its significance to the healing and reconciliation process within the broader context of the IRSSA. The lack of understanding about the CEP has fuelled the devastation of communities already affected by the residential school trauma. Survivor Richard Wagamese says that many immediate side-effects of receiving relatively large sums of money without meaningful explanations result in gambling the money away and spending it on alcohol and drugs. Other damaging aspects of receiving the uncontextualized CEPs include increased rates of domestic violence, suicide, depression, unresolved trauma, and re-victimization, among other impacts (Corntassel et al. 2009). Many Survivors are simply unprepared to accept large sums of money in their poverty-stricken communities and to understand that the CEP is meant to complement TRC initiatives and events.

## **TRC and Truth-seeking**

One of the elements that the TRC consistently emphasizes is the need to discover the truth about the past. Its mandate refers to the healing power of truth and its importance in overcoming the denial of residential school harms. Scholars such as Hamber (2003) highlight the restorative and healing power of truth and argue that for the victims, truth-telling is connected to psychological restoration. Hamber notes that “healing can only occur through providing space for survivors of violence to be heard, and for every detail of the traumatic event to be reexperienced in a safe environment” (2003:153). Ellen adds that telling stories helps create spaces in which these stories are not only heard, but are also understood (interview, 2011). Minow (1998), adds that mechanisms such as truth commissions play an important role in the process of transforming private suffering into public knowledge and bringing to light horrific experiences of victims. This section focuses on TRC processes, namely the national and community events, and their ability to provide opportunities for Survivors to tell their stories, while examining the challenges associated with revealing residential school experiences through the TRC.

### *TRC and truth-telling*

Scholars such as Qwul’sih’yah’maht (Robina Thomas) note the importance of telling stories about residential school experiences. In her view, Survivors’ stories “respect and honour people while simultaneously documenting their reality” and restorying can serve as resistance to colonialism (quoted in Corntassel et al. 2009:147). More specifically, Indigenous storytelling and restorying could be understood as acts that carry the potential to challenge the dominant narratives of colonialism and create a counter-narrative which includes Survivors’ perspectives and experiences. Narratives of

truth about residential schools are complex and messy and the TRC needs to be able to accommodate them in order to accomplish its objective of producing a complete historical record of residential school experiences (Green 2010).

Survivors' opportunities for truth-telling and story-sharing in the TRC occur mainly during the national and community events, which have both public truth-telling ceremonies, namely Sharing Circles (discussed previously), and individual statement-taking, which take place in privacy as requested by Survivors. All stories shared by Survivors are intended to be documented and later stored in the publically-accessible National Research Centre (TRC Mandate). The TRC emphasizes that both public and private disclosure of truth are equally important in creating an accurate representation of Canada's history. Truth revealed during Sharing Circles, which are video-recorded and broadcast by media, could be considered a strategy used to educate the broader Canadian public about residential school abuse by way of framing private stories as a public issue that affects all Canadians.

Many Survivors agree that TRC events "give Survivors a voice, an opportunity to be heard," and a space for respectful listening and uncovering years of abuse faced in residential schools (Survivor, TRC Sharing Circles June 17, 2010). Ed Martin, one of the Survivors who attended Holy Angels Residential School for nine years, explains that his experience during the TRC community event in Nistawoyou Friendship Centre, Alberta, was very positive. He was able to tell stories about his time in the residential school to all who attended the event without the fear of being punished or hiding his feelings. To him, truth-telling carries healing power and, as he says, "it's better [to tell the truth] than having that hang over us and pains in the morning and better than all that anger and

hatred you have there" (Cilliers 2009). To Bill Erasmus, Dene National Chief, Survivors' stories play an important role in framing the residential school abuse and neglect as something that is much more than a series of isolated incidents, but as something that occurred on mass scale. He says, for Survivors, truth-telling is "part of getting to understand that they are not alone in what they're experiencing" and "now that they're releasing it, they're feeling better" (CBC 2010d; 2010e). Marie Wilson explains that Survivors' ways of telling truth include not only stories, but also art, music, and poetry. The multiple ways of expressing truth highlight the diversity of residential school experiences and their many ways in which these experiences can be expressed.

At the TRC event in Winnipeg, Survivors expressed gratitude for having the opportunity to speak publicly about their past. Through sharing their stories, Survivors such as Judy Bayha noted that they come to understand many of their current troubles, such as the lack of parenting skills and rampant family violence, as results of residential school experiences, as opposed to individual failure (May 2010). Murray Sinclair noted that the healing power of truth about residential schools was directed at restoring not only Survivors, but also their children and future generations. By listening to accounts of abuse and neglect that took place in residential schools, children of Survivors may begin to see the real causes of "why their parents or grandparents were not ideal caregivers" and may choose to forgive them for the dysfunctions they encountered within their families and communities (Wawatay News 2010). Marie Wilson suggests that Survivors' stories that are made public will serve as opportunities for Canadians to learn about the past. She is hopeful that this will create space for Aboriginal and non-Aboriginal Canadians to "walk toward respectful relations for the future" (Noronha 2010). One of

the Survivors, self-identified as Morris of the Kitchenuhmaykoosib Inninuwug band, says that truth told by Survivors must reach non-Aboriginal Canadians in order for them to “understand the pain and the hurt our people went through and to empathize and be sensitive to that” (*ibid*).

In addition to providing Survivors with opportunities to tell their stories and give their statements, the TRC seeks to compile the complete record of residential school injustices through other forms of truth gathering. For example, the TRC plans to sponsor research that has the goal of examining the complicity of the Royal Canadian Mounted Police and the North West Mounted Police in residential school injustices, such as ignoring reports of abuse and neglect. By examining the role of the police, the TRC may be able to discover the extent to which Indian residential school abuse and neglect continued unchecked. In order to accomplish this task, former research director John Milloy says that the TRC will “look at how the Mounties handled complaints in recent years from those who experienced abuse at the institutions” (Kusch 2010).

Another method through which the TRC is attempting to document the abuse and neglect is by obtaining church records. According to Milloy, this has, so far, proved to be a challenging task for the TRC. One of the reasons why the churches have been slow and reluctant in disclosing their records is because the records are protected by privacy legislation. If disclosed, church records may incriminate individuals who perpetrated abuses in residential schools, but have not been criminally charged, as Catholic Church’s lawyer Pierre Baribeau argues. The churches’ unwillingness to disclose records presents an obstacle to truth-seeking and contributes to the denial of their culpability in residential school injustices. However, it would be incorrect to label all churches as reluctant to

supply their records. For example, the Presbyterian and Anglican churches have been, for the most part, cooperative in providing the TRC with access to their records (Curry 2010b). The Roman Catholic Church, on the other hand, has been the most uncooperative of all churches in releasing its records, which, it argues, is due to its fear of being extensively sued over new evidence of abuse and neglect. In contrast, the United Church is more concerned about the reputation of brothers and sisters who live in the community than about widespread lawsuits. Milloy says he hopes that when the TRC is able to obtain the church records, it will archive them in the National Research Centre (NRC).

