

# Sacred Responsibility:

Searching for the Missing  
Children and Unmarked Burials

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Interim Report



Independent  
Special Interlocutor

June 2023

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

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

**1-800-721-0066**

**The 24-hour National Indian Residential School Crisis Line:**

**1-866-925-4419**





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Representing strength, family and healing, bears are the primary element in the Office of the Independent Special Interlocutor's logo. The larger bear represents the parent, family, and community, while the smaller bear symbolizes the children who were stolen and never returned.

The Northern Lights in the night sky are the Spirits of our ancestors dancing. The dancing guides the children to reunite with their ancestors.

The stars depict the connection between the children taken from their communities and the parents left behind, who would stare at the same stars longing to be reunited.

The flowers in the larger bear signify life and the resilience of Indigenous people.

The changing colours in the dotted path illustrate the on-going search for truth, justice and healing.

The three pairs of moccasins honour and acknowledge all First Nations, Inuit and Métis children.

At the first National Gathering on Unmarked Burials in Treaty 6 territory, Regional Chief Gerald Antoine observed that on the back of the larger bear, there is a clear outline of a child's face looking up at the sky. Although this was not intentionally part of the design, it has shown us yet another way that the children's Spirits are speaking to us all.



*“For the child taken,  
For the parent left behind.”*

TRC Interim Report, 2012

## Opening Words

In the first year of my Mandate, I was honoured to meet with Survivors, Indigenous families, and communities across Turtle Island who are leading the Sacred work of searching for, recovering, protecting, and commemorating the missing children and unmarked burials at Indian Residential Schools and associated sites. Those leading search and recovery efforts often relive their trauma as they do this difficult and emotional work. We must honour and support their steadfast commitment to bringing respect, honour and dignity to the Spirits and bodies of the children who were never returned home.

I also recognize the courage, determination, and advocacy of Survivors who have worked tirelessly to raise Canada's collective awareness about the atrocities perpetrated against Indigenous children, their families and communities. Canada, as a country, can no longer ignore these truths. The fact that cemeteries and unmarked burials exist on former Indian Residential Schools and associated sites across the country counters Canada's reputation both domestically and internationally as a peaceful, just, and equitable country.

Elders and Survivors have instructed me to remember that I must be a voice for the children. Whether I am facilitating dialogue and information sharing, supporting communities by liaising with governments, churches, and other institutions, or intervening when actual or potential burial sites are threatened with destruction and desecration, my responsibility is to speak up on behalf of those missing children in unmarked burials.

I want to emphasize this point: my role is to give voice to the children. It is not to be neutral or objective – it is to be a fierce and fearless advocate to ensure that the bodies and Spirits of the missing children are treated with the care, respect, and dignity that they deserve.

Some may think that giving voice to the children conflicts with my responsibility to function independently and impartially, in a non-partisan and transparent way. However, international human rights and humanitarian law are clear: upholding human rights principles does not require me to be morally indifferent to the fate of children who are victims of genocide, mass human rights violations, and injustice. Rather, I have an ethical duty to insist that there be accountability and justice for the missing children, Survivors, Indigenous families, and communities. This means



Monument honouring Survivors of Indian Residential Schools in Winnipeg, near the Canadian Museum for Human Rights

that sometimes I must deliver hard messages to governments, churches, and other institutions, challenging them to do better.

In the November 2022 [Progress Update Report](#), I said that there is a need for governments, churches, and other entities to adopt an anti-colonial approach, to take responsibility for their role in creating the conditions leading to the existence of the missing children and unmarked burials, and to make reparations. They can no longer be bystanders in reconciliation. Canadians cannot take pride in a country that permits the burials of children to be violently disrespected, allows shovels to dig into the bones of ancestors, and hides from the truth.

I urge all Canadians to not be bystanders. Each of us must stand up and speak out. We must insist that these missing children, who were abused and neglected during their lives, now be treated with the respect and human dignity they deserve. We need to work together as we move forward. Let us honour and support all the Survivors, Indigenous families, and communities leading this Sacred work and keep the Spirits of the children foremost in our hearts and in our minds.



# Introduction to the Interim Report

This Interim Report examines the current Canadian legal framework and identifies significant limitations and gaps that create barriers for Survivors, Indigenous families, and communities as they lead search and recovery efforts to find the missing children and unmarked burials.

**Part 1** provides the background and context for why it was necessary to appoint an Independent Special Interlocutor. It also describes the Mandate and sets out the Guiding Principles that have been adopted to support and guide the Mandate commitments.

**Part 2** lists the findings and Calls to Action 71-76 in [Volume 4 of the TRC Final Report: Missing Children and Unmarked Burials](#) and notes the slow progress on implementing the Calls. Building on the TRC's work, the need to expand the scope of research and investigations beyond the sites of Indian Residential Schools is identified.

**Part 3** reports on the advancement made in relation to the Mandate obligations, including engagement with Survivors, Indigenous families, and communities; meetings with government and church officials; submissions to international experts and bodies; and public education and awareness activities.

**Part 4** begins with an overview of Canada's current legal system—a confusing, overlapping, and sometimes conflicting framework of laws, regulations, and policies enacted by federal, provincial, territorial, and municipal governments across the country. This multi-jurisdictional patchwork of laws fails to address the complexities of search and recovery work and does not align with the *United Nation's Declaration on the Rights of Indigenous Peoples* (UN Declaration).

**Part 5** draws on the experiences and insights shared by Survivors, Indigenous families, communities, and various other experts involved in these investigations, to identify specific barriers. Findings are made in 12 areas of common concern:

- A. Access to and destruction of records;
- B. Access to and protection of sites;
- C. Complexity and timeline of ground searches;
- D. Shortcomings of existing investigation processes;
- E. Affirming Indigenous data sovereignty;
- F. Challenges of responding to media and public disclosures;
- G. Increase in the violence of denialism;
- H. Lack of sufficient, long-term funding;
- I. Need for Indigenous health and wellness supports;
- J. Repatriation of the children;
- K. Land Back: Repatriation of cemetery and burial sites; and
- L. Accountability and justice.



Part 6 begins to lay the foundation for a new Reparations Framework to address the gaps and barriers within Canada's current legal system, which is ill-equipped to provide accountability and justice for Indigenous Peoples in the face of genocide, colonial violence, and mass human rights violations. It defines an Indigenous-led process and explains why such a process is essential to the search and recovery of the missing children and unmarked burials. It concludes by outlining ten elements of reparations that will form the basis of the Final Report.

Summaries are included throughout to illustrate the barriers communities are facing, as well as emerging Indigenous-led practices that have been applied to advance search and recovery work in accordance with Indigenous law and protocols.



Memorial for the missing children at the Vancouver Art Gallery



## The Over 50 Year Search to Find Marieyvonne Alaka Ukaliannuk

In the early 1960s, Marieyvonne Alaka Ukaliannuk was only four years old when she was taken from her hometown of Igloodik and sent on a floater plane to the Sir Joseph Bernier Federal Day School located in Chesterfield Inlet, Nunavut. During her first year at Sir Joseph Bernier, Marieyvonne Alaka was injured; she hit her head while playing with friends in the playground. She was sent to a hospital in Churchill, Manitoba, where she contracted tuberculosis. As a result, she was transferred to a larger hospital in Winnipeg, Manitoba, then to a tuberculosis sanatorium in Toronto, Ontario and then to another hospital in Montreal, Quebec. At the hospital in Montreal, she contracted meningitis and developed quadriplegia, becoming paralyzed in all four of her limbs. Her final transfer was to a children's continuous care home in Austin, Quebec, where she passed away at eight years old.

Marieyvonne Alaka did not speak English, only Inuktitut. As she was transferred from one institution to another; she was sent on her own, without any family to hold her hand, comfort her or make medical decisions on her behalf. She did not understand the languages being spoken to her. Marieyvonne Alaka's parents were never notified of her injury or of her transfers to the various institutions.<sup>1</sup>

During this period, the government would fly the children back to their homes from Sir Joseph Bernier Federal Day School in Chesterfield Inlet for the summer. The floater planes would land on the beach. That first summer after Marieyvonne Alaka was taken to Sir Joseph Bernier, Marieyvonne Alaka's parents went down to meet the plane with all the other parents.

Marieyvonne Alaka was the only child that did not get off the plane. Her parents immediately went to see the Catholic Priest to find out where Marieyvonne Alaka was. From that moment on and until his passing in 2007, Marieyvonne Alaka's father, Lucien Ukaliannuk, searched for her. He spent over 53 years trying to find out what happened to Marieyvonne Alaka. Marieyvonne Alaka's mother, Therese Ukaliannuk, felt that the search had died with her husband and that she would never know what happened to her daughter.



Sir Joseph Bernier Federal School, Turquetil Hall, Chesterfield Inlet / Nick Newberry collection, Nunavut Government Archives



Martha Maliiki at the National Gathering in Edmonton describing her work to help find Marieyvonne Alaka Ukaliannuk

That is when Martha Maliiki, a family friend and community researcher from Igloolik living in Iqaluit, took over the search. The search was made more difficult because the Catholic Church had changed Marieyvonne Alaka's name. Martha was able to find information using Marieyvonne Alaka's Eskimo Identification Number.<sup>2</sup> In addition to the decades that Lucien Ukaliannuk searched for Marieyvonne Alaka's burial, Martha's search took over 20 more years. Martha recounted: "As I was doing the research, it was really hard. There were times I was too angry to work on it... It was Marieyvonne Alaka's mother's strength that kept me going."

Marieyvonne Alaka is buried over 2,000 kilometres from her home of Igloolik. Marieyvonne Alaka's final resting place is located on the grounds of a church

in Magog, Quebec, known as the "Poppy Field." The Poppy Field is a burial area of the cemetery for "unclaimed" and orphaned children. In the Poppy Field, there are five white crosses.

In July 2016, Therese, at age 76, travelled with Martha to visit Marieyvonne Alaka's burial. To make this trip, private donors paid for their plane tickets. Martha and Therese fundraised to cover the rest of their costs. Martha said: "When we were brought to the burial site, we were told she was in an unmarked grave with four other children." Therese took time to sit next to each of the five crosses since she did not know where in the graveyard Marieyvonne Alaka was actually buried.

Martha and Therese asked both the Nunavut Coroner and the Quebec Coroner to have the graves exhumed so they could bring Marieyvonne Alaka home. They were told that an exhumation could not be done because further research had confirmed that 60 children are buried in 5 mass unmarked graves under each of the crosses.

They learned that there are over 300 children buried in the "Poppy Field". Marieyvonne Alaka is one of them. Martha is still working on behalf of Therese and her family to have a marker placed in the cemetery to memorialize Marieyvonne Alaka's life.



## Part 1: Why is there a need for an Independent Special Interlocutor in Canada?



Kimberly Murray, speaking at the public announcement of her appointment as Independent Special Interlocutor

The existence of unmarked graves and burial sites of children who died while being forced to attend Indian Residential Schools<sup>3</sup> in Canada is a stark reality of the ongoing harm of coercive, assimilative government laws and policies that have targeted Indigenous Peoples. The Indian Residential School System was put in place for the express purpose of “killing the Indian in the child.” This has been characterized as “cultural genocide” by the Truth and Reconciliation Commission of Canada (TRC) in 2015,<sup>4</sup> “colonial genocide” by Canada’s National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) in 2019,<sup>5</sup> and “genocide” by the House of Commons in 2022.<sup>6</sup>

Volume 4 of the TRC Final Report focuses on Missing Children and Unmarked Burials associated with Indian Residential Schools. With Calls to Action 71 to 76 the TRC identified specific actions required from governments, churches and other organizations to support the search and recovery of the missing children and unmarked burials.<sup>7</sup> While the Calls are primarily aimed at Canada, the TRC directed the federal government to work collaboratively with Indigenous Peoples, the churches

who are parties to the Indian Residential Schools Settlement Agreement (IRSSA), other levels of government and relevant institutions to implement them. To date, progress has been too slow. In the absence of the much-needed funding and other supports, Survivors, Indigenous families, and communities have had to shoulder this Sacred work on their own.

The TRC's findings and its Calls to Action in Vol. 4 received little public attention or response prior to the solemn announcements<sup>8</sup> of several First Nations about the recovery of unmarked burials at former Indian Residential School sites in 2021.<sup>9</sup> For example:

- In May 2021, the Tk'emlúps te Secwépemc (BC) announced the confirmation of up to 215 potential unmarked burials at the site of the former Kamloops Indian Residential School.<sup>10</sup>
- In June 2021, the Sioux Valley Dakota Nation (MB) confirmed the recovery of 104 unmarked burials (including 38 unmarked burials already located in 2018-19) in relation to three cemetery sites at the former Brandon Indian Residential School.<sup>11</sup>
- In June 2021, the Cowessess First Nation (SK) announced preliminary findings of 751 targets at the cemetery near the former site of the Marieval Indian Residential School. Most of these graves are unmarked among a few marked graves.<sup>12</sup>
- In June 2021, the Ktunaxa Nation (BC) confirmed the recovery of up to 182 unmarked burials near the former St. Eugene's Indian Residential School site.<sup>13</sup>
- In July 2021, the Penelakut Tribe (BC) confirmed the finding of more than 160 potential unmarked burials on the grounds of the former Kuper Island Indian Residential School.<sup>14</sup>

There have been further public confirmations of potential unmarked burials in 2022 and 2023, including:

2022:

- In January 2022, Williams Lake First Nation (BC) announced 93 potential unmarked burials were found around the former St. Joseph's Mission Indian Residential School site.<sup>15</sup>
- In February 2022, Keeseekoose First Nation (SK) found a combined 54 potential unmarked graves on the grounds of the former St. Philip's and Fort Pelly Indian Residential Schools. (12 at St. Philip's and 42 at Fort Pelly).<sup>16</sup>
- In March 2022, Kapawen'no First Nation (AB) announced 169 potential unmarked burials on the grounds of the former Grouard Mission (St. Bernard's) Indian Residential School.<sup>17</sup>
- In April 2022, George Gordon First Nation (SK) announced their preliminary findings which indicated 14 possible unmarked burials near the location of the former George Gordon Indian Residential School. The investigation team believes there are more to be found in other areas.<sup>18</sup>
- In May 2022, Sandy Bay First Nation (MB) announced 13 potential unmarked burial at the former Sandy Bay Indian Residential School.<sup>19</sup>

- In June 2022, Sagkeeng First Nation (MB) announced it had located 190 anomalies across two sites near the former Fort Alexander Indian Residential School. The investigation team has not confirmed if these are potential unmarked burials. However, they have ruled out other potential causes for the anomalies.<sup>20</sup>

2023:

- In January 2023, Star Blanket Cree Nation (SK) announced the preliminary findings of 2,000 anomalies on, and near, the site of the former Qu'Appelle Indian Residential School. The investigation's preliminary findings included recovering the partial remains of a child between the age of four and six.<sup>21</sup>
- In January 2023, the Wauzhushk Onigum Nation (ON) announced the findings of 171 anomalies that are consistent with possible unmarked burials on the grounds of the former St. Mary's Indian Residential School. Except for five grave markers found on the site, other potential burials are unmarked.<sup>22</sup>
- In February 2023, the Tseshaht First Nation (BC) publicly confirmed that the ?uu?atumin yaqckwiimitqin (Doing it for our Ancestors) team had located 17 suspected burials of children who were never returned home from the Alberni Indian Residential School.<sup>23</sup>
- In March 2023, ground penetrating radar datasets from the Saddle Lake Cree Nation's Acimowin Opaspiw Society (AB) confirmed as many as 179 unmarked burials at Sacred Heart Cemetery near one of the former sites of the Blue Quills Indian Residential School.<sup>24</sup>
- In April 2023, the shíshálh Nation (BC) released a video detailing the results of their ground search of the former St. Augustine Indian Residential School, which located 40 potential unmarked shallow graves of children.<sup>25</sup>



# interlocutor noun

(in-ter-loc-u-tor)

*Definition: one who takes part in dialogue or conversation.*

*Etymology: The word interlocutor traces back to the Latin word Interloqui, meaning “to speak between”.*

*- Merriam-Webster Dictionary*

The role of the Independent Special Interlocutor is to take part in conversations with Survivors, Indigenous families, and communities who are leading the Sacred work of recovering the missing children and unmarked burials. It involves speaking directly with those leading search and recovery work and with governments, churches and other individuals and organizations to help identify and remove existing barriers. Listening, hearing, and considering all input provided is required to inform recommendations about how to support Survivors, Indigenous families, and communities moving forward.