#### *Challenges for truth-telling and truth-seeking*

The TRC's work with regards to truth-telling and truth-seeking is encountering serious obstacles. In their paper, Corntassel et al. (2009) argue that Indigenous methodologies of truth-telling in the context of the TRC are missing. The TRC, in their view, is allowing Survivors to tell only part of the story, which includes only their residential school experiences and the ways in which they have been affected by residential schools. In doing so, the TRC runs the risk of

Framing these questions in a narrow way that doesn't fully appreciate the ongoing impacts of residential schools on communities, families and individuals and the lived experiences of resilience and resurgence that need to be shared with intergenerational survivors and other Indigenous peoples (*ibid*: 140)

The TRC, in their view, is too reconciliation-driven and is too state-controlled to permit a thorough understanding of the continuing legacy of residential schools. Reconciliation is not an Indigenous term, they argue, and the rhetoric of reconciliation has been imposed upon Aboriginal people through asymmetrical power relations. As Renate Eigenbrod (2011) notes, the process of reconciliation in this sense is dangerous because it

overemphasizes closure and coerces individual to “move on and forget,” an outcome for which many of Aboriginal people, including Survivors and their families, are not ready.

One of the challenges that the TRC is facing relates to the ability of Survivors to speak freely at TRC events. As Survivor Frazer Smith argues, for example, many Survivors are afraid to come forward and tell their stories because the “schools took away their pride and dignity” (Lavoie 2010). On the other hand, Aboriginal leaders, such as Betty-Ann Lavallée, National Chief of the Congress of Aboriginal Peoples, and Jeannette Corbiere Lavell, President of Native Women’s Association of Canada, suggest that there need to be significant changes made to the structure of the TRC’s truth-telling processes because, in their view, TRC events currently do not provide space for women and youth to share their stories. In order to correct this problem, TRC events should feature forums specifically designed for women and youth, because they experience residential schools and their legacy differently than men and “due to the sensitivity of some of the issues ...women and youth may not ‘fully open up in a mixed environment,’ [but it is important to have] their perspectives reflected in the truth and reconciliation process” (Standing Senate Committee on Aboriginal Peoples 2010:3). By ensuring that everyone has an opportunity to relate their experiences, the TRC may be able to create a more diverse range of narratives about the past.

A related limitation of the TRC with regards to truth-telling is connected to the previous point about the ability of the participants to express their experiences. While attending the TRC event in Winnipeg, I noticed that many Survivors from various parts of Canada, including remote communities, struggled with relating their experiences in the English language or refused to translate them into English, or simply knew no English.

The inability to express themselves led to at least two problems with truth-telling. First, there was an apparent expectation that Survivors would speak English while telling their stories to all those gathered in a Sharing Circle. This expectation impedes decolonization of Survivors' experiences, because truth-telling in this respect would be in the language of colonizers. Secondly, a large part of the audience, while listening respectfully to Survivors' stories, was unable to understand the meaning of their experiences, except for the universal meaning of tears streaming down these Survivors' faces. No translators were available to interpret stories and some Survivors expressed discontent with this, for their stories seemed to continue to be locked away behind the language barrier. To complicate the issue of language, Survivors were given a time limit at Sharing Circles, usually ten minutes, to express their stories, though many Survivors refused to comply with this rule.<sup>9</sup>

A serious challenge that the TRC is facing is its inability to allow Survivors to name perpetrators during its truth-telling ceremonies. This is caused mainly by privacy legislation that limits the TRC's scope. The TRC came under heavy criticism from both Survivors and Aboriginal leaders for disallowing Survivors of abuse to identify perpetrators by name during Sharing Circles. According to the TRC, Survivors are allowed to identify the perpetrators by name only in private statement taking sessions, but their names will not be made public (CBC 2010f). This places constraints on "the ways and extent to which Indigenous peoples can make their stories heard" (Henderson and Wakeham 2009:12). Prior to TRC events, Survivors are "trained" and briefed on the types of truth that are acceptable for public disclosure, which excludes perpetrators' names. However, Survivors argue that withholding perpetrators' names from their

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<sup>9</sup> No time limit was imposed on Survivors' stories during private statement-taking sessions.

testimonies is detrimental to their ability to heal from residential school abuses. The government's inability to understand the healing power of truth is evident in that statement made by Indian and Northern Affairs minister Chuck Strahl at the TRC national event: “[the TRC] is not a court of law … It's not intended to be. But certainly, if people have evidence of criminal activity they want to bring forward, they should bring it to the proper authorities” (CBC 2010f).

Without naming names, many Survivors are unable to tell complete stories of abuse and direct anger toward abusers and release their pain. As a result, perpetrators are rendered invisible and this makes it seem as though Survivors are telling stories about unknown, faceless individuals. To counter this limitation of the TRC, some Survivors in Sharing Circles chose to name names despite having been instructed against it. Other Survivors, such as Peter Yellowquill, former chief of Long Plain First Nation, and Chantelle Devillier, protested during the TRC national event in Winnipeg and accused the TRC of censorship. They were skeptical of the kind of truth that the TRC would receive and record, arguing that Survivors need justice in order to heal (Winnipeg Free Press 2010a). Some Survivors expressed their desire for retribution, meaning that they wished for the government to investigate the perpetrators and charge them criminally. As Devillier puts it, “What's the point of me just telling my story? We need prison terms for the men who did it to me!” (*ibid*). This desire for justice indicates that the TRC's truth-telling processes cannot possibly satisfy the needs of all Survivors, but rather serve the interests of a segment of the Survivor population.

The time and resources available to the TRC play a role in the amount of truth it will be able to gather. Ellen argues that problems with TRC's funding began at its

negotiations: “I think what folks from negotiations would say... is that there are 2 tables and the TRC was negotiated at the table ‘we’ll settle all the money issues, we’ll settle all the compensation issues,’ and then there’s TRC” (interview, 2011). Murray Sinclair admits that the problem with the TRC “is that [it] can’t do everything in the five years that we’ve been asked to do, and we probably don’t have enough money to do everything that was asked of us” (Stone 2010). This could mean that many Survivors’ stories will not be heard. The government, in turn, remains silent on the question whether the TRC will receive additional funding to complete its mandate. Michelle Yao, director of communications for INAC, points out that the TRC was established through a process of negotiations between multiple parties and thus the government cannot solely determine additional funding. However, she states that the “government is committed to fostering reconciliation between aborigines and all Canadians and recognizes the key work of the TRC” (Rabson 2010). Yao’s statements contradict the government’s stated goal of reconciliation, which may not be achieved without the additional funding for the TRC.