## Ground Penetrating Radar Terminology

Many Survivors, Indigenous families, and communities leading search and recovery efforts are using different remote sensing technologies to search for and recovery unmarked burials. There is a particular interest in ground penetrating radar (GPR), and it is important to understand the various terminology associated with GPR, particularly in the context of public confirmations of findings.

**Ground Penetrating Radar:** GPR is a technology that sends microwaves into the ground, which is reflected to the GPR box that maps any objects or disturbances within the ground. The results of GPR are often referred to using several terms, including:

**Anomalies:** Anomalies are areas of disturbed ground that look different from the surrounding ground as seen with GPR. This is used as a term to describe areas of interest where burials may be present.

**Reflections:** Reflections are hyperbolic (also known as 'U' shaped) echoes/images that are the result of the radar wave hitting an area of ground that is different from the surrounding area.

**Hits:** Reflections/Anomalies that have been identified as areas of importance when searching for missing children and unmarked burials.

**Targets:** Reflections/Anomalies that have been identified as areas of importance when searching for missing children and unmarked burials.

Prior to GPR searching, Survivors' truths form the most important information to determine and narrow down search areas.<sup>26</sup> Dr. Sarah Beaulieu notes that there is ample oral history and documentary evidence to support the existence of unmarked burials of missing children at former Indian Residential School sites. She emphasizes that where anomalies, reflections, hits, and targets are located, these results link Survivors' truths to specific areas within a site.<sup>27</sup>



Micaela Champagne, Cree-Métis GPR IRS Data Analyst, University of Saskatchewan, operating a GPR machine

## Why is there a need for an Independent Special Interlocutor in Canada? (cont'd)

Ongoing announcements of burials continue to send shock waves across the country. Canada has been forced to now confront the full horrors of what happened to Indigenous children who died while in the care of the Canadian State and churches. National and international attention has been brought to the atrocities, moral wrongs and human rights abuses that were perpetrated against Indigenous children, their families, and communities and which confirm the genocidal policies that Canada implemented to eradicate Indigenous Peoples and to steal their lands.

The confirmation of unmarked burials has ignited a powerful response from the Canadian public. While a small minority of people still deny that the Indian Residential Schools System and those that operated it created conditions and perpetrated violence against Indigenous children that led to their deaths, the majority of Canadians may now be asking themselves the following questions:

- What if this were my child?
- Why would “schools” have and need cemeteries on their grounds?<sup>28</sup>
- Why were parents not notified of their child’s death or the location of their burial?
- Why were the bodies of the children not sent home to their families and communities after they died?
- How can families and communities heal, find justice, and uphold their responsibilities to honour the children without knowing what happened to them and where they may be buried?
- What does the truth about Canada’s genocidal actions mean for Canadian society and Canada’s relationship with Indigenous Peoples?



Métis Survivor Jacquie Bouvier and Inuk Survivor Lillian Elias speaking on the Survivors' Panel at the National Gathering in Edmonton



Survivors have shared their truths for decades about the unmarked burials of children who died while being forced to attend Indian Residential Schools, but for far too long these truths have been dismissed or ignored. Within Indigenous communities, these truths are well-known; they have been shared over the years in whispers and hushes, in tears, and in ceremonies. Many Survivors, families, and communities have been searching for these children and trying to locate their burial sites for many years. In the 1960s and 70s, Alfred Kirkness, a Survivor of the Brandon Indian Residential School, worked tirelessly to identify the location of the original cemetery containing the unmarked burials of missing children. In 1986, Survivor Albert Lightning and others began searching for the cemetery located at the Red Deer Industrial School in Alberta. In 1992, Albert Lafferty, a Métis resident of Fort Providence, began research on the Fort Providence Indian Residential School cemetery in the Northwest Territories.<sup>29</sup>

These and other early efforts to find and protect the burials of the children received little or no support from Canada or the church entities that operated these institutions.<sup>30</sup> Some local media brought attention to the concerns related to individual sites, yet regional and national media were, for the most part, absent. Government and church officials were silent. Why was this?

- Was it because they refused to confront the ugly truths about what really happened at these “schools” which are now, more appropriately, recognized as “institutions of genocide”?<sup>31</sup>
- Was it simply apathy or callous indifference to the grief and suffering of those seeking answers?
- Was it because they held little value for Indigenous children when they were alive and felt that they mattered even less after they died?
- Was it because Canada and the church entities, as defendants in several criminal and civil court cases filed by Survivors, were reluctant to reveal any information related to the institutions to limit their liability?
- Was it because Canada sought to avoid charges of genocide and other breaches of international law and protect its global reputation as a just and peaceful society?

Canada’s legal framework created a culture of impunity. The TRC found that “Canada’s laws...fostered an atmosphere of secrecy and concealment...and the law...became a shield behind which churches, governments, and individuals could hide to avoid the consequences of horrific truths.”<sup>32</sup>

In the 1980s and 1990s, a growing number of Survivors began speaking out about the abuses they suffered as children at Indian Residential Schools. They wanted individual perpetrators, Canada, and the churches, to be held accountable for their actions. In 1990, on CBC national television, then Grand Chief of the Assembly of Manitoba Chiefs, Phil Fontaine, revealed the abuse he and other students had endured at the Fort Alexander Indian Residential School.<sup>33</sup> This public revelation led to other Survivors sharing their truths about the mistreatment, abuse and neglect they suffered while in the care of the State and churches.

Survivors continue to be at the forefront of holding Canada to account for these harms. The 2006 Indian Residential Schools Settlement Agreement and the more recent Indian Residential Schools Day Scholars Settlement Agreement in 2021 are evidence of their resistance, resilience, and success.<sup>34</sup>

The truth-finding processes currently underway to locate, investigate, recover, and protect the missing children and unmarked burials demonstrate that the struggle for truth, accountability and justice is far from over. It has already been eight years since the TRC provided clear direction on what is needed to support Survivors, Indigenous families, and communities in finding the missing children and unmarked burials. The Minister of Justice and Attorney General of Canada engaged with Indigenous leaders across the country, who emphasized that this work must be led by Indigenous people. The Independent Special Interlocutor was appointed to support the Indigenous-led processes that are continuing the unfinished work of the TRC.<sup>35</sup>



Inuk Elder Levinia Brown, and Andrew Carrier, Manitoba Métis Federation, presenting on Survivors' Panel at the National Gathering in Winnipeg

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

In June 2022, I was appointed as the Independent Special Interlocutor for a two-year term by the Minister of Justice and Attorney General of Canada, David Lametti. The Mandate states that I am to function independently and impartially, in a non-partisan and transparent manner as I work to achieve the stated objectives, which includes:

- Engaging with Survivors, First Nations, Inuit and Métis governments, Indigenous organizations, Indigenous communities and families to gather information and input about barriers and concerns relating to the identification, protection, and commemoration of unmarked graves and burial sites, including the exhumation and repatriation of remains, where desired.
- Providing information and liaising with relevant governments and organizations to assist Survivors, Indigenous families and communities to address barriers and navigate federal, provincial, territorial and municipal systems to support their search and recovery of the missing children; and assisting communities to obtain and preserve relevant information and records from Canada, the provinces and territories and any other institutions, such as church entities, universities and other record holders.
- Researching promising practices, gaps and barriers in the legal framework to identify recommendations to improve legal protections under Canadian law and create a new federal legal framework to

The Indian Residential Schools Settlement Agreement (IRSSA) was negotiated as a result of one of the largest class action lawsuits in Canadian history, brought by Survivors of the Indian Residential Schools that operated in Canada. The IRSSA came into effect in September 2007. The court supervised IRSSA also included a Common Experience Payment (CEP) to provide monetary compensation to individual Survivors based on verified attendance in a recognized Institution; an Independent Assessment Process for those that were physically and sexually abused, a health support program, the establishment of a Truth and Reconciliation Commission, and a commemoration program.

Under the IRSSA, the Government of Canada 'recognized' 140 former Indian Residential Schools. Article 12 of the IRSSA established a process for individuals or organizations to request that an 'unrecognized' institution be added to the list of 'recognized' institutions under the IRSSA. Five additional Institutions were recognized as a result of the Supreme Court of Newfoundland and Labrador's approval of the Anderson Settlement in 2016.<sup>36</sup> There are a number of other institutions that Indigenous children were forced to attend where they experienced mistreatment and abuse that have not been recognized under the IRSSA. As of 2019, the federal government reported that a total of 9,471 people had asked for 1,531 distinct institutions be added to the IRSSA. Of these, only seven institutions met the government's criteria for 'recognition.'<sup>37</sup>

protect unmarked burial sites and support the recovery of the missing children. The new legal framework will be governed by Indigenous laws, the *United Nations Declaration on the Rights of Indigenous Peoples*, the federal *UN Declaration Act* and informed by other relevant international legal instruments that may apply.

As the Independent Special Interlocutor, I interpret the Mandate broadly. The term “missing children” includes any child who was never returned home from a government or church run institution. This includes Indian Residential Schools, Federal Hostels, recognized or not recognized under the Indian Residential School Settlement Agreement (IRSSA), and other associated institutions, such as hospitals (including psychiatric hospitals and sanatoria), Indian hospitals, reformatories, and industrial schools. For clarity, the missing children also includes children who are buried in a registered cemetery, but their families were never notified of the location of their burial.

In accordance with the Mandate, a Progress Update Report was delivered in November 2022 simultaneously to the federal government and Indigenous leadership. This Interim Report describes the work and progress made in the first year of the Mandate. The Final Report will be delivered in June 2024.



Participants at the National Gathering in Toronto



## Guiding Principles

The work of the Independent Special Interlocutor is guided by the following principles:

- The bodies and Spirits of missing Indigenous children must be treated with honour, respect, and dignity.
- Survivors must be honoured and acknowledged for raising public awareness about the truths of unmarked burials of children who died at Indian Residential Schools.
- Indigenous families and communities have the right to know what happened to their children who died while in the care of the State and churches.
- Searches and investigations must follow the truth. This requires tracing the movement of each child, using records and Survivor testimonies, from when a child was first taken to an Indian Residential School through to any other institution or location they were sent.
- The search for unmarked burials and the recovery of missing Indigenous children must be governed by Indigenous laws, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the *United Nations Convention on the Rights of the Child*.



The Empty Chair is present at every National Gathering. Through ceremonies, the Spirits of the missing children are invited to witness all that is being done to bring them home. At the past four National Gatherings, participants have gifted Sacred items to the Chair.

## Part 2: Building on the Work of the TRC Final Report

Over the course of the TRC's work, Survivors repeatedly told the Commissioners that there are missing children in unmarked burials at the former Indian Residential School sites and at other locations where children were taken. Survivors are the living witnesses to what happened at Indian Residential Schools across the country. While unfettered access to documents held by governments, churches, and police is essential, Indigenous people's accounts are key to truth finding and the reparations process. In the TRC's view,

Of course, previously inaccessible archival documents are critically important to correcting the historical record, but we have given equal weight and greater voice to Indigenous oral-based history, legal traditions, and memory practices in our work and in this final report since these sources represent previously unheard and unrecorded versions of history, knowledge, and wisdom. This has significantly informed our thinking about why repairing and revitalizing individual, family, and community memory are so vital to the truth and reconciliation process.<sup>38</sup>

Survivors' lived experiences at these institutions—their painful memories of missing children, deaths and burials and their vast knowledge of the institutional buildings and grounds—is irreplaceable evidence that guides the whole process of searching for the truth about what happened to missing Indigenous children, locating, and protecting their burial sites, and honouring and commemorating their lives. Survivors' truths are essential to identifying search areas at Indian Residential School and associated sites. As Survivors age and pass away, there is an urgency to gathering their truths before it is too late.

The TRC Commissioners believed that Survivors, Indigenous families, and communities deserved answers to what happened to their children. When asked, the federal government refused to provide additional funding to support the TRC in conducting a thorough investigation into the missing children and unmarked burials.<sup>39</sup> The Commission's work was also "hampered by limited and late access to relevant documents from the government and churches, due to problems with document production."<sup>40</sup>

Despite not receiving additional funding, the TRC published Volume 4 of the TRC Final Report: Missing Children and Unmarked Burials. This was the first attempt at a systematic nation-wide investigation into why and under what circumstances thousands of Indigenous children died in Indian Residential Schools. The Commission relied on archival records and evidence gathered from Survivors' public and private statements about the missing children and unmarked burials at its National, Regional and community hearings.

Even though it experienced several barriers, the Commission was able to gather information relating to the deaths of children from the historical records it had received and from Survivor truths. The TRC found that policy and regulatory gaps, lack of oversight and care, and inadequate funding



From left to right: Mohawk Survivor Doug George-Kanentiio, Inuk Survivor Piita Irniq, and Métis Survivor Louis Gardiner on the Survivors' Panel at the National Gathering in Toronto

resulted in an unnecessarily high death rate at Indian Residential Schools. The deaths of 3,200 children were documented; 2,040 on the TRC's Register of Confirmed Deaths of Named Students and 1,161 on the Register of Confirmed Deaths of Unnamed Students. The TRC anticipated that with further research, the death toll would be much higher. The Commission also recorded and analyzed the presence and condition of cemeteries located on former Indian Residential School sites.

The TRC's work revealed a high probability that there are unmarked burials associated with every Indian Residential School site across the country. It also found that:

- Children were often sent to and died at other institutions, such as sanatoria, Indian hospitals, reformatories, and industrial schools;
- The policies and laws to protect children at Indian Residential Schools were either not in place, slow to be implemented, and rarely enforced;
- Parents were often not informed about the transfer of their child from an Indian Residential School to other institutions, of the death of their child while in the care of the State, or where their child is buried;
- There were many different causes of death of children who were forced to attend these institutions including diseases, neglect, mistreatment, and criminal acts; and
- There was a need for further work to locate, protect and commemorate the unmarked burial sites of the missing children and to find a way to identify those children once they are recovered.

In Volume 4, the TRC made clear that there were significant limitations to its research and issued Calls to Action 71-76 to support further work. These Calls to Action provide a foundation for the searches and investigations now being done by communities and for what I must complete during the Mandate as the Independent Special Interlocutor.

## TRC Calls to Action 71-76

- 71.** We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.
- 72.** We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.
- 73.** We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.
- 74.** We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.
- 75.** We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of appropriate memorial ceremonies and commemorative markers to honour the deceased children.
- 76.** We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:
  - i.** The Aboriginal community most affected shall lead the development of such strategies.
  - ii.** Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.
  - iii.** Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.



Over the past year, discussions with Survivors, Indigenous families, and communities leading search and recovery work have made it clear that it is necessary to trace the movement of each missing child, from when they were first taken to an Indian Residential School through to any other institution or location where they were subsequently sent. Only by following the forced transfer of each child from Indian Residential Schools to other associated institutions can the full truth about their experiences, the conditions leading to their deaths and the location of their burial sites be determined.