### **TRC and Symbolic Reparations**

Truth commissions are often able to make recommendations to provide reparations to victims of human rights violations. These may include monetary compensation, such as direct payments to the victims, returning confiscated possessions, and employment reinstatement for those wrongfully removed from their jobs. Reparations may also come in the form of symbolic acts, such as apologies, reburials, commemorative activities, and memorials for those who have perished. Symbolic reparations are most often coupled with monetary compensation, as demonstrated in the cases of South Africa and Chile. Sharpe (2007) argues that reparations serve as acts of acknowledgement of an injustice

and could be considered as steps taken to repair the damage. In terms of reparations, the Canadian context is unique because the material compensation measures, CEP and IAP, were negotiated through the IRSSA and separately from the TRC. On the other hand, symbolic reparations, such as commemoration initiatives, are the TRC's responsibility.

#### *TRC and commemoration initiatives*

One of the mechanisms through which the TRC is designed to provide symbolic reparations to Survivors is outlined in Commemoration Policy Directive “Schedule J” of the IRSSA. According to this directive, commemoration activities must have the goals of:

Honouring, educating, remembering, memorializing and/or paying tribute to residential school former students, their families and their communities, and acknowledging their experiences and the broad and systemic impacts of the residential school system. Commemoration may involve the creation of, or improvements to existing, permanent memorials and commemorative structures, or ceremonies or other projects.

The IRSSA allocates \$20 million to commemoration activities, and the TRC is charged with the responsibility of reviewing commemoration research proposals and administering funding to the successful applicants. According to the TRC's *Commemoration Initiative Call for Proposals Guide*, commemoration processes are Survivor-driven and are based around Survivors' needs, thereby ensuring that their needs are represented in commemoration activities. The TRC is designed to accommodate three types of commemorative activities: (a) *Lasting Legacies Initiative*, which includes permanent physical structures such as “monuments, plaques, cairns, and traditional structures;” (b) *One Time Events*, which are designed to acknowledge students who passed away and to bring closure to their families, and may include activities such as “banquets, memorials, talking circles, potlatches, closing ceremonies, pow-wows, and

welcome home ceremonies; and (c) *Cultural Components*, which are intended to revive and maintain Aboriginal cultures and languages.

While the TRC is not designed with the goal of developing and encouraging participation in commemorative activities, one of the initiatives that the TRC is undertaking that could be considered a symbolic action seeking to repair the harm is the *Missing Children* research project, which is based upon the Missing Children and Unmarked Burial Working Group's (2007/2008) recommendations. This research project overlaps with the truth-seeking function of the TRC, and is intended to locate the records of children who died or disappeared while attending Indian residential schools. The *Missing Children* research initiative, much like the *Commemoration Initiative*, is designed to be Survivor-driven and comprised of “representatives from major national Aboriginal organizations, a national organization representing former students of Indian Residential Schools, the churches, and the federal government” (MCUBWG 2008: 3). It was created in response to the needs of Survivors and their families to learn what happened to the missing children. The *Missing Children* initiative is also intended to locate and commemorate children buried in unmarked gravesites, which, according to John Milloy, may help bring closure and certainty, as well as promote “the healing and the psychological well-being of families of children” (CBC 2010g).

One of the problems that the *Missing Children* project faces is access to information. The TRC heavily relies on church records to identify and locate missing children. Because religious entities such as the Catholic and United Churches are reluctant to release student records, this may impede the search for missing children. Milloy also argues that another complication in carrying out this project is that the

records held by the churches are incomplete, which will make it impossible to compile the complete list of graves. For this reason, according to researcher Susan Roy, the search for missing children has so far been unsuccessful. Another challenge for the *Missing Children* project is time and resources. Unlike the *Commemoration Initiative*, it is financed by the already-strained \$60 million TRC budget, and the costs associated with it were estimated to be millions of dollars. In addition, the project is likely to take a significant amount of time to complete and could stretch beyond the TRC's mandate. If the TRC fails to locate the missing children within five years, until 2014, there is a possibility that they will never be found.

#### *Government's promise to repeal sections of the Indian Act*

One of the public acts aimed at condemning residential schools was the announcement made by INAC Minister Chuck Strahl during the TRC national event in Winnipeg. Strahl announced that the government would repeal sections 114 to 122 of the Indian Act, which “allowed the government to set up residential schools and forceably [sic] remove Native children from their homes” (Klowak 2010). This could be considered a gesture that acknowledged residential schools as an injustice that should have never been inflicted. Though the repeal the sections of the Indian Act may carry significance to those affected by residential schools, there are reasons for cynicism about this gesture. First, there is a distinct certainty that even without the repeal measures, these sections of the Act would never be used again. Therefore, striking them down does not necessarily represent a monumental feat on part of the government that allows it to boast about its commitment to reconciliation. Also, even though these sections are marked for repeal, it is unknown when or whether this will, in fact, occur. Lastly, many Survivors are largely

unaware of these sections and what they mean, so to them the mere act of striking them down may carry little meaning, if any.

### **Restoring Survivors' Dignity and Self-respect**

The goal of this section is to assess the ability of the TRC to restore Survivors' dignity and self-respect through acknowledging the harm done in residential schools. More specifically, the focus here is to examine the extent to which the TRC and perpetrators of residential school abuses validate, acknowledge, and affirm Survivors' experiences.

#### *Perpetrators' acknowledgement of wrongful acts*

Allan and Allan (2000) and Ame and Alidu (2010) argue that the acknowledgement of past injustices serves as a form of recognition of the harm done and helps overcome the denial of guilt, denounce perpetrators' actions, and affirm Survivors' experiences and bring about healing. In the context of residential schools, one of the ways through which perpetrators can aid the restoration of Survivors' respect, dignity, and identities is by acknowledging the harm done. This would involve the perpetrators of abuse telling the truth about the past and admitting their role in carrying out abusive acts.<sup>10</sup> During Sharing Circles at the TRC national event in Winnipeg, Survivors expressed the desire to hear truth from the perpetrators. Not only that, but Survivors wanted the perpetrators to hear Survivors' stories and how they felt after they have been abused. This, however, was impossible to achieve because the perpetrators were not

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<sup>10</sup> I argue here that the acknowledgement must consist of truth told not only by the high-level government officials (such as the INAC and church ministers, who often to make an umbrella apology for the horrific acts that went on in residential schools), but by the actual perpetrators of abuse, such as teachers, nurses, nuns, priests, etc. During the TRC's first national event, church representatives and the government officials offered apologies to Survivors. These, however, were made by the high-level individuals who did not directly harm participants during the residential school era and therefore the apologies may have had a limited effect. Church members, on the other hand, were providing apologies-on-request, which speaks to the lack of voluntary acknowledgement of the past.

included in TRC events and the admission of criminal acts would have resulted in their being charged with a criminal offense. According to Emma Paris, without perpetrators, truth-telling by victims resembles a “group therapy session, [where victims are] telling stories to each other” (Baute 2010). This poses a serious challenge to the prospects of acknowledging the past and bringing justice, healing, and closure to Survivors.

*The role of the TRC in acknowledging the harm done*

Acknowledgement may take other forms in addition to truth-telling. The churches’ willingness to open their records for public examination may signify an act of transparency and accountability for the abuse and neglect that took place. This would also allow Survivors to obtain a sense of justice and help restore their human and civic dignity. Survivor Richard Morris of Sioux Lookout argues that the acknowledgement may help residential school Survivors move beyond victimhood and suffering “to being strong and resilient people” (Wawatay News 2010).

Even though the perpetrators are effectively prevented by the TRC’s legal framework from taking the responsibility for abuse, the TRC staff plays a part in acknowledging residential school experiences. Crocker (2000:6) argues that truth commissions may allow victims to gain respect when they are “able to give their accounts and when they receive sympathy for their suffering.” The Canadian TRC has the goal of listening to Survivors with respect and its activities are intended to “offer priority towards Survivor participants” (TRC Winnipeg national event programme). Murray Sinclair also made a promise to all Survivors willing to participate in the TRC’s activities by stating that “you will be treated with respect. You will be treated with dignity” (Drews 2010). As

a result, Survivors' experiences and cultural identities are reaffirmed through the TRC processes and the seeds of respect may begin to be sowed as the TRC continues its work.

The TRC also seeks to promote the restoration of dignity and respect through witnessing the truth that is told at TRC events. Murray Sinclair explains that the Aboriginal principle of "witnessing" is related to the process of remembering truth, affirming Survivors' experiences, and understanding residential school injustices as having an impact on a vast number of children, which speaks to the commonality of negative experiences among Survivors. As Nishnawbe Aski Nation residential school program coordinator Sam Achneepineskum argues, "the more that we hear that people had the same experiences that we had, it makes you more aware that this whole thing is based on a policy that was created by the government across Canada and it affected every First Nation across the country" (Smith 2010). With time, the TRC will hear more and more stories and "the circle of awareness will grow larger through witnessing" (Tracing Memory 2010a). As Andrea Simcoe-Williams, resident of Mnjikaning First Nation, says, "the stories have been locked away by individuals and families and saying them out loud and being acknowledged [by the commission] is an important step" (Sison 2010a). Although the TRC's role is important in acknowledging past injustices, it does not have the same effect as it would if Survivors' stories were affirmed by the perpetrators. Having the perpetrators voluntarily attending Sharing Circles would exhibit gestures of contrition and could help restore the dignity and respect for Survivors.

### **Recognition of Aboriginal Identities**

The establishment of the Indian residential school system stemmed from the government's desire to appropriate Aboriginal lands through the process of assimilation

of Aboriginal children into Euro-Canadian society. As a result, Aboriginal cultures were misrecognized as inferior and of lesser value than non-Aboriginal cultures. In order to right this wrong of the misrecognition, it is necessary to counter the stereotypes of racism and superiority that served as foundation for misrecognition. This section seeks to examine the potential of the TRC to promote the recognition of Aboriginal identities as unique and distinct, as envisioned by Charles Taylor. More specifically, the focus here is to assess the TRC's ability to educate the public about Aboriginal cultures.

One of TRC's strategies for educating the public about residential schools includes a partnership between the TRC and the Canadian Museum for Human Rights to house Survivors' stories. Stuart Murray, the museum's chief executive officer, suggests that through the exhibit "Canadians and visitors from around the world will gain a better understanding about the schools and their impact" (quoted in Sison 2010). The collection of Survivors' experience will also help represent Aboriginal resiliency in the face of assimilation and assert their presence as distinct and unique cultural groups. Similarly, the National Research Centre (NRC) is intended to facilitate access for "former students, their families and communities, the general public, researchers and educators who wish to include this historic material in curricula" (TRC Mandate). By incorporating residential school experiences into the collective memory, the NRC could play an important role in promoting public awareness about residential schools and, as Murray Sinclair optimistically states, "the truth, eventually, will heal us all" (Turenne 2010). The public's exposure to the truth about residential schools may bring about the recognition and understanding they were an act of genocide, which has a profound impact on Aboriginal people. The problem with the NRC is that it falls under the same legal constraints as the

TRC, namely privacy legislation, which dictates what type of truth is included in the NRC's archives. By complying with privacy legislation, the NRC's archives may incorporate truth that is inherently limited. For example, the names of the perpetrators who are still alive and who have not been convicted in the court of law will be excluded from its records.

In addition to promoting the recognition of the harm done, it is also important to consider the ways in which the TRC may be able to repair Aboriginal identities through affirming their equality and worth. Many Survivors during the TRC first national event spoke of the need to restore their identities. For example, one Survivor shared his identity confusion by saying “I’m not White, not Indian, I don’t know what I am” (Sharing Circles June 18, 2010). To others, the recognition and acceptance of Aboriginal spirituality, languages, and traditions play an important role in healing the past. As Sam Achneepineskum suggests, “[the public] need[s] to acknowledge where people come from and what happened to us” (Romain 2010). By bringing Aboriginal and non-Aboriginal people together, the TRC attempts to combat stereotypes of “otherness” that Aboriginal people have suffered for centuries. As Ross (2008:20) notes, one of TRC’s challenges is to foster the recognition through “correcting historical misperceptions of cultural inferiority.” Similarly, Murray Sinclair notes that the process of “sharing of Survivors’ experiences will [allow us] to truly understand them, and in the process, help future generations move forward with respect” (Turtle Island 2010). By learning about the past and beginning to understand the diversity of Aboriginal cultures, non-Aboriginal Canadians may come to understand the misrecognition that Aboriginal people have

suffered. As Marie Wilson notes, “something amazing can happen when aboriginal and non-aboriginal perspectives are brought together” (CBC 2009a).

Indirect public participation in TRC’s proceedings is facilitated mainly through media coverage, including news and television. According to Murray Sinclair, the “national media attention generated by the Winnipeg event was outstanding and [the] coverage was energetic and analytical” (First Perspective 2010). While attending Sharing Circles, I noted the presence of news media outlets such as CTV, CBC, and APTN. However, there was no live coverage of the event on the radio or television, which would have allowed those unable to attend the event to watch it or listen to it in their communities. Also, after the completion of the event, the media coverage dissipated and, as a result, many Canadians stopped receiving up-to-date information on the TRC’s work. An additional problem with media coverage is that the community events often do not receive adequate coverage, which limits the TRC’s ability to achieve its goal of public engagement. This could be due to the remoteness of communities to which the TRC travels and results in selective media coverage of TRC’s activities.

Through countering racist stereotypes and attitudes, the TRC may be able to lay the groundwork to serve as a basis for teaching future generations of Canadians about Aboriginal languages, traditions, customs, and the importance of these cultural aspects and their role in creating diverse nations that are characterized by equality rather than the dominance of one group over another. In other words, the TRC’s objective seems to be aimed at eliminating the perceived inferiority of Aboriginal people and eradicating the self-proclaimed superiority of European Canadians, while fostering a dialogue based on mutual respect. According to Phil Fontaine, there needs to be widespread acceptance of

the past, and without mutual respect based upon recognition, reconciliation is not possible (MacLeod 2009). To accomplish this task, the TRC would need to boost its public education initiatives. However, it is unreasonable to expect that the TRC, in its five-year lifespan, will right all the wrongs perpetrated by residential schools. Instead, it may be able to advance the public understanding of the past, through which new relationships can be formed.