The TRC's preliminary research was able to confirm that while some children died in Indian Residential School infirmaries, many were sent to and died in segregated Indian Hospitals or at hospitals operated by other governments or entities for the general public. Others were sent to and died in segregated sanatoria, some operated by Indian Affairs and others by provincial governments.<sup>41</sup> Children who were already suffering trauma from the abuses they had endured at Indian Residential Schools were also sent to psychiatric institutions, reformatories, and industrial schools, where many also died.

As those leading search and recovery efforts review archival records and gather Survivor truths that may contain information about the missing children, they are finding evidence that many children were taken or transferred to these other institutions, often without notice to or consent from their parents and families. The names of Indigenous children who are buried at these other sites can sometimes be found in archival records, along with other important information about them. There is a need to expand the scope of research beyond Indian Residential School sites that are recognized under the IRSSA to support search and recovery work.

Current investigations are also beginning to reveal how the systems and patterns of colonial violence that existed in the Indian Residential School system extended to these associated institutions. One emerging pattern is that Indigenous children were transferred, often multiple times, to other institutions that were controlled by the same church entities that operated the Indian Residential Schools.

Understanding the full scope of the forced transfer of children from one institution to the next and the conditions that led to their deaths will require significant time, funding, research, and long-term commitment to finding the truth. Identifying all the potential sites where unmarked burials may exist will take many decades for those leading this Sacred work.



## Unmarked Burials at Other Institutions: The Lakeshore Psychiatric Hospital

The Lakeshore Psychiatric Hospital in the Province of Ontario operated from 1889 to 1979. During its existence, it was known under several different names including the Mimico Asylum (1889), Mimico Insane Asylum (1894), Mimico Hospital for the Insane (1911), Ontario Hospital (1920), and Ontario Hospital New Toronto (1934). The hospital lands are now occupied by Humber College.

The hospital was overcrowded<sup>42</sup> and many patients died from tuberculosis, which was strongly associated with institutional detention.<sup>43</sup> The hospital was known to perform electroshock therapy, insulin shock therapy and lobotomies on patients.<sup>44</sup> Many patients were required to build some of the hospital buildings and did not receive payment for their labour. Patients also assisted in making coffins and burying other patients at the asylum cemetery. The treatment of the patients at the Lakeshore Psychiatric Hospital was cruel, including forced labour, and violent restraint methods. This type of treatment, unfortunately, was not unusual for psychiatric hospitals during this time.

There are 1,511 patients buried in a cemetery approximately two to three kilometers north of the former hospital site. Although Ministers and Priests performed burial ceremonies for many patients, most of the graves were and continue to be unmarked.



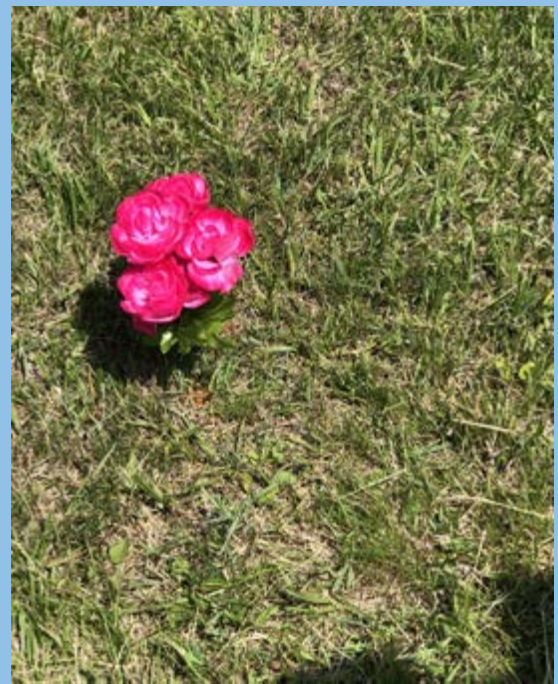
Lakeshore Psychiatric Hospital, 1979. Toronto Public Library Digital Archive



Lakeshore Psychiatric Cemetery, Wikimedia Commons / Reverend Edward Brain, D.D.

In 2004, Mr. Ed Janiszkeski came across some burial records relating to the Lakeshore Psychiatric Hospital. He has been working to investigate and restore the cemetery and identify the unmarked graves for the last 15 years.<sup>45</sup> After decades of advocacy by Mr. Janiszkeski and other volunteers, in 2012, the government of Ontario finally memorialized the cemetery by installing a commemorative plaque. The Government also committed to determining the location of each burial and establishing a process to install headstones.<sup>46</sup>

Several Indigenous people are buried in unmarked graves in this cemetery. A current list of names of those buried at the cemetery, includes a boy who is only listed as "Indian Boy." Further investigation is needed to determine how many of the unmarked graves are of Indigenous children and which communities they were taken from.



Flowers placed on the grave of a boy only identified as "Indian Boy" at the Lakeshore Psychiatric Cemetery

# Three Sisters: The Osborne Family's Search for Truth

During the 1920s and 1930s, three sisters from Pimicikamak (Cross Lake) Cree Nation – Nora, Isobel, and Betsey Osborne – were taken away from their community, one by one. Their family never saw them again.

The sisters' parents, Sarah Jane and Solomon Osborne eventually came to understand that all three girls had died. But they did not know how, or where. They did not know which Indian Residential School or Schools the girls had been taken to. They did not know who to ask about where any records of their lives or deaths might be located.

Sarah Jane and Solomon carried the weight of their daughters' absences for the rest of their lives, but they never gave up trying to find them. Before her own death, Sarah Jane asked her granddaughter, Betsy Oniske, to keep looking. The girls' younger brother, Charlie Osborne, asked the same of his sons, Jackson and William. As time passed, the search for three daughters – for three sisters – became a search for the three Aunties whom Betsy, Jackson and William had never met.

The family's search is a story of determination and love that spans multiple generations. It is also one of many similar accounts of the gaps and barriers that families searching for their missing children are encountering. These challenges are legal, logistic, and financial. They are linguistic, cultural, and geographic. They are unique to each child's circumstances, but they are also symptomatic of a broader pattern of colonial violence, racism and injustice embedded in the Indian Residential School system and associated institutions where Indigenous children were sent.

The Osborne family have chosen to make their journey public, so that others can learn more about the barriers that continue to separate families from their relatives who died while attending Indian Residential Schools.

## Finding the Records

The details of the lives – and deaths – of Indigenous children who were in the care of the State or churches who ran Indian Residential Schools, if they were recorded at all, can be found in the records of different federal, provincial, municipal, church, hospital, and private institutions. Information may be held in:

- Federal Department of Indian Affairs' Vital Statistics records for Status Indians;
- Federal Department of Health Records, including Family Allowance, Hospital and Rehabilitation records;
- Treaty Annuity Paylists;
- Band Registers;
- Indian Residential School records;
- Census records;
- Provincial vital statistics agencies;
- Church records;
- Hospital records, including federal, provincial and municipal;
- Tuberculosis sanatoria records, including records from provincial tuberculosis registries and provincial tuberculosis sanatoria oversight bodies and associations;
- Police records;
- Reformatory or youth detention records and prisons;
- Residential facilities for children with disabilities;
- Local municipal cemetery registers;
- Funeral homes;
- Records of transportation providers, such as railways or airlines; and
- Many other types of records.

In the case of the Osborne family sisters, the records that finally led to where they were buried had to be traced through a maze of various archives and record systems.

### ***When and where the sisters died***

Although the federal government has routinely documented many aspects of Indigenous people's lives since before Confederation, in many cases significant life events like births and deaths were often poorly recorded and sometimes recorded inaccurately. Names were changed or may be misspelled. Archival records are hard to locate. The Osborne family had access to the Cross Lake Cree Nation Band records that provided dates for when each of the sisters died, as well as approximate dates of birth for two of the three girls. These records, together with additional information from provincial census and church records, enabled the family to estimate the range of dates when Nora, the oldest, Isobel, the middle daughter, and Betsey, the youngest, would have been born. Using this information, the family found death records matching the girls' names on Manitoba's Vital Statistics Agency's online records database. This database listed places of death for all three sisters: Cross Lake and the nearby community of Norway House for Betsey and Nora; Selkirk, a municipality in southern Manitoba, for Isobel.

The family applied for access to more detailed provincial vital statistics records, including long form death registrations,<sup>47</sup> that could confirm the sisters' identities, and potentially indicate where they were buried. During the months-long wait for their application to be processed, the family kept looking for other reliable information.

### ***Where the sisters were sent***

The Osborne family did not know exactly when the sisters had been removed from their home by government, church, or police officials, or which Indian Residential School(s) they were forcibly transferred to. They did not know if the girls had died while at an Indian Residential School, or if they had been transferred to one of the Indian hospitals or to other institutions.

To find out which institutions the girls were transferred to, the family first looked through the online records kept by the National Centre for Truth and Reconciliation. Although they were able to find out where Betsey had been taken, the records in the NCTR's database did not go back far enough to tell them anything about Nora or Isobel and did not contain admission and discharge records. Next, the family searched through the publicly available files that the federal government kept for the two Indian Residential Schools closest to Pimicikamak where the sisters were most likely sent. This research required many hours and a strong internet connection, which was not available in Pimicikamak.



Elder William Osborne describing his family's search for three Aunties who were never returned home at the National Gathering in Winnipeg

The family also requested records from three different religious organizations: the Roman Catholic Church, which ran St. Joseph's Indian Residential School, the United Church, which ran Norway House Indian Residential School, and the Anglican Church, which operated the Dynevor Indian Hospital near Selkirk. Eventually, the Osborne family located Indian Residential School records for Nora and Betsey. These records, however, ended when the girls were transferred to hospitals. No Indian Residential School record for Isobel was found.

## **Finding the Sisters**

### *Betsey*

Indian Residential School records showed that Betsy was a healthy eight-year-old when she was taken to St. Joseph's Indian Residential School in Cross Lake in 1939. Six years later, she was sent to an unnamed sanatorium. As there was no sanatorium near Cross Lake when Betsey was discharged from St. Joseph's Indian Residential School, this raised the possibility that she had been sent away and did not die near Cross Lake at Norway House as listed on the Manitoba Vital Statistics online database. When the family finally received the detailed death record from the province, it showed that Betsey died of tuberculosis on May 5, 1946, at the Clearwater Lake Sanatorium near The Pas, Manitoba. While no location of burial was listed, the family was able to confirm through the Diocese of Keewatin-le Pas, that Betsey was buried in the Riverside Roman Catholic Cemetery in The Pas, almost 400 kilometers from where her place of death had been listed online. Church records also identified the very plot in which she was laid to rest. But Betsey's burial site was not marked with her name until 2020, when her niece, Betsy Oniske, asked the cathedral at The Pas to do so. It is worth noting that this church archive would not provide the actual records to the Osborne family but rather merely shared information they deemed relevant with the family.

### *Isobel*

The family found no Indian Residential School records for Isobel, but some records indicate that she was 22 when she died on July 20, 1948. The record of Isobel's place of death, Selkirk, proved to be key to finding her. The first place the family looked was the Dynevor Indian Hospital, which was near Selkirk. The Anglican Church Archives responded to the family's request for information. They could not find Isobel's burial at Dynevor, but widened their search and found a record of her burial in an Anglican cemetery nearby, providing a document confirming the place and date of Isobel's burial, as well as the cause of her death (pulmonary tuberculosis). This record also indicated that before she died she had been working as a "domestic" prior to being hospitalized at the Selkirk Mental Health Centre.<sup>48</sup> Isobel had not been buried at Dynevor, but in the local Anglican cemetery in a nearby municipality. Her gravesite is unmarked, and the family still does not know the precise location of where she is buried.

## Nora

Records from Norway House Indian Residential School run by the United Church, show that when Nora was 15 years old, she had been discharged from the institution and sent to an unnamed “mental hospital.” Because there was no mental health facility in the Norway House region at the time, it was unlikely that she had passed away in Norway House. This meant that, like the record of her sister Betsey’s death, the online record of Nora’s place of death was incorrect. Research indicated that there were two provincial mental health facilities in Manitoba at the time, located in Brandon and Selkirk that also had beds for tuberculosis patients. The detailed Vital Statistics death registration records that the family eventually received, confirmed that Nora had been sent to what is known today as the Selkirk Mental Health Centre, where she died, on March 23, 1946, at the age of 25. This was the same hospital as where Isobel would die two years later. Both Nora and Isobel were buried in the same cemetery.

All three sisters died of tuberculosis. None of them were buried in cemeteries connected to the family’s listed religious affiliation (United Church). Only one of their graves – Nora’s – was marked with a name. Finding the truth about the last years of the sisters’ lives and their places of burial was complicated by gaps and inaccuracies in the available records: the online place-of-death listings for Nora and Betsey were wrong, and the school record for Isobel was missing.<sup>49</sup>

The Osborne family encountered many barriers in their search for the three sisters. These included restricted access to federal and provincial records, inaccuracies and inconsistencies across records, and variable responses to requests for records by churches.

The Osborne family wants those with the power and responsibility to remove these barriers to take concrete action to do so. They are honouring the lives and memory of Nora, Isobel, and Betsey Osborne by sharing their experience with others. They have made the following recommendation:

*The creation of an independent and Indigenous-led Centre for Healing and Research that will provide culturally appropriate support to individuals and families dealing with the direct trauma, intergenerational trauma, and vicarious trauma that is connected with the missing children and with the unmarked burials of Indigenous children who were never returned home from Canada’s Indian Residential Schools System. To do this,*

- a. this centre will provide culturally appropriate health and healing support;*
- b. this centre will provide research and travel support for families seeking to find out what has happened to their family members who never returned, to travel to their graves if they can be located, and to memorialize their lives cut short;*
- c. that the support that this centre provides will be easily accessed from remote locations, will be culturally appropriate, and ideally will be available in local languages;*
- d. that this centre will provide training and work experience opportunities to new Indigenous health workers and Indigenous researchers; and*
- e. that this centre will advocate for more appropriate and timely access for impacted families and communities to key records from all levels of government.*

In 2019, more than 80 years after the three sisters had been taken away, the Osborne family found information that led them to where Nora, Isobel and Betsey are buried. They were able to make arrangements to visit the burial sites, first in 2020, then again in 2022. In 2022, the Osborne family held a service to rebury earth from the sites, in small caskets, next to the graves of the three sisters’ parents. They were finally able to bring their Aunties home.

## Part 3: Progress on Mandate Commitments

In the first year of my Mandate, I have engaged with Indigenous people, governments and churches, and international experts. I have also attempted to advance public awareness and education about the truths of the missing children and unmarked burials.



Meeting with Chief and Council in Ketegaunseebee, Garden River First Nation

### Engagement with Survivors, Indigenous Families and Communities

Throughout the Mandate, I have prioritized meeting with Survivors, Indigenous families, and communities, including travelling to meet them within their own territories and attending the sites where search and recovery efforts are ongoing, when requested by the Survivors and leadership.

In addition, I have delivered numerous presentations to Indigenous leadership, communities, and organizations, including at National and Provincial Annual General Meetings and Assemblies, and at community Gatherings focused on the search and recovery of unmarked burials and missing children. Through these presentations, information is shared about the Mandate, activities and



progress to date, and the barriers that those leading search and recovery work are facing across the country. These presentations also provide me with an opportunity to gather input from Survivors and communities on what they would like to see in a new legal framework.

Over the last year, I have also engaged in liaison activities, including assisting Survivors and Indigenous families locate records that provide information about their missing loved ones. Often, families approach me at a Gathering and request a private meeting. When meeting with the family, information is shared about what they currently know. Sometimes they only know the name of the institution that they believe their loved one was taken to. Often, they don't even know this information.

With permission from the family, a preliminary search for any records that might exist in the National Centre for Truth and Reconciliation (NCTR) database is done on the missing child. Sometimes, records are found that provide helpful information – such as the date the child was taken to an institution or transferred to another institution. In rare circumstances, the NCTR database may also hold a death certificate for the child.



Only some provinces and territories have provided the NCTR with death certificates of Indigenous children. It has also become clear that the provinces that have provided death certificates to the NCTR may not have disclosed all the relevant death records. This is apparent, because I have, more often, found a death certificate of a missing child on ancestry.com – a for-profit genealogy company. Death certificates sometimes identify the location of the burial. When they do, the next step is to research the cemetery and find where the actual burial plot is located. Unfortunately, it is all too common that the child is buried in an area of the cemetery with no individual marker, and in areas, for example, known as the “Aboriginal Cemetery”,<sup>50</sup> the “Poppy Field,”<sup>51</sup> “Babyland” or the “Children’s Section.”<sup>52</sup>

Survivor, Alsen White, holding onto a hook in the girls washroom at Blue Quills Indian Residential School. The number 39 is still visible, the institutional number assigned to her.



*It is essential for our youth to know who we are – the raw, real history. Knowing where you come from and putting context into why our families are in the situations we are in...is essential to building healthy communities... To know where we are going we must first know where we have been.*

- Stephanie Nirlungakuk, Inuk Youth,  
National Gathering in Toronto

*The stories that have been documented should be made available to us. With no hesitation, no hurdles, and no delays. We deserve to know our history, what was done to our family members, our loved ones, our people. No more...sweeping things under the rug. No more denying what our Survivors have been saying for years. No more belittling what it was. Because it was genocide.*

- Megan Metz, Haisla First Nation Youth,  
National Gathering in Vancouver



*There is a certain heaviness that comes with this work. These schools were once sites of pain and suffering. They tried to tear us apart – [tear] our families and our communities apart. They tried to break us and tell us that as Indigenous people we don't belong here. Indigenous people are strong, we are resilient and the resilience of our Survivors and our ancestors is why we are still here. We are still here; our stories, ceremonies and voices are stronger than ever.*

- Benjamin Kucher, Métis Youth,  
National Gathering in Edmonton



In the first year of the Mandate, I have hosted four National Gatherings on Unmarked Burials. The priority of these National Gatherings was to bring those leading search and recovery work together to discuss challenges and learn about promising practices that are emerging to overcome the many barriers. Input on potential legal mechanisms to protect the burials sites and to identify the missing children was also received. In addition, efforts to include the voices of youth at each Gathering were made.

The four National Gatherings held were as follows:

***National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children***, Edmonton, AB, September 12-14, 2022. Over 300 participants attended in person with over a hundred more joining the livestream. A [Summary Report](#) is available for this Gathering.

***National Gathering on Unmarked Burials: Addressing Trauma in the Search and Recovery of Missing Children***, Winnipeg (MB), November 28-23, 2022. Over 400 participants attended in person and hundreds more joined the livestream. A [Summary Report](#) is available for this Gathering.

***National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty and Community Control over Knowledge and Information***, Vancouver, BC, January 16-18, 2023. Over 400 participants attended in person with almost a thousand more joining by livestream each day. There will be a Summary Report of this Gathering posted on the [OSI website](#) once available.

***National Gathering on Unmarked Burials: Upholding Indigenous Law***, Toronto, ON, March 27-29, 2023. Over 420 participants attended in person with 2,700 joining by livestream on the second day and over 720 joining by livestream on the final day. There will be a Summary Report of this Gathering posted on the [OSI website](#) once available.

Future National Gatherings are being planned in Montreal on September 6-8, 2023, and one in the far north, the date and location yet to be determined and finalized.



Participants at the National Gathering in Vancouver



## The Independent Special Interlocutor's Call for Submissions

An open Call for Submissions was issued in January 2023. The Call invites submissions from Survivors, Indigenous families, and communities; Indigenous national, provincial, and territorial organizations; non-governmental organizations (NGOs); and other individuals, academics, professionals, organizations, and institutions with expertise on subjects relevant to the Mandate, including:

- The barriers and concerns relating to the identification, protection, and commemoration of unmarked graves and burial sites, including the exhumation and repatriation of remains, where desired.
- Assisting communities obtain and preserve relevant information and records from Canada, the provinces and territories and any other institutions, such as church entities, universities, and other record holders, with a particular emphasis on OCAP Principles.
- Promising practices, gaps, and barriers in Canadian laws to locate, protect and commemorate unmarked burials and support the identification, recovery, and repatriation, where desired, of the missing children.
- How Indigenous laws and the *United Nations Declaration on the Rights of Indigenous Peoples* can be included in a new legal framework to help identify, protect, and commemorate unmarked graves and burial sites, including the exhumation and repatriation of remains.

Submissions can be made in a variety of formats including written, photographic, audio or video. The closing date for submissions is August 31, 2023, however, best efforts will be made to consider all submissions received to inform the drafting of the Final Report. More detailed information is available on the OSI website [here](#).

## Meetings with Governments and Churches



Attorney General and Minister of Justice David Lametti at the National Gathering in Toronto

In the first year of the Mandate, I have also met with representatives from all levels of government across Canada. Early on, I requested an opportunity to present to the Federal, Provincial and Territorial Ministers responsible for Justice and Public Safety at their October 2022 meeting. To date, my request to attend a meeting of the Federal, Provincial and Territorial Ministers of Indigenous Affairs has not been granted.

Given that my Mandate “does not confer powers to compel the production of information or documents” I have, by letter dated December 9, 2022,<sup>53</sup> requested information from the federal, provincial, and territorial governments. Specifically, they have been asked to provide the following information in relation to their respective jurisdictions:

- Progress on implementing the Truth and Reconciliation Commission of Canada’s Calls to Action 71-76;
- Progress on implementing the *United Nations Declaration on the Rights of Indigenous Peoples*;
- Funding being provided for search and recovery efforts, repatriation, and commemoration, including any restrictions on funding;
- Actions taken under legislation or other means to protect the sites before, during and after searches;
- Actions taken under legislation or other means to support repatriation of missing children’s remains and repatriation of lands where unmarked burials are known to exist;
- Proactive steps, if any, taken to create a specialized process and expedite access to records relating to the search and recovery of missing children;
- Proactive work to review and locate records that may contain information relating to the location of unmarked burials and the identities of missing children;
- Number of criminal prosecutions of perpetrators of abuse of children at Indian Residential Schools as well as criminal or regulatory prosecutions relating to the desecration of burials sites and other offences relating to disrespecting Indigenous human remains; and
- Whether any regulatory body or oversight exists for organizations, institutions, research, or professions that support search teams who work with Indigenous communities to support search and recovery efforts.

# Responses Received from Federal, Provincial, and Territorial Governments

	<b>TRC Calls to Action 71-76</b>	<b>United Nations Declaration Art. 11 &amp; 12</b>	<b>Legislation</b>	<b>Access to Records</b>	<b>Information Sharing</b>
	Response requested by 20 Jan 2023	Response requested by 20 Jan 2023	Response requested by 17 Feb 2023	Response requested by 17 Mar 2023	Response requested by 21 Apr 2023
Canada	✓	✓	✓	✓	✓
Alberta	✓	✓	✓	✓	✓
British Columbia	✓	✓	✓	✓	
Manitoba	✓	✓	✓		
New Brunswick*	✓	✓	✓	✓	✓
Newfoundland and Labrador	✓	✓	✓	✓	✓
Northwest Territories	✓	✓	✓	✓	✓
Nova Scotia	✓	✓	✓	✓	✓
Nunavut	✓	✓			
Ontario	✓	✓	✓	✓	✓
Prince Edward Island*			✓	✓	
Quebec**	✓	✓	✓	✓	
Saskatchewan	✓	✓	✓	✓	✓
Yukon	✓	✓			

\*There were no Indian Residential Schools in Prince Edward Island or New Brunswick.

\*\*The French version of the letter and request for information was sent one month later to Quebec.

## Emerging Practice: The Special Advisor to Support Families of Missing and Deceased Indigenous Children in Quebec

In June 2021, the Government of Québec passed Bill 79: *An Act to authorize the communication of personal information to the families of Indigenous children who went missing or died after being admitted to an institution.*<sup>55</sup> The creation of this legislation was the result of advocacy from a coalition of families who founded the Awacak Association. The word Awacak is an Atikamekw word meaning “little beings of light.”

In June 2021, Anne Panasuk was appointed Special Advisor to Support Families of Missing and Deceased Indigenous Children in Québec. Prior to being appointed as Special Advisor, Panasuk had carried out investigations as a journalist with Innu families of Pakuashipi and the Atikamekw families whose children died or disappeared after being hospitalized. During those investigations, she had regularly been denied information from the government that frustrated the families’ searches for their missing children. Before agreeing to take this position, Panasuk sought the approval of Elders.

Special Advisor Panasuk says that the Act provides “the necessary tools for families to get concrete answers about children who remain unaccounted for after they entered state or religious institutions.”<sup>56</sup> The Act provides her with the powers to share information with Indigenous families about children who went missing between the 1950s and 1990s<sup>57</sup> after being taken to receive health or social services. Families can make requests<sup>58</sup> to access hospital records, sanatoria records, foster records, child and youth records, cemetery and church records and other relevant records.<sup>59</sup>

*It is very difficult to explain the feeling one has when a brother or a sister has disappeared and to watch our parents suffer from the loss. Only people who are going through the same thing can really understand these disappearances, this grief, this frustration, this anger.<sup>54</sup>*

Françoise Ruperthouse,  
Awacak spokesperson



As the Special Advisor, Anne Panasuk is responsible for:

- Establishing and coordinating the Monitoring Committee provided for in section 21 of the Act;
- Maintaining relations between Indigenous families and the Québec government for the purpose of the Act and its application;
- Honouring the mandate to inform Indigenous families of the measures in place to support them in their search for information, including the procedures to be followed under the Act;
- Providing support and advice in the application of the various provisions of the Act, including those related to the disclosure of personal information, the exercise of investigative powers, and support for disinterment; and
- Contributing to the preparation, dissemination and presentation of the annual report provided for in section 22 of the Act.

The Act establishes a Monitoring Committee (s. 21); provides for a complaints process if records are not being released by an institution (s. 19); includes powers of investigation (s. 13); creates provisions for government support for families in



Special Advisor Anne Panasuk at the National Gathering in Vancouver

applying for a court order to disinter the remains of their loved one (s. 18); and requires the Minister responsible for Indigenous Affairs to provide an annual report on implementation of the Act (s. 22). To date, two Annual Reports have been issued for 2021-22 and 2022-23 that contain recommendations from the Monitoring Committee.

The 2022-2023 Annual Report, presented in Manawan on April 21, 2023, indicated that families are searching for more than 130 missing Indigenous children. According to the report, most families requesting assistance from the government come from Innu and Atikamekw communities, though requests have also been received from Anishinaabe, Naskapi, and Inuit families. While the Act is in place for a 10-year period, the Awacak Association is asking for sustained and adequate funding for the Monitoring Committee to continue its work past 2023. Anne Panasuk's tenure as the Special Advisor ends in June 2023, at which time Pierre-Paul Niquay will assume the role.<sup>60</sup>



## Emerging Practice: BC Provincial Liaison

At each of the National Gatherings, Survivors, Indigenous families, and communities emphasized that they, and not governments, are best placed to lead the search and recovery of the missing children and unmarked burials. Those leading searches know how to work most effectively in their own communities and how this work should be done. Participants also spoke about the need for Indigenous communities to work together to share information, promising practices, and resources.

As the TRC and Indigenous communities have noted, what is needed is sufficient and stable funding. One participant at the Edmonton National Gathering emphasized:

*We have resources to get us through to March. And the objective is to try to get the long-term funding that we require to get us through the next five years... I would like to suggest an approach for funding and supports that is not bound by the bureaucratic process that restricts us [to a fiscal year], when we have significant work that must be done.*

Several provinces and territories have provided funding to support search and recovery work that supplements federal funding. In British Columbia, a regional model for First Nations in the Province to share knowledge, expertise, information, and resources is emerging. In July 2021, the Province of BC announced supports for Survivors, Indigenous families, and communities leading the search and recovery of missing children at the 18 former Indian Residential Schools and three Indian Hospitals in British Columbia. The [BC Residential School Response Fund](#) provided Indigenous communities with up to \$475,000 in funding to support First Nations-led strategies to investigate, identify, document, maintain, commemorate and protect Indian Residential School or Indian Hospital cemeteries or other sites at which Indian Residential School children are buried.

Funding was made available for:

- Mental health and wellness and clinical supports
- Traditional wellness and cultural supports
- Archival research
- Engagement with Elders, Knowledge Keepers, Survivors, intergenerational Survivors and families
- Engagement with First Nations, local governments and landowners
- Procurement of technical expertise
- Communication supports
- Training and capacity development
- Planning and project management supports
- Policy development

As part of its response, the Honourable Murray Rankin, BC Minister of Indigenous Relations and Reconciliation, also appointed Survivor Charlene Belleau as the BC First Nation Liaison. Charlene Belleau is a Survivor of the St Joseph's Mission Residential School, former Chief of Esk'etemc First Nation and former chair of the First Nations Health Council. She is also part of the St. Joseph's Mission Residential School investigative team supporting the search for missing children and unmarked burials.

The intent of the First Nations Liaison position is to build and maintain a network of relationships amongst communities in BC. This is to ensure that communities have the tools and resources required to move ahead with site research and searches and to support each other in the process. The mandate of the First Nations Liaison includes:

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

Since 2021, the Province of BC, with the support of the First Nations Liaison, has supported four in-person provincial gatherings:

- October 2021 – Tk'emlúps te Secwépemc
- May 2022 – Stó:lō Nation Chiefs Council
- November 2022 – Squamish Nation
- May 2023 – Tseshaht First Nation



Charlene Belleau, BC Provincial Liaison

The provincial gatherings bring together Survivors, Indigenous leaders, and project leads from each of the communities planning or conducting searches on or near Indian Residential Schools and Indian Hospitals in BC.

The agenda for the provincial gatherings is based on feedback from communities leading searches and often reflects common challenges or priorities, including issues related to archival research, oral truth-telling, ground searches, federal and provincial funding, commemoration, and the recovery, identification, and repatriation of remains. The provincial gatherings create a safe, supportive, and collaborative space for communities leading searches to share promising practices and to explore common challenges and possible solutions.

## Meetings with Governments and Churches (cont'd)



On March 21, 2023, I had the opportunity to [appear in person before the Standing Senate Committee on Indigenous Peoples](#) to report on the work I have been doing in my role as the Independent Special Interlocutor. I took this opportunity to highlight the common concerns that have been raised by Survivors, Indigenous families, and communities leading search and recovery efforts including the barriers they face to access records and sites. I also emphasized my ongoing concerns relating to Canada's Technical Arrangement with the International Commission on Missing Persons, which was entered into without Survivor or Indigenous community consultation and was shrouded in secrecy.