While Charles Taylor's theoretical framework may be applied to account for TRC's public education initiatives and their role in advancing the recognition and equality of Aboriginal identities, it seems unlikely that the TRC has the potential to be considered a successful tool for promoting such recognition in the political sphere, where the origins of inequality were initially generated. More specifically, with respect to the recognition, the TRC's work seems to be limited to public education, as evident in its mandate, and thus fails to foster broader political recognition, and more precisely, on the intergovernmental, nation-to-nation level. Thus, even though the TRC may help change the public's perceptions about Aboriginal cultural identities as it carries out its work, it does not seem to be an appropriate tool for promoting reciprocal recognition among equals between Aboriginal and non-Aboriginal governments.

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This chapter provided an analysis and discussion of Canada's Truth and Reconciliation Commission through the lens of restorative justice and the theory of recognition. Although the TRC could be considered in the various ways to possess restorative qualities, it falls short of being fully restorative. Notably, certain challenges that the TRC

faces with regards to restorativeness, such as the government's imposition of the exterior/mainstream legal framework that limit the TRC's powers, fall outside of TRC's capabilities to correct them. Further threats to restorativeness that the TRC has to constantly contend with are limited time and resources. With respect to promoting the distinctness, uniqueness, and equality of Aboriginal identities, the TRC serves as a tool that provides only limited recognition. This is, in part, due to the TRC's narrow mandate that seeks to educate the public about Aboriginal cultures and identities, while leaving intact the existing power structures between Aboriginal and non-Aboriginal governments. As such, Taylor's (1992) notion of "reciprocal recognition among equals" may apply only partially in the TRC's context (p. 64). By way of conclusion and summary, next chapter considers the TRC in light of Nancy Fraser's tripartite theory of social justice, followed by limitations and future research.

## **CHAPTER 6: CONCLUSION, LIMITATIONS, AND FUTURE RESEARCH**

This chapter begins by assessing the ability of the TRC to frame the residential school system as a product of colonialism that requires systemic change. Next, it presents limitations of this thesis and concludes by outlining potential future research.

### **Decolonizing Potential of the TRC**

Although the TRC meets some of the criteria of the principles of restorative justice and recognition, the question remains as to what the TRC could do to help trigger decolonization. To conclude this thesis, I draw upon Coulthard's (2007) criticisms of Charles Taylor's theory of recognition and Nancy Fraser's (1995; 2003; 2004; 2005; 2008) tripartite theory of social justice to assess the potential of the TRC to frame the Indian residential school system as the product of a colonial system that has not yet been fully eradicated.

One of Coulthard's critiques of Taylor is that concessions, such as recognition of cultural identities, are often granted by the colonizer to the oppressed groups as surface remedies for injustices, leaving colonial structures undisturbed. More specifically, Coulthard argues that Taylor's theory fails to account for the necessity of a struggle for recognition. He emphasizes the importance of “conflict and struggles, [without which] the terms of recognition tend to remain in the possession of those in power to bestow on their ‘inferiors’ in ways that they deem appropriate” (p. 449). In the context of residential schools, this criticism would mean that the TRC is merely a concession made by the federal government that dispenses recognition for the damage done by residential schools and affirms cultural identities of Aboriginal groups and Survivors’ status as victims. Following this logic, TRC negotiations, which could hardly be considered Survivors’

“struggle for recognition,” take place within the boundaries defined by the government and yield recognition on the government’s terms.

Given the above critique, it is important not to underestimate Survivors’ agency and struggle for recognition. While Coulthard points to the lack of struggle in Taylor’s theory of recognition, the question becomes: Can the TRC be considered a space within which a struggle for recognition occurs? To address this question, it is appropriate to consider what Gerald Vizenor (2008) refers to as “survivance,” a concept that signifies Aboriginal people’s narratives of asserting their presence in the colonized society, resisting the colonizer, enduring attempts of the colonizer to eradicate Aboriginal cultures, and adapting to the changing nature of a society. For Vizenor, Aboriginal identities are not stable, but dynamic and changing in response to colonizer’s assimilation efforts. In other words, the narratives of survivance help to keep Aboriginal cultures alive in the face of destruction. During the TRC national event in Winnipeg, a number of Survivors exhibited struggle for recognition by asserting their cultural identities. These resistance strategies included narratives about survival of Aboriginal cultures traditions and spiritualities in the post-residential school era, sharing stories in Aboriginal languages or withholding stories altogether, and naming names of the perpetrators of the residential school abuse despite having been instructed against doing so. Some Survivors, such as Peter Yellowquill and Chantelle Devillier, chose to boycott the event and urged others to do the same. To them, the TRC was a government’s creation that would fail to bring justice and recognition to Survivors.

Coulthard (2007:445) also argues that Taylor’s theory ignores a subjective dimension of colonialism. He refers to an inferiority complex that results from the

capitalist exploitation and subsequent internalization of racism and unequal power relations by the oppressed groups. In order to dismantle colonialism, it is essential to wage war on the racial and economic basis of inequality<sup>11</sup>. If this argument is applied to the TRC, it becomes apparent that even though the TRC may be effective in applying the label of “Survivor” to residential school victims, it locks them in these colonial identities and the “subjectivity of the colonized remains the same – they become ‘emancipated slaves’” (p. 449). According to Coulthard, only struggle against the colonizers, as opposed to compliance with their terms of recognition, may help Survivors shed their colonial identities. Coulthard is pessimistic about the possibility of Hegel’s notion of “reciprocal recognition among equals” in the context of Canada’s Aboriginal people. In his argument, this type of recognition is not realistic because the colonizer is not seeking recognition from the colonized. Following this view, the TRC, which seeks to reaffirm quality and worth of cultural identities of Survivors and promote the recognition of the damage done by residential schools, is an inadequate tool for challenging the existing power dynamics between Aboriginal and Canadian governments and fostering recognition among equals. The type of recognition that the Canadian government is granting through the TRC is *not* mutual, but is imposed on Survivors and Survivors’ identities become reified as colonial subjects.

Nancy Fraser develops a different framework that could be used to assess the TRC in terms of its potential to contribute to the process of decolonization of Canada<sup>12</sup>. Fraser argues that groups may suffer from three distinct types of injustices: socioeconomic, cultural-symbolic, and political. Socioeconomic injustices include

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<sup>11</sup> I address the material basis of colonialism later in the section.

<sup>12</sup> Coulthard also criticizes Fraser, but also explains the strengths of her approach.

maldistribution of material resources, which are manifested in exploitation, economic marginalization, and deprivation (Fraser 1995). Cultural-symbolic injustices, on the other hand, are those associated with misrecognition and include cultural domination, nonrecognition, and disrespect. For Fraser, socioeconomic injustice can be remedied through redistribution, while cultural-symbolic injustices can be remedied through providing due recognition. In her later work, Fraser has added a third pillar to her model of justice – representation. She argues that representation is becoming increasingly important in light of current struggles for justice and democracy (Fraser 2004). This status model highlights the importance of transnational politics and governance structures that must be taken into account when considering economic and cultural injustices. Representation-related injustices are linked to social inequality and, more specifically, social status, which in Fraser’s terms can be resolved by providing “recognition of people’s standing as full partners in social interaction [who are] able to participate as peers with others in social life” by ensuring participatory parity in political claims-making (2004:377; 2005). Certain groups may suffer from all three types of injustices simultaneously.<sup>13</sup>

In Fraser’s view, remedies to injustices may be of two types: transformative and affirmative. Transformative remedies, in Fraser’s view, are associated with “correcting inequitable outcomes precisely by restructuring the underlying generative framework” (1995:73)<sup>14</sup>. By contrast, affirmative remedies to an injustice are those that attempt to correct “inequalities that arise from the organization of social relations without

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<sup>13</sup> In her work, she uses examples of gender and “race.”

<sup>14</sup> I examine the TRC in light of Taylor’s theory of recognition in the previous section.

challenging these relations” (Woolford 2005:31). Let us begin by considering affirmative remedies and their roles in addressing systemic injustices suffered by Aboriginal people.

In the case of redistributive affirmative remedies, the goal is to correct income inequality, while leaving undisturbed the capitalist mode of production. This could include direct money transfers to the maligned groups, which serve only as a temporary and therefore inadequate means for improving their economic situation. More specifically, without challenging the underlying framework, economic injustice will recur. To be sure, when addressing economic injustices, affirmative redistribution does little beyond providing concessions to the disadvantaged groups, because it does not “challenge the deep structures that generate class disadvantage” (Fraser 1995:85).

Fraser’s transformative redistribution, on the other hand, relates to the economic changes that seek to promote equality through measures such as “redistributing income, reorganizing the division of labour, subjecting investment to democratic decision-making, or transforming other basic economic structures” (1995:73). Economic empowerment, in her view, enhances social equality through not only transfers of wealth, but also through the restructuring of social institutions. Fraser draws on the work of Karl Marx and John Rawls in justifying her position with respect to the importance of the distribution of resources. In examining the TRC through the lens of transformative redistribution, I employ Fraser’s conceptualization of the economic redistribution rather broadly. In my analysis, it includes not only the material wealth, but also the lands, housing, and education, among other resources.

Similarly, with respect to recognition, affirmative remedies tend to promote the revaluing and differentiation of group identities, while leaving intact the elements that led

to misrecognition. With regards to Aboriginal people, affirmative recognition could include an

Acknowledgment that [Aboriginal] peoples represent a distinct ethnic group within the Canadian mosaic and that they deserve status equal to other ethnic groups within the nation. The underlying assumption of such an approach is that ethnic identities are primordial categories of difference and that, to get along, we must recognize group differences (Woolford 2005:33).

By increasing the differentiation of the groups' identities, affirmative remedies tend to promote reification, which, in Fraser's terms, results in "repressive communitarianism" and leads to "right-wing nationalism, religious fundamentalism, and anti-immigrant movements" (2004:377).

Transformative recognition, in Fraser's terms, "consists in anti-racist deconstruction aimed at dismantling Eurocentrism by destabilizing racial dichotomies" (1995:91). The goal of remedies associated with transformative recognition is not to promote essentialized group differentiations, but rather to acknowledge the dynamic and ongoing processes of collective identification that are part and parcel of what it means to be a group. In her earlier work, Fraser argued that transformative recognition required the destabilization of cultural identities, but she later moved to argue that the specific socio-historical circumstances of misrecognition and status denial have a crucial bearing on the form that transformative recognition should take.

In Fraser's (2003) view, one type of representation-related injustices that groups may suffer is "ordinary-political misrepresentation" (18). These injustices may take forms of unequal political participation, "intra-frame representation, [and] debates over the relative merits of alternative electoral systems" (Fraser 2008:408). Affirmative remedies for these injustices include protection of groups' political rights and ensuring "a

fair and equal voice for everyone” (Nelund 2011:13). In the case of Indian residential schools, affirmative remedies for ordinary-political misrepresentation of Aboriginal people in the Canadian political system would seek to remedy surface-level injustices, such as reinstating their right to vote and, to a certain degree, increasing their political decision-making capabilities, with both remedies seeking to establish participatory parity. What is neglected by these affirmative remedies is the global, international, scale of injustices “in which the international system of supposedly equal sovereign states gerrymanders political space at the expense of the global poor (Fraser 2008:408).

The second level of representation-related injustices is metapolitical injustice, which Fraser conceptualizes as “misframing.” These injustices are less obvious and occur when “polity’s boundaries are drawn in such a way as to wrongly deny some people the chance to participate *at all* in its authorized contests over justice” (Fraser 2008:408), (original emphasis). These injustices require transformative remedies that go beyond addressing ordinary-political representation. To remedy injustices of misframing, groups must be invested with power to participate as equal partners in nation-to-nation decision making and international affairs. Woolford (2009:152), in turn, argues that transformative remedies for representation “would seek to critique systems of representation that deny participation to certain groups and individuals in our societies.”

### *TRC and transformative change*

The need for employing a framework that combines transformative recognition, redistribution, and representation in the context of Canada’s colonialism is presented in the argument made by Robyn Green (2010), who observes that without addressing the broader implication of colonialism,

There is a risk that a Truth Commission will only emphasize the necessity for cultural recognition and/or remembrance through the language of a “rights” that could ultimately lead to the (re)construction of indigenous peoples as “minority subjects”<sup>15</sup> within the nation-state (p. 27).

To begin the discussion of how the TRC could promote systemic change, it is appropriate to assess it in light of Fraser’s tripartite theory.

The TRC mandate and activities focus exclusively on discovering the truth about residential schools and their legacy, and thus the TRC serves as an affirmative cognitive remedy. More specifically, it tends to promote the recognition of the wrongness of the residential school system and equality and respect for Aboriginal cultures, while precluding the discussion of the foundations of the misrecognition. As such, affirmative recognition could reinforce colonialism by reifying Aboriginal cultural identities. Therefore, there needs to be another method of conceptualizing recognition, one that does not rely on the essentializing the notion of “identity.” Fraser’s transformative recognition could be applied to the TRC in a way that does not seek to define identity. More specifically, the TRC could promote transformative change and challenge the basis of colonial relationships between Aboriginal and non-Aboriginal peoples through the recognition of Aboriginal rights to self-determination in the areas such as governance, justice, child welfare, education, and health, among others. In other words, the TRC would promote the process that invests Aboriginal people with control of their destinies. Monica notes that in order for transformative recognition occur, the TRC would have to support the process of

Recognition of First Nations as one of the founding nations of Canada than the French and the English [is important] because that would reflect respect for the first inhabitants of this land, one would hope that there will be recognition with respect to language, making Indigenous languages more mainstream in Canada so

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<sup>15</sup> Eva Mackey, *House of Difference*

that non-Indigenous people could learn and ... connect the two cultures (interview, 2010).