I have also taken the opportunity to meet with church representatives from various religious denominations to discuss access to records and the ways that churches are supporting search and recovery work. I have met with the Moderator of the United Church of Canada, the Canadian Conference of Catholic Bishops and attended an All Parties meeting of the signatories to the Indian Residential School Settlement Agreement. Just as I requested information from the federal, provincial, and territorial governments, I also submitted a request for information to the various church entities in May, 2023. The suggested dates for responses are as follows:

- **July 14, 2023** – Progress on TRC Calls to Action 73-76 and Article 11 & 12 of the *UN Declaration on the Rights of Indigenous Peoples*;
- **August 18, 2023** – Access to Records Policies and Processes; and
- **September 15, 2023** – Information relating to supporting search and recovery efforts, investigations into abusers and emerging practices.

## Submissions to International Experts and Bodies

When the Tk'emlúps te Secwépemc announcement was made regarding the 215 potential unmarked burials, there were calls for international oversight and monitoring. My Mandate specifically directs me to apply international instruments, including the *United Nations Declaration on the Rights of Indigenous Peoples*. As such, I felt it was important to make two formal submissions to the United Nations during the first year of the Mandate.

### Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples

In January 2023, a [Submission](#) to the United Nations Special Rapporteur on the Rights of Indigenous Peoples (UN Special Rapporteur) was made in response to his Call for Inputs. Following this submission, I was granted an opportunity to meet directly, and in person, with the UN Special Rapporteur, Mr. Francisco Calí Tzay on March 2, 2023, in Montreal, Quebec, for one hour during his ten-day visit to Canada.

Jerry Peltier, member of Kanehsatake and Survivor of the Spanish Indian Residential School, and Doug George-Kanentiio, Chairperson of the Akwesasronon Shonataaten:ron and Survivor of the Mohawk Institute, were also in attendance at the meeting. They made the following recommendations to the UN Special Rapporteur:

- the need for full reparations for reconciliation, including just compensation for Survivors;
- full consultation and approval by the Survivors and Indigenous Nations of any and all national action;
- increased funding for the investigation into unmarked burial sites, the identification of the human remains, and the repatriation of the children to their respective home communities;
- full access to all records involving Indian Residential Schools from governmental agencies and the churches, which administered the Institutions, as well as other record holders;
- a commitment to justice: to hold those individuals and organizations responsible for the mistreatment and abuse of the children who attended Indian Residential Schools and for those who were never returned home;
- support to ensure that search and recovery efforts include all sites where children were taken to from Indian Residential Schools, including hospitals (including Indian hospitals and psychiatric institutions), reformatories, industrial schools, convents, homes for unwed mothers, foster homes and orphanages;
- support for Indigenous revitalization efforts including restoring relationships with territories and cultural and linguistic restoration efforts; and
- the explicit and unambiguous revocation of the Doctrine of Discovery.



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From left to right: Jerry Peltier, Survivor of Spanish Indian Residential School; Mr. Francisco Calí Tzay, UN Special Rapporteur; Kimberly Murray, Independent Special Interlocutor; and Doug George-Kanentio, Survivor of the Mohawk Institute

On March 10, 2023, at the conclusion of his Canada Visit, Mr. Francisco Calí Tzay issued an [End of Mission Statement](#). In this Statement, the UN Special Rapporteur noted the following about the search and recovery of unmarked burials and missing children:

- All institutions holding records, including the Catholic church, healthcare facilities and provincial governments are encouraged to disclose this documentation;
- Federal and provincial governments are encouraged to take legislative and other measures to make it easier for Survivors and the families of missing children to access information;
- Adequate financial support should be provided by Canada to cover the costs of forensic investigation, exhumation, and/or commemoration;
- A Survivor-centered, Indigenous-led investigation is necessary that respects Indigenous Peoples' laws and protocols relating to grieving, death and burial practices;
- A significant need exists for funding for culturally relevant Indigenous health and well-being supports to address trauma; and
- A significant need exists to remove obstacles to accessing burial sites, particularly when they are located on private lands.

Mr. Calí Tzay issued the following recommendations to the Government of Canada that relate to the search and recovery of the missing children and unmarked burials:

- Counter misinformation and denialism about Indian Residential Schools with education and awareness-raising;
- Work in cooperation with Indigenous Peoples to urgently act to preserve the Independent Assessment Process records, which are set for destruction in 2027 by a Supreme Court of Canada order, as these may contain information about the location of unmarked burials;
- Favourably settle the claims of Métis Survivors and their families; and
- Reopen the claims process for those excluded from the initial settlement, in recognition that some Survivors who suffered severe trauma were not emotionally prepared to present claims by the government's deadline.

## Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples

In March 2023, a [Submission](#) to the United Nations Expert Mechanism on the Rights of Indigenous Peoples (UN Expert Mechanism) was made in response to the UN Expert Mechanism's Call for Inputs in relation to their report on "Establishing Monitoring Mechanisms at the National and Regional Levels for Implementation of the UN Declaration on the Rights of Indigenous Peoples."

This submission highlighted the ways in which Canada's current legal framework fails to align with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) in the search and recovery of unmarked burials and missing children. In particular, this submission noted the lack of alignment of Canada's laws with the Articles of the UN Declaration relating to:

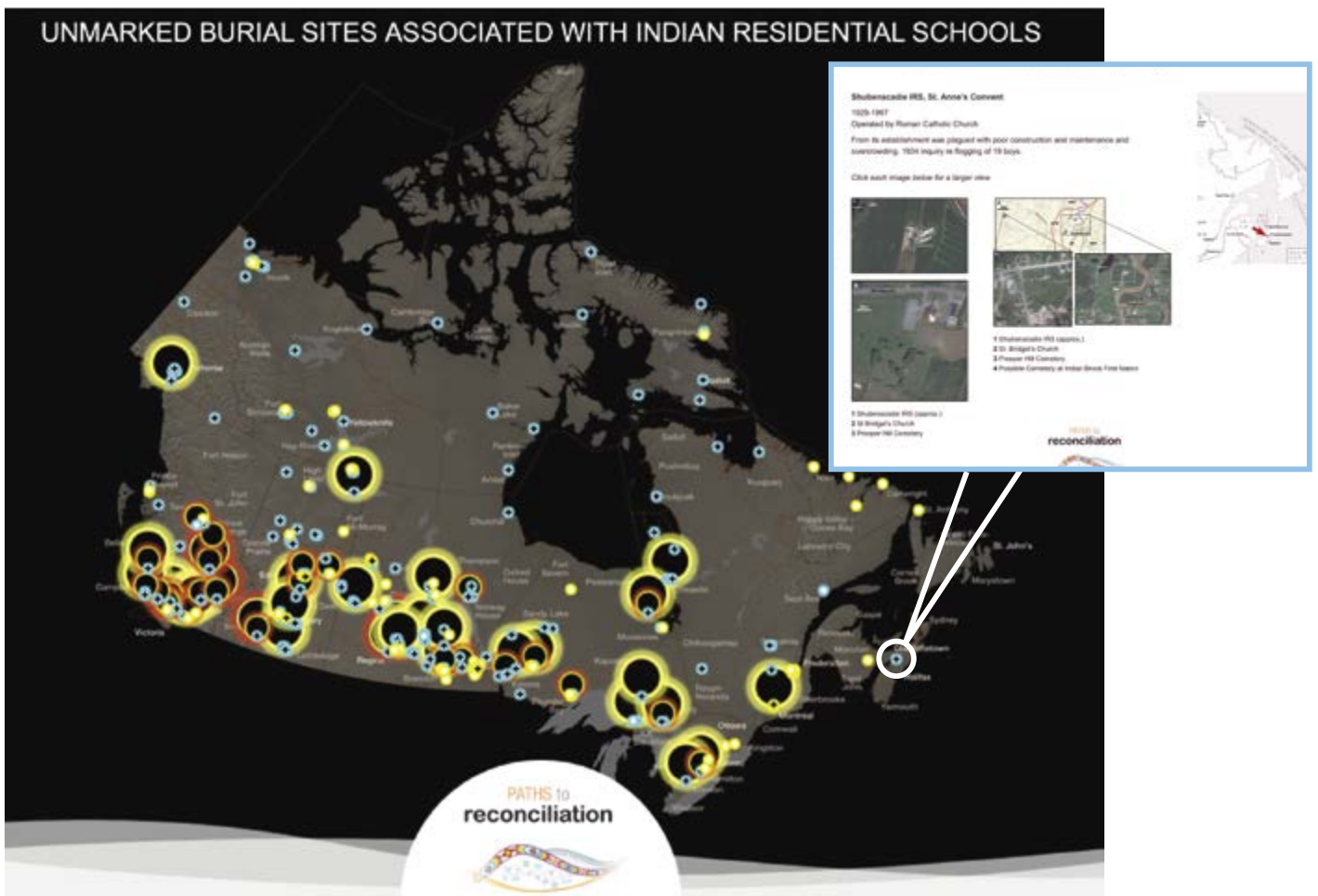
- Non-discrimination, including lack of equitable access to human rights remedies;
- Protection of Indigenous burial sites, including inequitable legal protections for Indigenous burial sites as compared to government-run, church-run or private cemeteries;
- Self-determination and revitalization of Indigenous laws, including with respect to difficulties accessing records and sites, which create barriers for Indigenous families and communities to uphold their responsibilities to the missing children under Indigenous laws; and
- Repatriation, including the government policy not to pay for the return of children's remains, who died while in the care of the State and churches at Indian Residential Schools and other institutions, to their home communities.

The submission also advocated for the establishment of Indigenous-led regional, national, and international monitoring mechanisms for the implementation of the UN Declaration. The important role of the National Council for Reconciliation (TRC Calls to Action 53-56), to monitor, evaluate, and report on the Government of Canada's progress towards reconciliation, and the implementation of the TRC's 94 Calls to Action was identified. Also noted was the potential for human rights systems and organizations within Canada and the UN Expert Mechanism, to hold Canada accountable at the domestic and international level, respectively.

### Public education and awareness

A significant amount of time has been dedicated to attending meetings and presenting information about the Mandate and work to date. This provides an opportunity to raise public awareness about the truths of missing children and unmarked burials. Presentations have been made to universities, conferences, government departments and divisions, and medical organizations, to name a few.

A Memorandum of Understanding has been signed with Canadian Geographic to work collaboratively to create a [publicly available interactive map](#) of unmarked burial sites. This information was compiled by Dr. Scott Hamilton over many years, including when he worked on his report for the TRC called "[Where are the Children Buried?](#)".



The map was launched publicly on September 30, 2022. Its purpose is to promote public education and awareness about the truths of unmarked burials and missing children and to provide information to support those leading search and recovery work. The map includes a description, along with aerial and historic map images, of Indian Residential School sites recognized under the Indian Residential School Settlement Agreement (IRSSA). It also contains some information relating to sites that are not recognized under the IRSSA. Further work is underway to add more information about all the sites where unmarked burials of missing children may be. The map continues to be updated as new information is provided by those leading search and recovery efforts.

Canadian Geographic has created a [Teacher's Guide](#) and several [educational activities](#) so that teachers can incorporate the map as a teaching tool in their curriculum. In addition, Canadian Geographic has partnered with the Office of the Independent Special Interlocutor to establish information booths at the National Gatherings, Assemblies, and at several other conferences to promote awareness. Through discussions that have occurred at these information booths, new images and information have been added to improve the accuracy of the map.

To date, the map has been accessed over 18,000 times.

# National Advisory Committee on Residential Schools Missing Children and Unmarked Burials

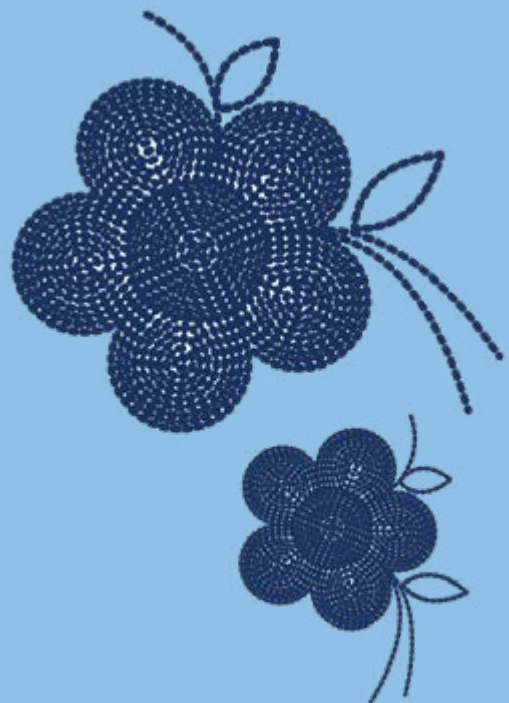
The National Advisory Committee on Residential Schools Missing Children and Unmarked Burials (NAC) was established in July 2022 and is guided by a Circle of Survivors. The NAC provides Indigenous communities with access to trustworthy information about all aspects of the search for missing children.

The Committee is made up of independent experts from a wide range of backgrounds, such as archival research, archaeology, forensics, police investigations, health and well-being, and Indigenous laws and protocols. Most Committee members are First Nations, Inuit or Métis who have a wide range of expertise, including:

- Working with Survivors;
- Researching Indian Residential School records;
- Conducting ground searches for unmarked burials;
- Forensic investigations;
- Securing evidence for potential prosecutions;
- Culturally-safe approaches to information sharing and disclosures; and
- Community health and wellness.

On January 19, 2023, the NAC launched a navigator document: [Navigating the Search for Missing Children and Unmarked Burials: An Overview for Indigenous Communities and Families](#). Its purpose is to provide an initial introduction to the numerous options that communities may wish to consider to find their missing children. Topics include:

- Community input;
- Communication with community and media;
- Survivor knowledge;
- Archival records and the NCTR;
- DNA data;
- Types of ground search technologies;
- How ground search technologies work;
- Different ways to carry out excavations; and
- How forensic examinations can support investigations.





## Part 4: Overview of Canada's Current Legal Framework

Canada's legal system is based on English common law and French civil law brought here by colonizers in the 17th and 18th centuries and adopted by colonial governments. They also brought with them unfounded, harmful, racist, and discriminatory beliefs about the inferiority of Indigenous Peoples and the superiority of European civilization, law, and society. Even as colonial governments negotiated Treaties with sovereign Indigenous Nations across much of the country, they also passed legislation, without the knowledge or consent of Indigenous Peoples. Due to this unfounded view of Indigenous Peoples as "inferior," "savage", and "uncivilized", the federal government treated Indigenous people as unable to manage their own affairs and designated them wards of the State.

In Canada, the *Constitution Act, 1867* sets out the division of powers and legislative jurisdiction between the federal and provincial governments. Under section 91 of the *Constitution Act, 1867*, the federal government has jurisdiction over several areas, including "Indians and lands reserved for Indians." Section 92 sets out the powers of provincial governments. These include matters such as managing provincial Crown lands, health care, resource development and the administration of justice, including administering courts and provincial prisons. In addition, pursuant to section 93, provinces have authority over education.

Almost a decade after the enactment of the *Constitution Act, 1867*, the *Indian Act of 1876* consolidated all laws relating to Indigenous Peoples, giving the Crown legislative authority to administer reserve lands, resources, and finances, and regulate and control every aspect of First Nations people's lives. In 1884, the *Indian Act* was amended to establish and administer the Indian Residential School System under the Department of Indian Affairs to 'civilize' Indigenous children and assimilate them into White Canadian society.<sup>61</sup>

The *Indian Act* remains in effect, even though the Aboriginal and Treaty rights of First Nations, Inuit and Métis Peoples are recognized and affirmed under Section 35 of the *Constitution Act, 1982*. It continues to control many aspects of the lives of First Nations people across Canada and imposes a governance structure that purposefully displaced the traditional governance and legal systems of First Nations, which have been developed over millennia to effectively create societal norms and resolve disputes.