Similarly, Graydon Nicholas, New Brunswick's first lieutenant-governor of Aboriginal descent, argues that Aboriginal voices must be taken into account when reforming social institutions that were the cause of centuries of oppression of Aboriginal people. Namely, Nicholas refers to:

All aspects of [Aboriginal] life. We're talking about spirituality, the churches. We're talking about the political process at the federal and provincial level. We're talking about our democratic institutions, for example, the military as well as the police forces who were all part of ... removing the spirit of the aboriginal people in this country (CBC 2010).

In his statement, Shawn Atleo calls for the Canadian government to "understand that reconciliation today requires significant changes in the relationship between First Nations and governments" (AFN 2010). In his view, Aboriginal people must be supported by the Canadian government in their goal of "achieving equitable outcomes and opportunities for First Nations students" (*ibid*).

In terms of redistribution, the TRC tends to be more affirmative than transformative. For example, it offers reparations such as the CEP/IAP compensation payment, *Missing Children Project*, Commemoration Initiative, and the elimination of certain sections of the Indian Act, all of which could be considered measures with the goal to acknowledge residential school experiences. However, the TRC falls short of possessing the power to order a more profound restructuring of material relations between Aboriginal and non-Aboriginal nations. Given Aboriginal peoples' interdependence and the special relationship with their lands, in order to possess transformative potential, the TRC would need to reach beyond reparations for residential

school experiences (Ross 2008:19). According to Taiaiake Alfred (2009:181), for example, structural material change would include:

Massive restitution made to Indigenous peoples, collectively and as individuals, including land, transfers of federal and provincial funds, and other forms of compensation for past harms and continuing injustices committed against the land and Indigenous peoples, [without which] reconciliation will permanently absolve colonial injustices and is itself a further injustice.

Alfred speaks of transformative redistributive change that would allow Aboriginal peoples to regain power, to take control of their lands and resources, and to become self-sufficient groups. Survivors who participated in a conference at the Geneva Park Conference Centre in November 2009 also expressed their desire for examining Indian residential schools from a wider perspective, more specifically by reviewing Aboriginal people's access to lands and resources.

Waziyatawin (2009:196) argues that in addition to the lands, other forms of restitution are required to combat colonial structures. These non-land based restitution measures could include “environmental cleanup, infrastructure development for sustainable living, educational opportunities, healing centres, resources for language and culture revitalization, relocation expenses for displaced Indigenous Peoples, and debt relief.” In the TRC’s context, this could mean restoring funding for the Aboriginal Healing Foundation and including Aboriginal people who were affected by residential schooling, but did not attend them, in the compensation schemes. Given these calls for extensive reparations, transformative redistribution will not be an easy task. An example of difficulties that may be encountered in the process of transformative redistribution includes the government’s reluctance to provide restitution to Aboriginal people, as demonstrated in its resistance and the eventual refusal to sign the \$5 billion dollar

Kelowna Accord, a “social justice package with major new funding for indigenous housing, health and education” (De Costa 2009:4).

With respect to representation, the TRC tends to act as an affirmative solution to residential school experiences as opposed to attempting to remedy injustices of political misframing. More specifically, even though Survivor groups have been consulted with regards to what the TRC’s design and activities should include, the scope of the debate is quite narrow and does not seem to advance Aboriginal peoples’ political interests and power outside the TRC. Therefore, the question becomes: what could the TRC do to promote transformative representation? One could argue that this would entail a move toward power sharing in the intergovernmental relations between Aboriginal and non-Aboriginal nations. This, in turn, would provide Aboriginal people a degree of control of the issues that concern Canada domestically. In addition, the TRC would be part of the power shift that could create opportunities for Aboriginal people’s political participation on an international level and in decision-making with regards to Canada’s role in the global world. In concrete terms, some of the areas in which Aboriginal people could gain greater control include Canada’s economic and social development and global trade and politics. Equal participation in these spheres may contribute to the empowerment of Aboriginal people in their struggle for transformative recognition and redistribution.

Even though the TRC represents an affirmative remedy for resolving colonial injustices, it could be considered a step toward promoting the broader social change and reforming colonial structures. As De Costa (2009:1) suggests, by addressing residential school experiences, the TRC is potentially transformative because it could serve as the

“starting point to make connections with Aboriginal claims, for lands and rights, especially rights to govern and hold jurisdiction over those lands.”

### **Limitations and Challenges**

During the process of writing this thesis, I encountered various challenges, pertaining mainly to methodological and conceptual considerations. One of the challenges concerns the selection of restorative justice principles and values as a model for evaluating the TRC’s work and design. As mentioned briefly in the Theoretical Framework chapter, there no single definition of restorative justice, but rather an eclectic collection of principles, values, and practices that guide the responses aimed at repairing the harm done. To overcome the challenge of selectivity and “cherry picking” restorative justice elements through which the TRC was evaluated, I focused on the overlap between restorative and Aboriginal justice in the process of creating a model against which “restorativeness” of the TRC was measured. As such, the main goal was to select restorative justice elements that were in accordance with Aboriginal justice practices.

With regards to methodological considerations, the major limitation of the data collection resulted from the reluctance of the TRC commissioners and TRC Survivor Committee members to participate in the thesis interviews. I believe that the TRC staff might have been able to provide valuable insights into the challenges that the TRC is currently facing in carrying out its mandate, as well as the successes that it is enjoying. I was, however, able to indirectly gather the opinions of the TRC staff by way of analyzing the news articles, TRC correspondence, and other relevant materials containing feedback of the TRC staff regarding the TRC operations.

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Overall, TRC's design and processes incorporate a number of restorative justice elements to varying degrees of success. Based on the restorative justice framework employed in this thesis, I conclude that the TRC does not closely approximate the restorative justice ideal. Despite demonstrating many restorative justice values, principles, and practices, it falls short of being fully restorative. In order to increase its restorative and cognitive potential, the TRC must be able to overcome multiple challenges in its work, including limitations imposed by the exterior legislative framework, namely privacy and criminal justice legislation. Also, the success of the TRC greatly depends on the general public's willingness to take part in the journey with Aboriginal people on the path of healing and coming to terms with past injustices, while looking to the future and renewing relationships based on mutual respect and recognition.

The TRC must also foster the recognition that the residential school system and its legacy need to be resolved alongside other systemic injustices that Aboriginal people are currently facing. Residential schools comprise only a part of the colonial machine that has perpetuated oppression of Aboriginal people for many centuries and, if not brought to a halt, it may continue inflict further injustices for centuries to come. Without framing residential schools as a systemic issue, the TRC runs the danger of overlooking the roots of colonial structures that gave rise to not only residential schools, but to the many institutions that are operating based on stereotypes and unjustified assumptions of cultural inferiority of Aboriginal cultures and supremacy of Euro-Canadian peoples.

This thesis assessed the restorative and cognitive potential of the TRC in the early stages of its work, with much of it still lying ahead. More specifically, I am

referring to the remainder of TRC events, its interim report, which is set to be published halfway through its lifespan, and recommendations that it will produce upon completing its work, which is tentatively set for 2014. As Ellen notes, TRC's success, to a great degree, will depend on the government's willingness to follow the TRC's recommendations and the public's desire to learn about, understand, and accept the truth about the past (interview, 2011).