### What is a legal framework?

A legal framework consists of a nation's constitution, legislation, regulations, and policies, that together affirm the political legitimacy and authority of various levels of government. A constitution is a foundational document that establishes the structure of government and defines the rights and responsibilities of citizens. Legislation is the legally binding set of rules or laws that govern a country's vision and shapes its policies. Regulations are the practical mechanisms that enable executive branches of government such as a Cabinet or Ministries to implement legislation and policy. Finally, policies provide direction about how laws will be implemented, and how governments will respond to citizens in relation to particular matters.

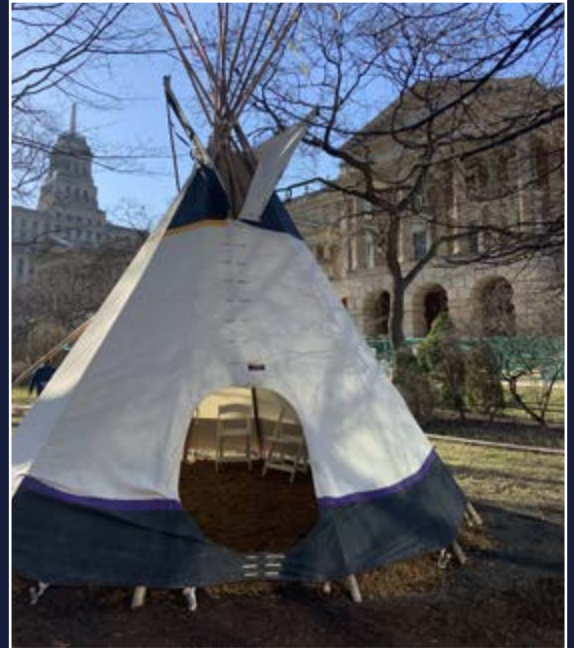
As the TRC highlighted, the way in which law has been used to oppress Indigenous communities has led many Indigenous people to view “Canada’s legal system as being an arm of a Canadian governing structure that has been diametrically opposed to their interests.”<sup>62</sup> The TRC concluded that “it should [therefore] come as no surprise that formal Canadian law and Canada’s legal institutions are still viewed with suspicion within many Aboriginal communities.”<sup>63</sup> The TRC further emphasized that significant changes need to occur in the way Canadian law impacts Indigenous Peoples’ lives:

*In Canada, law must cease to be a tool for the dispossession and dismantling of Aboriginal societies. It must dramatically change if it is going to have any legitimacy within First Nations, Inuit, and Métis communities. Until Canadian law becomes an instrument supporting Aboriginal peoples’ empowerment, many Aboriginal people will continue to regard it as a morally and politically malignant force. A commitment to truth and reconciliation demands that Canada’s legal system be transformed...Canada’s Constitution must become truly a constitution for all of Canada. Aboriginal peoples need to become the law’s architects and interpreters where it applies to their collective rights and interests. Aboriginal peoples need to have more formal influence on national legal matters in order to advance and realize their diverse goals. At the same time, First Nations, Inuit and Métis peoples need greater control of their own regulatory laws and dispute-resolution mechanisms.<sup>64</sup>*

The colonial underpinnings of Canadian law still exist and continue to violate the inherent, Treaty, Constitutional and human rights of Indigenous Peoples. The source of these injustices can be traced back to the arrival of Europeans in North America and the eventual displacement and marginalization of Indigenous governance and legal systems that was and is part of the ongoing colonization process. Yet as Anishinaabe legal scholar John Borrows points out,

*The recognition of Indigenous legal traditions alongside other legal orders has historic precedent in this land. Prior to the arrival of Europeans and explorers from other continents, a vibrant legal pluralism sometimes developed amongst First Nations. Treaties, intermarriages, contracts of trade and commerce, and mutual recognition were legal arrangements that contributed to long periods of peace and helped to restrain recourse to war when conflict broke out. When Europeans came to North America, they found themselves in this complex socio-legal landscape...<sup>65</sup>*

Europeans initially recognized the legitimacy of Indigenous diplomatic, governance and legal systems and negotiated many Treaties with Indigenous Nations. Over time, however, colonial governments and successive Canadian governments failed to uphold the promises made in those Treaties and used Canadian law to impose harmful, assimilative laws and policies on Indigenous Peoples. Rather than recognizing the importance of Indigenous laws in shaping what is now Canada, Canadian law still has a long way to go to respect Indigenous laws, principles, and processes.



Tipis and tents on the lawn in front of the Ontario Court of Appeal at Osgoode Hall during the National Gathering in Toronto, where Indigenous laws were discussed.

## The Limitations of Canada's Current Legal Framework

The work that Survivors and communities have been leading to recover the missing children and unmarked burials across Canada has revealed an urgent need for legislative, regulatory and policy protections of former Indian Residential School sites. There are significant gaps in legal protections at the federal, provincial, and territorial levels to protect the sites pending searches and investigations, and from further development.

Currently, there is a complex patchwork of multiple and sometimes conflicting laws, regulations, and policies enacted by federal, provincial, territorial, and municipal jurisdictions across the country that impact search and recovery work. There are both limitations and gaps in these laws. For example:

- There are complex privacy and access to information regimes that impede access to records that may contain information about the location of unmarked burials and the identities of missing children.
- There are no legal protections for sites until remains are found. This means that it is only after shovels hit the bones of the ancestors that legal protections are triggered. This is too late in the process and creates further harm to the bodies and Spirits of the missing children and trauma for Indigenous people and communities.
- There is a gap in legal protections for Indigenous burial sites even after unmarked burials are identified, and ineffective processes when the burials are located on private lands.
- There are limited to no legislative mechanisms that provide access to sites that need to be searched that are privately owned. There are limited circumstances where police and coroners' powers can be used to provide protection for or access to sites that need to be searched, yet they have not been utilized, even when requested by Survivors and Indigenous communities.
- These laws were not created for, nor did they contemplate the search and recovery of missing children and unmarked burials, including the potential existence of mass graves.
- These laws were not created to support the investigations of genocide and mass human rights violations that occurred and that led to the deaths of children at Indian Residential Schools and other associated institutions.
- The current legal framework in Canada is ill-equipped to provide accountability and justice for the missing children, Survivors, and their families.
- Finally, Canada's current legal landscape fails to meaningfully include Indigenous laws or to reflect key international legal principles and commitments, such as those contained in the *UN Declaration on the Rights of Indigenous Peoples*.

The inadequacy of Canada's current legal framework has serious repercussions for Survivors, Indigenous families, communities, and leadership.

## The St. Anne's Indian Residential School Survivors' On-Going Fight for Accountability and Justice

The Catholic-run St. Anne's Indian Residential School, which operated between 1904 and 1976, was the site of horrific abuses of Indigenous children. As has been documented and proven through Survivor testimonies, historical records, police investigations, criminal convictions, civil lawsuits and hundreds of adjudicator decisions, Indigenous children taken to St. Anne's Indian Residential School were physically, sexually, culturally, and spiritually abused by those entrusted with their care. Students were routinely beaten, frozen, whipped, and forced to eat moldy food and their own vomit. An electric chair, constructed by school officials, was often used to punish children. At least 31 children who were sent to St. Anne's Indian Residential School died there.<sup>66</sup> The total number of children who died and were never returned home is not yet known.



St. Anne's (Fort Albany) Indian Residential School, June 1971,  
National Centre for Truth and Reconciliation,  
[10a-c000066-d0021-001](#)

St. Anne's Indian Residential School Survivors continue to seek accountability and justice for the mistreatment, neglect and crimes committed against them. These struggles illustrate the limits of Canadian law as well the resilience of Survivors in continuing to fight for justice despite the many barriers they have encountered in the legal system.

In 2006, churches, the federal government, and Survivors signed the Indian Residential Schools Settlement Agreement (IRSSA), which was formally approved by the Ontario Superior Court of Justice ("Approval Order"). Under the IRSSA, an Independent Assessment Process (IAP) was established to determine individual compensation for sexual and physical abuse that Survivors endured. The IRSSA and IAP process required Survivors to give up their rights to sue the government and churches in return for the individualized assessment of compensation under the IAP. The government was required by law to provide IAP adjudicators with all the documents, records and school reports needed to assess individual claims. The Approval Order specified that the ongoing implementation of the IRSSA and IAP was to be supervised by Canadian courts.

In many instances, the entities responsible for Indian Residential School harms undermined their disclosure obligations under the IRSSA. Governments and church officials, hid, lost, 'forgot' or destroyed important records, and claimed that significant evidence was privileged or confidential.

With respect to St. Anne's Indian Residential School, the federal government was found to have breached the IRSSA because government lawyers failed to disclose over 12,000 documents, totalling approximately 47,000 pages, that detailed the abuse of children and identified abusers.<sup>67</sup> As a result, all St. Anne's Survivors' claims that went through the IAP between 2006 to 2014 were assessed based on incomplete records. The undisclosed documents included investigative records, witness testimonies, transcripts and evidence compiled for the criminal prosecutions of seven former St. Anne's Indian Residential School employees in the 1990s and for 154 civil lawsuits against the government and Catholic entities in the early 2000s. Combined, this material represented the personal accounts of almost 1000 Survivors of St. Anne's Indian Residential School. Survivor Edmund Metatawabin, author and former Chief of Fort Albany First Nation, said that "the whole truth is reflected in the combined oral stories from all St. Anne's Survivors and recorded into these documents."<sup>68</sup>

It was only in 2013 that Survivors and their lawyers became aware that these documents had not been filed in IAP hearings. This was after the deadline for filing IAP applications had passed. In 2014, 60 St. Anne's Survivors obtained a court order directing government officials to disclose these documents and make them available to IAP claimants and adjudicators ("Disclosure Order").<sup>69</sup> The judge ruled that Canada had breached the IRSSA, that there must be remedial full disclosure, and that concluded IAP claims could be reopened on a case-by-case basis to ensure "procedural and substantive access to justice."<sup>70</sup>

Since 2014, Survivors have returned to court almost 30 times to ask Canada to live up to its commitment to ensure compensation, accountability, and justice for the Survivors of St. Anne's Indian Residential School. Since Canadian courts are responsible for overseeing the implementation of the IRSSA, Survivors have been forced to go to court over and over to seek accountability and justice. This includes Survivors who, without the benefit of documents proving their abuse, did not make IAP claims before the 2012 filing deadline.

Over the course of many hearings, courts have ruled on what "procedural and substantive access to justice" means in Canadian law when it comes to the abuses children suffered at Indian Residential Schools. Since the 2014 Disclosure Order, the IAP Chief Adjudicator reopened the cases of two St. Anne's IAP claimants that were originally denied, after the claimants brought forward the previously undisclosed evidence. Both claimants were eventually awarded full compensation. The federal government, however, has never remedied the injustice caused to hundreds of other St. Anne's Survivors due to the lack of disclosure of records prior to their IAP claims being adjudicated. Instead, the federal government has argued in court against the Chief Adjudicator's power to reopen these cases.

In 2017, the Supreme Court of Canada ordered that all IAP documents, including those detailing the abuse of children sent to St. Anne's, must be destroyed.<sup>71</sup> While Survivors succeeded in delaying the destruction of some of the St. Anne's IAP records,<sup>72</sup> courts have refused to: extend deadlines for filing new IAP claims;<sup>73</sup> give IAP adjudicators the power to compel the disclosure of documents in

individual cases;<sup>74</sup> or direct the reconsideration of documents that Canada had failed to disclose.<sup>75</sup> Despite Survivors' efforts, on March 31, 2021, the IAP formally ceased operations.

Significant concerns remain about whether evidence relating to abuses at St. Anne's Indian Residential School has been fully disclosed and fairly considered. In April 2021, despite opposition from several Survivors, the Ontario Superior Court appointed retired BC Judge Ian Pitfield to review St. Anne's IAP cases that were adjudicated before Canada disclosed additional documents.<sup>76</sup> The Court appointed a former IAP adjudicator to act as an advocate for Survivors in this review process, but Survivors themselves were not notified or allowed to participate, nor were they sent Judge Pitfield's findings and recommendations. His final report, made in December 2021, concluded that 11 claims may have been differently decided if the documents had been considered.

Although the Supreme Court of Canada has said that supervisory courts can review and reopen IAP claims in "exceptional circumstances",<sup>77</sup> and that new evidence can constitute such circumstances, this has only happened in a few of the hundreds of St. Anne's IAP claims. Despite this fact, in October 2022, the Supreme Court of Canada refused to hear the Survivors' appeal of how St. Anne's IAP claims have been mishandled.<sup>78</sup>

The experience of the Survivors of St. Anne's Indian Residential School illuminates two very different understandings of accountability and justice. One, as represented in court cases, focuses on technical legal questions of process, contractual interpretation, and the importance of efficiency and finality in adjudicative proceedings such as the IAP. In this view, the actions of the government and the churches, and the jurisdiction of Canadian courts, while not perfect, have been adequate to uphold the legal rights of Indian Residential School Survivors. From the perspective of Canadian law, the process has run its course, and it is now time to move on.

But there is another view of accountability and justice, based on Indigenous laws – specifically the need to repair the harm that was perpetrated on the children and Survivors and the need for those who committed that harm to be held accountable. To achieve this view of accountability and justice, all records relating to St. Anne's Indian Residential School must be disclosed, and the full truth of what happened at St. Anne's must be revealed. As the Survivors of St. Anne's Indian Residential School have demonstrated, they are committed to ensuring accountability and justice for every Survivor and for every child who was never returned home, no matter how long it takes.



## The Canadian Legal Framework's Lack of Alignment with the UN Declaration

The current Canadian legal framework does not adequately support Survivors, Indigenous families, and communities leading search and recovery efforts nor does it align with the UN Declaration. Here are just some examples of this lack of alignment:

- **Lack of alignment with Articles relating to non-discrimination:** Although the *Canadian Bill of Rights Act* as well as provincial human rights legislation were enacted beginning in 1960, the last Indian Residential School closed in the late 1990s. During this time the Canadian legal system, including the human rights system, failed Indigenous children and families.
- **Lack of alignment with Articles relating to the protection of Indigenous burial sites:** The current legal framework does not provide the same level of protection to Indigenous burial sites as to government-run, church-run or private cemeteries. Within many cemeteries, Indigenous burials are not marked or treated with the same level of care and respect as non-Indigenous people's graves. Indigenous burial sites are frequently disturbed due to excavation and construction and thereby desecrated.
- **Lack of alignment with Articles relating to self-determination and revitalization of Indigenous laws:** Survivors, Indigenous families and communities leading search and recovery efforts are required to navigate a complex jurisdictional quagmire to gain access to records and sites. In many instances, those leading searches have been denied access to sites that are privately or corporately owned. Laws were not created with Indigenous Peoples' input, nor did they contemplate the important work of recovering unmarked burials and identifying and honouring the missing children. These legal barriers impede Indigenous Peoples' ability to uphold their responsibilities to their ancestors under Indigenous laws.
- **Lack of alignment with Articles relating to repatriation:** The practice and policy of the federal government and churches was to not fund the repatriation of children who died at Indian Residential Schools or other state-run institutions to their homes, their families, and communities. To date, the Canadian government and the church entities that operated Indian Residential Schools and other institutions have not established clear guidelines and policies or a formal commitment to supporting the repatriation of children to their home communities when requested.

Given the many ways that the Canadian legal framework fails to align with the UN Declaration, along with the fact that the federal government has committed to harmonizing its laws with the UN Declaration, there is a need to carefully consider what legislative, regulatory, policy and procedural reforms need to be put in place to afford robust and comprehensive protection to support the search and recovery of the missing children and unmarked burials.



## Emerging Practice: “Let’s Find Them”: The Nanilavut Initiative

The Nanilavut Initiative is led by the Inuvialuit Regional Corporation and is aimed at helping Inuit families find information on loved ones sent away during the tuberculosis epidemic of the 1940s to 1960s. Nanilavut means “Let’s find them” in Inuktitut. People of all ages were taken to sanatoria by government and never returned. Part of the work of the Nanilavut Initiative is to trace the transfers of each missing loved one, including Inuit children at Indian Residential Schools and Federal Hostels.



Deacon Rebecca Blake and Survivor Wilbert Papik, who travelled to visit his father’s burial site after over 60 years of searching for him

In August 2022, Rebecca Blake, who is Inuvialuit and an ordained Anglican Deacon, travelled with family members to Edmonton to visit the burial sites of their loved ones that had been missing to them and conducted Remembrance and Celebration of Life Ceremonies. Each of the missing loved ones were taken by the government to a tuberculosis sanatorium. They then died while in the care of the State and were never returned home. When a child died, parents were often not notified of their child’s death or about the location of their child’s burial.

As they travelled to visit the burial sites, they found that some of the burials were unmarked; some were in segregated sections of cemeteries only for Indigenous people, which were often too small for the number of people buried there; some were buried in graves with other people because the government would not pay for individual burials; and one grave was even in a ditch next to a busy highway.

At the Winnipeg National Gathering, Deacon Rebecca Blake reflected on the importance to the families of finding the burials of their loved ones. She said:

*At every gravesite, [families] were saying ‘finally we have found you. And we have so missed you and we have always, always loved you.’ [Finding the graves] lifted the burden of not knowing – that now we can allow our loved ones to rest; that these were just their carrying cases that were left behind in a foreign land, but their Spirits can now soar free.*

## Part 5: Findings to Date

The Progress Update Report, issued in November 2022, identified several common concerns about the barriers and gaps that are making search and recovery work particularly difficult. Additional barriers have been brought to my attention in the first year of the Mandate, as outlined below.

Survivors, Indigenous families and communities leading search and recovery efforts have developed creative ways to address some of these barriers through emerging Indigenous-led practices.

### A. Access to and destruction of records

Access to and destruction of records continues to be a significant concern and barrier for those leading search and recovery work. There are privacy and access to information regimes that apply to governments and non-governmental organizations; records holders are often constrained by these or hide behind them in failing to disclose records to those seeking access. In addition, particular records, such as health records, are subject to more stringent laws, further limiting access to essential information that can help locate unmarked burials and identify missing children.

### The Children of Shingwauk Alumni Association's Efforts to Locate Records of Two Missing Boys

The Children of Shingwauk Alumni Association (CSAA), working with researcher Ed Sadowski, has been trying to access records from the federal government to help identify two boys who drowned in a small lake on a farm property adjacent to the former site of the Shingwauk and Wawanosh Indian Residential Schools, in Sault Ste. Marie, Ontario, Robinson-Huron (1850) Treaty Territory.

The search is based on the comments made at the first Shingwauk Reunion in 1981 by Margaret Mclean, a former staff member who was born, raised,



Shingwauk Indian Residential School, Shingwauk Residential Schools Centre/Noel L. Goater Collection

and lived at Shingwauk and Wawanosh Indian Residential Schools. Margaret McLean told the CSAA that her father Seymour Hayes, also a former Shingwauk staff member, attempted to retrieve the bodies of two boys from the marshy section of the lake in and around 1914-1915, but that they were never recovered. At the 1981 Reunion, Survivor Angus Abram, who was taken with his sister, Lina, to Shingwauk and Wawanosh in 1916, confirmed the existence of the “long pole” that Mr. Hayes had used to try to locate the bodies. In the 1960s, the lake was filled in and is currently part of Snowdon Park.

Canada destroyed many Indian Residential School records and there is a paucity of records for the Shingwauk and Wawanosh Indian Residential Schools for this period. The use of Provincial Vital Statistics records when dealing with the deaths of Indigenous children at Indian Residential Schools is problematic as this information is often missing, incomplete or incorrect. Indian Agents filed Quarterly Returns of “Births, Deaths, and Marriages” to the Ontario Provincial Registrar. CSAA wants to compare the provincial and federal records for accuracy. While the Provincial Death Records for this period are accessible, the Federal Death Records held by Library and Archives Canada are restricted by law under the federal *Privacy Act*. CSAA’s request to access these records has been denied.

One way to determine the identities of the two boys is to cross-reference the records of the Indian Register and the Indian Trust Fund. Some of these records include lists of those entitled to receive Treaty Annuity and Interest Annuity benefits. Comparing these lists from year to year may help to identify which children’s names appeared in one year and not the next.

Other relevant records may include:

- Treaty Annuity records, including the Savings Account Ledgers of Indigenous children;
- Indian Trust Fund, including Interest Annuity records; and
- Trust Fund Ledgers.

By examining these records, it may be possible to determine whether charges were made to a child’s Treaty and Interest Savings Accounts to cover the costs of their own coffins and burials. CSAA’s access to these records has been hampered by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada (ISC).

Since 2020, CSAA and Ed Sadowski have been attempting to access all the records of the Indian Register and the Indian Trust Fund. They have filed access to information requests to both the governments of Ontario and Canada. They have met with federal representatives from various departments, specifically CIRNAC, ISC, and Library and Archives Canada. They have received a report that records have been reviewed and were told none are relevant, from the viewpoint of Canada. CSAA, however, requires unfettered access to the records so that they can determine what information might be relevant from their perspective. CSAA has repeatedly asked CIRNAC and ISC to provide them with an inventory of all the records that they hold for the period 1900-1920.

In early 2023, some records were released by Canada. Treaty Annuity and Interest Annuity Paylists were provided along with some Trust Fund Ledgers and other documents, but the copies were very poor quality and difficult to read. Canada also mistakenly included some records relating to a different Indian Residential School in the release package. Unfortunately, the Annuity Paylists for Indian Residential School children (Form No. 81) were not included in the release of records. The request to provide all records and the request to provide an Inventory of records held by CIRNAC and ISC were ignored. These issues were raised with Canada but there has not been any response.

CIRNAC and ISC continue to block access to the Indian Register itself. If any individual is indeed identified, then the Indian Register along with its Genealogical Data Base and other records would show if any family members were still alive.

Shirley Horn, Survivor and founding member of CSAA, shared her perspective on how frustrating the experience with the federal government has been and how its approach does not align with respecting and honouring the children:

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

## The Office of the Treaty Commissioner: Obstacles to Accessing Records relating to Four Indian Residential Schools in Saskatchewan

The Office of the Treaty Commissioner (OTC) is partnering with Dr. Winona Wheeler, Department Head of Native Studies at the University of Saskatchewan, to document and collect church records relating to four Indian Residential Schools in the Prince Albert Catholic Diocese, Saskatchewan. The collection and review of church records will support the ground penetrating radar and community oral history research that is currently in process at Thunderchild First Nation (Delmas Indian Residential School), Onion Lake First Nation (St. Anthony's Indian Residential School), English River First Nation (Beauval Indian Residential School) and Beardy's and Okemasis Cree Nation (St. Michael's Indian Residential School).

The OTC has encountered several barriers in accessing church records relating to all four sites to date. Here are two examples of the run-around the OTC experienced in trying to collect church records.

## Timeline – St. Michael’s Indian Residential School Records

**June 8, 2021** – Bishop of the Prince Albert Roman Catholic Diocese announced that he would share archival records. The Prince Albert Diocese includes the four Indian Residential Schools that the OTC is seeking church records about (St. Anthony’s, Delmas, St. Michael’s and Beauval).

**June 10, 2021** – The OTC contacted the Prince Albert Catholic Diocese, but the Bishop who promised to release the records had retired in March 21, 2021.



St. Michael’s Indian Residential School, Shingwauk Residential Schools Centre/Lily Stevenson collection

**June 11, 2021** – A new Bishop was appointed for the Prince Albert Catholic Diocese.

**June 24, 2021** – After numerous phone calls to the Diocese, a representative of the Diocese emailed a letter stating that the Prince Albert Diocese “never owned or operated any residential school” and denied that the previous Bishop had agreed to share documents. The letter indicated that some documents relating to St. Michael’s Indian Residential School were microfilmed by the Saskatchewan Archives Society and “are available in Regina.” The letter also stated that some Prince Albert Diocesan records are held at St. Paul University, in Ottawa, Ontario.

**June 30, 2021** – St. Paul University’s Archivist replied to a request for information and stated that they have no records relating to the Prince Albert Catholic Diocese.

**July 20, 2021** – After arranging to view the microfilm at the Saskatchewan Archives Society in Regina, the OTC was informed that the documents have access restrictions, and that written permission from the Prince Albert Diocese was required to view the files.

**July 22, 2021** – The OTC requested written permission from the Bishop at the Diocese to view the microfilmed records.

**July 28, 2021** – The OTC researchers met with the Bishop to discuss access to the Diocesan Archives and microfilmed records of the St. Michael’s Indian Residential School.

**September 14, 2021** – The Prince Albert Diocese informed the OTC that it was drafting a non-disclosure agreement, which would be sent to OTC.

**September 27, 2021** – The OTC signed the non-disclosure agreement and received an authorization letter to access the microfilmed records.

**October 5, 2021** – The Prince Albert Diocese contacted the Provincial Archives of Saskatchewan to state that the OTC was not given permission to make copies of the microfilm records of the St. Michael's Indian Residential School.

**October 8, 2021** – The OTC researchers travelled to Regina under the impression that they could make copies of the microfilmed records of the St. Michael's Indian Residential School. The Reference Archivist advised the OTC researchers that they could only view the files and could not make copies.

**April 13, 2022** – Treaty Commissioner Culbertson met with the Archbishop to express concerns over the lack of cooperation of the Prince Albert Catholic Diocese.

**April 28, 2022** – After numerous requests, the Bishop finally agreed to meet with Treaty Commissioner Culbertson.

**August 24, 2022** – The Bishop amended his letter of permission to include “the possibility of making copies or downloading the digital copy of the documents.”

**August 24, 2022** – The Provincial Archives of Saskatchewan authorized the OTC to access the records and the digitized files were finally sent, 14 months after the initial announcement indicating that records would be made available.

## Timeline – Beauval Indian Residential School Records

**July 29, 2021** – The Archivist at the Prince Albert Catholic Diocese recommended contacting the Archdiocese of Keewatin Le Pas Archives for Beauval Indian Residential School records.

**August 9, 2021** – The OTC contacted the Centre du Patrimoine regarding Oblate records for the Beauval Indian Residential School. The OTC was notified that authorization was required to view documents earlier than 1931. The recommended archives to search were:

1. Soeurs de Saint Joseph de Saint Hyacinthe Québec
2. Centre du Patrimoine, St. Boniface Manitoba
3. Archdiocese of Keewatin Le Pas Archives

**September 21, 2021** – The OTC contacted the Archdiocese of Keewatin Le Pas Archives to request access to Beauval Indian Residential School documents.



Beauval Indian Residential School, Société historique de Saint-Boniface Archives (SHSBA), Corporation archiépiscopale catholique romaine de Keewatin - Le Pas 0484, N1671

**September 23, 2021** – The Archdiocese of Keewatin Le Pas Archives sent the OTC a non-disclosure agreement to sign before records could be viewed. The OTC sent the non-disclosure agreement already signed in relation to records from the Prince Albert Catholic Diocese.

**November 5, 2021** – The OTC met with the University of Regina to discuss translating Oblate archival documents.

**November 26, 2021** – The OTC contacted the National Centre for Truth and Reconciliation (NCTR) and set up a meeting for December 2021.

**December 1, 2021** – NCTR provided the OTC, via email, with the School Narratives for the four Indian Residential Schools. NCTR indicated that if the OTC needed copies of the documents referenced in the Narratives, they could arrange to have the records reviewed by the NCTR's Access and Privacy Office.

**March 10, 2022** – After cancelling two scheduled visits to The Pas, a representative of the Archdiocese of Keewatin Le Pas Archives deposited Indian Residential School files with the Centre du Patrimoine for digitization. This was nearly six months after the initial access request. A review of the files revealed that there were no records relating to the Beauval Indian Residential School.

**March 18, 2022** – Further inquiries by the Centre du Patrimoine uncovered the fact that the Oblate records for the Beauval Indian Residential School were removed from the Archdiocese of Keewatin and sent to Richelieu, Québec.

**May 6, 2022** – Oblate records for Beauval Indian Residential School were requested from the Archivist for the Missionnaires Oblats de Marie Immaculée in Richelieu, Québec.

**June 15, 2022** – In order to source necessary research funds, the OTC partnered with the University of Saskatchewan’s Indigenous Studies Dept. (Dr. Winona Wheeler) to submit an application to the SSHRC Partnership Engage Grant - Residential School Initiative.

**September 26, 2022** – Dr. Wheeler received a SSHRC Partnership Engage Grant to fund Indian Residential School research.

**December 1, 2022** – The University of Saskatchewan processed the grant and research expenses could now be charged.

**April 12, 2023** – The OTC is still working to retrieve records relating to the Beauval Indian Residential School. Researchers must travel to the archives in Richelieu, Québec to review and copy all relevant records, which will require multiple trips.

## Challenges of Accessing Oblate Archives





## Findings to date on access to and destruction of records:

1. Access to records, including those held by various levels of government within Canada and the different church entities that were funded to operate Indian Residential Schools, continues to be a challenge for many communities. Specific barriers include:
  - A lack of transparency and information on how to access records;
  - Legal and policy requirements to pursue access via formal freedom of information processes, even where records are over 100 years old;
  - Long delays before access to archives is granted;
  - Limited access and/or institutional selection of what records are “relevant”;
  - Production of records that require translation, particularly French language records, and no accompanying funds to pay for the translation;
  - Records are in numerous archives across the country, and outside Canada, which requires research teams to attend at multiple sites;
  - The need to negotiate several and varying Memoranda of Understanding or Access Agreements with multiple institutions;
  - Records are not always accessioned or organized in a manner that is useful; and
  - Significant research may be required because the records often do not identify the child by their original birth name, but rather by the number or christian name they were assigned by government or school officials.
2. Many records have been destroyed over the years relating to Indian Residential Schools. Between 1936 and 1954, the Government of Canada systematically purged thousands of these records from its files. In 1973, an agreement between Public Archives Canada and the Department of Indian Affairs placed a moratorium on further records destruction.<sup>79</sup> Further moratoriums on record destruction must be put in place.
3. Records have also been taken overseas by various church entities. Some records relating to Indian Residential Schools operated by the Catholic entities are at the Vatican and some may have been taken there in breach of the terms of the Indian Residential School Settlement Agreement. Records from the United Church, the Anglican Church, and the Church of England can be found in various archives in England. This creates a significant barrier for those leading search and recovery work to access all records that may contain information relating to the location of unmarked burials and identities of the missing children. These records must be returned to Canada and made available to Indigenous Peoples.

4. The Supreme Court of Canada has ordered the confidential records of Survivors' applications and testimonies from the Independent Assessment Process (IAP) be destroyed on September 19, 2027 unless Survivors opt to preserve the records for historical, public education and research purposes at the National Centre for Truth and Reconciliation.<sup>80</sup> Unlike other notice processes pursuant to the IRSSA, there have been limited efforts by the Indian Residential Schools Adjudication Secretariat (IRSAS) (which managed the IAP process) during its existence, the federal government and other entities to provide notice to Survivors about the opt-in to preserve their truths at the NCTR. In addition, many Survivors who participated in the IAP process are no longer alive and there is no way for living family members to opt-in. To date, approximately 30 Survivors have opted to have their records and testimonies preserved. The IAP records and testimonies may contain information related to missing children and unmarked burials that could assist Survivors, Indigenous families, and communities conducting search and recovery work.