## APPENDIX A: STUDY INFORMATION AND CONSENT FORM

**Thesis Title:** An Evaluation of the Design of the Truth and Reconciliation Commission of Canada (TRC) through the Lens of Restorative Justice and the Theory of Recognition.

**Student Researcher:** Konstantin Petoukhov, phone: (204) 275-0479, email: [Umpetouk@cc.umanitoba.ca](mailto:Umpetouk@cc.umanitoba.ca).

**Thesis Supervisor:** Dr. Andrew Woolford, phone: (204) 474-6058, email: [Andrew\\_Woolford@umanitoba.ca](mailto:Andrew_Woolford@umanitoba.ca).

**Sponsor:** Social Sciences and Humanities Research Council (SSHRC).

This consent form, a copy of which will be left with you for your records and reference, is only part of the process of informed consent. It should give you the basic idea of what the research is about and what your participation will involve. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

You are invited to participate in the interview phase of my Master's thesis which seeks to evaluate initial design of Canada's Truth and Reconciliation Commission (TRC) through the lens of restorative justice and the theory of recognition. More specifically, the following principles of restorative justice will be considered when examining the TRC: victim empowerment, victim-centredness, truth-seeking, and potential to restore relationships between Aboriginal peoples and the Canadian government. The theory of recognition will inform the interview by examining the extent to which the TRC may be viewed as a mechanism promoting recognition and acknowledgement of past wrongs against Aboriginal Peoples, as well as influencing recognition of Aboriginal peoples as possessing unique and distinct cultural identities. The interview questions will attempt to obtain information on the potential of Canada's TRC to be considered an institution of restorative justice (please find the list of questions attached).

The interview will consist of 10 to 12 questions and will take approximately 30 to 45 minutes to complete. The interview can be conducted either in-person or by telephone. The time for in-person interviews will be selected based on your preference and the interviews will be held at a location convenient for you. Please note that in-person interview may be audio-recorded with your permission (please see next page). During telephone interviews, which are scheduled at your convenience, the researcher will take written notes.

There are no risks associated with your participation in this interview, i.e. potential harm is no greater than that which one might experience in the normal conduct of one's everyday life. The significance of this research lies within discovering the potential of the TRC to repair the harm done to Aboriginal peoples by the residential school system. In

addition, your responses will contribute to the body of knowledge on truth commissions and restorative justice.

Your privacy as a respondent is highly valued. You have a choice regarding whether or not your name will appear in my Master's thesis. If you choose the option to keep your responses confidential, your name will **not** appear in my Master's thesis. Instead, in my Master's thesis you may be identified as "Interview Subject 1, 2, 3," etc. Furthermore, all other information which could potentially be used to identify you as a respondent, such as dates, times, location of the interview, and personal identifiers, will not be included in the thesis. These data such as this, containing no link to your identity as a respondent, will be stored indefinitely. On the other hand, if you are comfortable with being identified in my Master's thesis by name, your name will appear in the thesis. The interview data which contains personal identifiers will be kept until completion of my Master's thesis, April 2011, at which point all personal identifiers will be removed and destroyed, and the data will be stored indefinitely.

Please make a selection regarding confidentiality of your responses below:

- YES**, I wish to be identified by name in Konstantin Petoukhov's Master's thesis.
- NO**, I do not wish to be identified by name in Konstantin Petoukhov's Master's thesis.

All data, along with audio tapes and interview transcripts, will be stored in a secure location in the researcher's locked office in Isbister Building at the University of Manitoba. Please note that this Master's thesis will become a public document upon its completion.

**In-Person Interview participants** - please indicate your preference on the use of audio-recording equipment during your interview:

- NO**, I do not consent to have this interview audio-recorded;
- YES**, I consent to have this interview recorded. Please provide your signature: \_\_\_\_\_

I wish to take this opportunity to reassure you that regardless of the choice you make, the data will be kept in a secure location, in a locked room, and will be accessible only by the researcher or thesis supervisor. To protect your identity further, this Consent Form will be stored separately from interview data so that no connection can be made between your identity and interview data.

The planned date for completion of this Master's thesis is summer 2011. If you would like a copy of the complete thesis and/or only the "Results" section of the thesis, they will be sent to you by email or regular mail, or both.

I would like to receive:

- Complete thesis
- Only the “Discussion” chapter of the thesis

Please indicate below your postal address and/or email address:

Participant's email:

---

Participant's address:

---

As a token of appreciation for your participation in this interview, you will be given a \$10 gift certificate to Tim Hortons.

Your participation in this interview is completely voluntary. Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in the research project and agree to participate as a subject. In no way does this waive your legal rights nor release the researchers, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from the study at any time, and /or refrain from answering any questions you prefer to omit, without prejudice or consequence. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification or new information throughout your participation.

**Student Researcher:** Konstantin Petoukhov, phone (204) 275-0479, email:

[Umpetouk@cc.umanitoba.ca](mailto:Umpetouk@cc.umanitoba.ca)

**Thesis Advisor:** Dr. Andrew Woolford, phone (204) 474-6058, email:

[Andrew\\_Woolford@umanitoba.ca](mailto:Andrew_Woolford@umanitoba.ca)

This research has been approved by the University of Manitoba Psychology/Sociology Ethics Board (P/S REB). If you have any concerns or complaints about this project you may contact any of the above-named persons or the Human Ethics Secretariat at 474-7122. A copy of this consent form has been given to you to keep for your records and reference.

Participant's Signature \_\_\_\_\_

Date \_\_\_\_\_

Researcher's Signature \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX B: INTERVIEW SCHEDULE

Questions to be asked to participants during interviews:

1. What does the concept “restorative justice” mean to you?
2. Overall, can Canada’s TRC be considered restorative?
3. Can restorative justice be effectively used in the case of residential schools?
4. What are some of the potential successes and failures of Canada’s TRC?
5. Can restorative justice (which is based on healing) be successfully employed alongside retributive justice (which is based on punishment)?
6. Are the justice principles guiding Canada’s TRC consistent with the cultural values and traditions of the variety of Canadian Aboriginal peoples?
7. In your view, did Aboriginal governments receive a fair opportunity to contribute to the planning of the TRC?
8. To what extent may the TRC prevent future injustices against Canada’s Aboriginal peoples?
9. What potential obstacles might the TRC encounter in carrying out its work?
10. How does the TRC’s work influence the recognition and acknowledgement of injustices committed during the residential school era?
11. Does Canada’s TRC contribute to the recognition of First Nations peoples as members of sovereign nations possessing distinct and unique cultural identities?
  - Follow-up/clarification: Does the TRC promote recognition of the equal dignity of Aboriginal and non-Aboriginal cultures?
12. What do you think of the CEP (Common Experience Payments) and IAP (Individual Assessment Payments) processes? Do they serve as an adequate form of justice for residential school survivors?

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