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

5. All individuals, organizations, and entities within Canada should search for, protect, and disclose records that may support the identification of unmarked burials and missing children. This includes a commitment to not destroy any records relating to any, and all, institutions where Indigenous children were taken or transferred to.
6. Survivors, Indigenous families, and communities are often required to pay fees to various levels of governments to access records and images necessary to support search and recovery work. An immediate waiver of fees is needed, including fees to obtain birth and death certificates, issued burial permits, and fees under access to information laws, regulations, and policies.
7. Consistent with Articles 7 and 8 of the Declaration, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence's recommendations and the Joinet-Orentlicher Principles,<sup>81</sup> Canada must uphold its international obligations to take effective measures to provide access to records to support the search and recovery of unmarked burials and missing children. This is both to support the right of Indigenous Peoples to know the truth of what happened and ensure the non-repetition of the human rights violations that Indigenous children suffered while in the care of the State and churches.



## Emerging Practice: Collaborative Approaches to the Access of Records

### Acimowin Opaspiw Society's Reconciliation Partnership with the Diocese

The Acimowin Opaspiw Society is supporting Survivors in the search and recovery work at

three former sites of the Blue Quills Indian Residential School. To gain access to church records a formal Reconciliation Partnership between the Catholic Church and the Acimowin Opaspiw Society was developed. The Reconciliation Partnership is an agreement between the entities to share responsibility for achieving the common goal of finding the missing children and unmarked burials. It is based on a foundation of friendship and has the overarching intent to restore harmony between the parties.

The Reconciliation Partnership addresses both the relational and technical research needs of the community to gain access to the records. It required emotional investment, trust, and healing, as well as an agreed upon process and has yielded very good results.



Blue Quills Indian Residential School, Courtesy of OMI Archives

### Williams Lake First Nation's Agreements to Access Records



St. Joseph's Mission Indian Residential School, Le ministère des Affaires indiennes et du Nord canadien / Bibliothèque et Archives Canada / e011080296\_s1

Williams Lake First Nation, like many other communities, entered into a Memorandum of Agreement with the National Centre for Truth and Reconciliation (NCTR) to gain access to the records and statements in their archive. The NCTR collection includes all the records that the TRC gathered from the federal government, the church entities and some provincial governments and other archives.

In addition, Williams Lake First Nation has agreements with the RCMP and the Royal BC Museum. Through these access agreements, the Investigation Team has been able to find documents which have helped them provide additional context to the truths shared by Survivors about the identities and locations of the missing children.

## B. Access to and protection of sites

The laws differ relating to the legal status of the lands being searched. Some of the sites that are being searched, or that need to be searched, may include lands that are under the legal control of federal, provincial, or municipal governments, churches, or private and/or corporate landowners. In some cases, private or corporate landowners are denying Survivors and families access to the lands to conduct ceremonies and ground searches for the missing children. In addition, provisions from historic treaties and/or modern land claims or self-government agreements may apply.

Different legal regimes intersect under provincial laws when human remains are found. Provisions under *Coroners Acts* or *Fatalities Inquiries Acts* may apply resulting in a Coroner or Medical Examiner being called to investigate. *Heritage Acts* provisions may apply resulting in an archaeological assessment and, depending on the location of the remains, *Funeral, Burials and Cremations Acts* or *Cemeteries Acts* may apply.

The shortcomings of all these existing laws are that protections are only triggered once human remains are uncovered. In other words, there is no legal protection for possible or potential burial sites if the ground has not already been dug up. This means that the unmarked burial sites of the missing children that are known to exist based on Survivor truths, records, and remote sensing results, may not be given the legal protections they deserve.

### Lack of Legal Protections for the Unmarked Burials at the former Brandon Indian Residential School

The lack of legal mechanisms at the federal, provincial, and municipal level has impacted the ability of Indigenous communities to access and protect sites of former Indian Residential School cemeteries across Canada, including in Manitoba. The Brandon Indian Residential School (also known as the Brandon Industrial Institute), located on the Assiniboine River in south-western Manitoba operated on Treaty 2 territory from 1895 to 1972.<sup>82</sup> The Brandon Indian Residential School building remained vacant from 1972 until 2006, when it was demolished. The decision to demolish it was not led by the community nor was the land returned to the local First Nations.<sup>83</sup> The lands where the known cemeteries are situated changed ownership over time.



Brandon Indian Industrial School, Library and Archives Canada / C-030122

A cemetery was established on the institution's grounds in 1896. By 1912, when the principal wrote to the federal government for permission to open a new cemetery, at least 51 children from 12 Indigenous communities in Manitoba had been buried "at the lower end of the farm close to the Assinaboine (sic) River."<sup>84</sup> The Brandon Indian Residential School's first cemetery, is on land that would later be leased, developed, sold, forgotten, sold again and literally parked on.<sup>85</sup> The newer cemetery was located on the hill behind the school, but, unfortunately, was also neglected over time.<sup>86</sup>

The site of the Brandon Indian Residential School's first cemetery has already been 'lost' twice. In 1921, the cemetery and surrounding land was leased to the City of Brandon.<sup>87</sup> As part of the land clearing efforts, the grave markers were removed and the property became Curran Park – a municipal park, swimming pool and picnic grounds. In the 1960s and 70s, Alfred Kirkness, a Survivor of the Brandon Indian Residential School, worked tirelessly to identify the location of the cemetery. He was determined to have the graves of the children marked and the memory of the children treated with respect. Through his efforts, the location of both cemeteries was documented and some of the children who died at the Brandon Indian Residential School were identified.<sup>88</sup>



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Memorial for children who were never returned home from the Brandon Indian Residential School

As a result of Alfred Kirkness' work, the Indigenous Friendship Society, the Brandon Girl Guides, and the Rotary Club all started supporting the efforts to respect the children's burials and protect the cemetery. Eventually, the cemetery was protected by a fence and commemorative cairn and maintained by the Brandon Girl Guides. However, the site was not recognised as a cemetery or heritage space under provincial law, and no restrictions were placed on the land title to indicate that the property includes the cemetery site and burials of children. In 2001, the City of Brandon sold the property, which is now privately operated as Turtle Crossing Campground RV Park. Sometime between 2005 and 2010, the fence and cairn were removed, and RV camping spots were constructed on the cemetery site and on the burials of the children.

Sioux Valley Dakota Nation, the closest First Nation to the former Brandon Indian Residential School, has been attempting to access and protect this Sacred site for over a decade. In 2012, the Nation offered to do a geophysical survey of the site, but the landowner declined to cooperate. Although the Nation provided the landowner with archival evidence of the cemetery, and requested the support of federal and provincial governments, the property remained unprotected and inaccessible to the Nation until the landowner applied for a permit to redevelop the campsite in 2018. This led to the creation of a working group and an investigation that identified 56 potential unmarked burials on the campgrounds.

Camping was not restricted at the site until 2021, after the recovery of the 215 unmarked burials at the Kamloops Indian Residential School. Sioux Valley Dakota Nation has been requesting the assistance of the municipal, provincial, and federal governments to access and protect these unmarked burials. The Southern Chiefs' Organization has called on the City of Brandon to buy back the land so that the cemetery and unmarked burials can be protected.<sup>89</sup>

The Sioux Valley Dakota Nation has identified the need for further searches to delineate the cemetery boundaries and once that is complete, a fence could be erected to protect the burial sites. In October 2022, the Sioux Valley Dakota Nation planned to do a second survey of the site, but the landowner denied access.<sup>90</sup> Unfortunately, due to the complexity and lack of clear legal mechanisms under federal, provincial, and municipal laws, the discretion to provide access to such sites continues to rest with private landowners.



## Findings to date on access to and protection of sites:

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

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

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



## Emerging Practice: How the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte are Upholding Indigenous Laws

*We went into the White man's court because the White man does not follow his laws. So we went in there and said: "You must follow your laws. We are going to follow ours and you are going to follow yours." ... [W]e wanted to get our children. We wanted them and we need to have them because it is part of our culture – we have to take care of our children and all our people who died. But in this case, the children have been taken from us and we want them back so we can...complete our own lives and make the world safe for the children we now have and the ones who are coming.*

- Kahentinetha<sup>91</sup>

In March 2022, the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte brought an application for an interlocutory injunction to pause McGill University's redevelopment of the Royal Victoria Hospital grounds so a search can be completed of the site for unmarked burials. In addition to other institutions across Canada, Indigenous children were sent to the Royal Victoria Hospital, some from Indian Residential Schools and Federal Hostels in the Far North. The Royal Victoria Hospital historically included the Allan Memorial Institute, which was a psychiatric hospital and research institute located in the Ravenscrag building. Controversial, non-consensual medical experimentation was conducted on patients at the Allan Memorial Institute and may have been done on Indigenous children.<sup>92</sup>

The Kanien'kehá:ka Kahnistensera (also referred to as the Mohawk Mothers) are five members of the Women's Council Fire who along with two members of the Rotiskenrakehte, the Men's Fire, have been acknowledged and authorized to act as delegates to defend the collective rights of the sovereign Kanien'kehá:ka people in accordance with the Constitution of the Rotinonhsonni Confederacy and its clan-based consensual-decision-making system. As the basis of their claim, they relied on the kaianerehkó:wa (Great Law of Peace), the teiohateh (Two Row Wampum) and the sovereign authority of the Rotinonhsonni.<sup>93</sup>

In their written submissions to the Quebec Court, they state that they "are sovereign Indigenous peoples who have never ceded or surrendered their land, law, and customs." Since Kahnawake is the "community closest to the settler city of Montreal", the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte are "therefore responsible for matters concerning that land on behalf of the entire rotinonhsonni confederacy."<sup>94</sup> They indicate that in accordance with the Great Law, "Indigenous women are the caretakers of the land on behalf of future generations"<sup>95</sup> and "original owners of the land following Indigenous law."<sup>96</sup> They therefore "are expected to assume their duties and responsibilities as sovereign onkwehonwe in accordance with the kaianerehkó:wa"<sup>97</sup> and they must "give permission for anything to be done to their traditional unceded homeland,"<sup>98</sup> which includes



“the thequenondah (two mountains beside each other/Mount Royal”<sup>99</sup> (i.e. the site of the Royal Victoria Hospital and the Allan Memorial Institute).

The Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte's Application for an Injunction indicated that “Indigenous and/or non-Indigenous children may be buried in the vicinity of the Henry Lewis Morgan



From left to right: Kahentinetha and Kwetiio, members of the Kanien'kehá:ka Kahnistensera at the National Gathering in Toronto

pool, and in adjacent grounds of the Ravenscrag gardens of the Allan Memorial Institute.”<sup>100</sup> They cite the sworn testimony of a Survivor of the MK-Ultra experiments, Lana Ponting, who indicated that Indigenous people, including children, were victims of these experiments, that rumours of unmarked burials have been circulating amongst patients since the 1950s, and suspicious activities were conducted outside the building at night.<sup>101</sup>

The Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte also submitted evidence of the well-known and wide-ranging medical experimentation done on Indigenous children who were deemed “wards” of the state<sup>102</sup> and were therefore under Canada’s care. They also asserted that “the site may contain archaeological remains from the first pre-colonial Iroquoian village”<sup>103</sup> and indicated that it is “an extreme offence” to disturb their ancestors.<sup>104</sup>

The Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools intervened to provide background information about missing children and unmarked burials as well as the possibility of unmarked burials existing at the Royal Victoria Hospital site. She submitted:

*As a result of my experience overseeing and coordinating the work related to Volume 4 of the TRC Report, I have first-hand knowledge of the steps required to identify unmarked burials and the possible identities of missing children. I also have a concrete understanding of the link between hospitals, universities, and Indian Residential Schools. Through the review of records collected by the TRC, I have knowledge that certain hospitals were utilized to send sick children from Indian Residential Schools and, as a result, it is a reasonable possibility that the remains of children may be found on these sites.*

In oral submissions, the Kanien'kehá:ka Kahnistensera spoke about their responsibilities to the missing children and to the land. Kwetiio said:

*From as long as I can remember, and what was told in the stories that is our history, there are no titles [to land]. Land can't be sold or bought because it's not ours to sell or buy. It's the future generations' land that must be respected, and the health of this land preserved.*

*The land is very precious where people are buried, especially where children are buried, but it's also precious land [because it is] where we once lived... Those children that are buried in various sites across Canada and the United States are very valuable to us. They have a story to tell. We cannot let their deaths go without telling a story or learning a lesson from them. We cannot let them not have value...*

*Right now, there are shovels in the ground... It's degrading the history of our ancestors. It's degrading that unceded territory... We're now living with a process that allowed genocide. That same process is what's governing this court right now... I'm asking for this to be a start... Make that genocide and intergenerational trauma stop right there.<sup>105</sup>*

In stark contrast, in oral submissions, the lawyer for McGill likened the Kanien'kehá:ka Kahnistensera to mere “strangers” who wanted to stop excavation on someone else’s property. He also referred to the possible unmarked burials of missing children as “historical baggage.”

On October 27, 2022, Justice Gregory Moore of the Quebec Superior Court granted an interim injunction on the basis that the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte raised legitimate concerns about identifying unmarked graves before they are disturbed.<sup>106</sup> He held that the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte would suffer serious or irreparable harm if the injunction were not issued.<sup>107</sup> Importantly, he based his findings of irreparable harm on the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte and other community members':

- “anguish at being prevented by the redevelopment project from fulfilling their obligations to look after generations past, present, and future;”<sup>108</sup>
- “trauma...from not knowing what happened to their family and community members, from the possibility that they were mistreated and suffered, and from the threat their remains will be disturbed;”<sup>109</sup> and
- lack of trust that McGill and other defendants would honour their claims that they will be respectful of Indigenous concerns, citing the fact that McGill allowed excavation to begin just two days before the court hearing commenced.<sup>110</sup>

He also noted that the ceremonies that the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte indicated should be conducted were not part of the redevelopment plans.<sup>111</sup> Justice Moore invited the Parties to meet out of court to create an appropriate archaeological search plan, without which he noted that “the plaintiffs and those who share their concerns will continue to face the trauma that comes from not knowing whether, when or how their community members’ graves

might be disturbed.”<sup>112</sup> He further held that “an out of court discussion, undertaken in the spirit of reconciliation, could resolve the issue more comprehensively than litigation.”

On April 20, 2023, the Kanien’kehá:ka Kahnistensera and the Rotiskenrakehte and all other Parties reached an Agreement relating to an appropriate archaeological plan. The terms of this Agreement have been given the force of a court order and made public and will ensure that the investigation for unmarked burials is transparent, guided by experts with the required experience in searching for unmarked burials, and follows best practices in accordance with Indigenous laws, customs and protocols.

The efforts made by the Kanien’kehá:ka Kahnistensera and the Rotiskenrakehte in obtaining the injunction is noteworthy for several reasons:

- The Kanien’kehá:ka Kahnistensera and the Rotiskenrakehte were successful as self-represented litigants while arguing against an army of lawyers for the Société québécoise des infrastructures, McGill University, the City of Montreal, the Province of Quebec, and the Government of Canada, who were often very aggressive, offensive and failed to lawyer in ways that would foster reconciliation;<sup>113</sup>
- The Kanien’kehá:ka Kahnistensera and the Rotiskenrakehte relied on Rotinohsonni laws, not Canadian law; and
- The case may be a significant precedent for pausing other development on lands where there is evidence of possible unmarked burials of Indigenous children. It may also encourage collaborative processes to implement appropriate archaeological plans that are respectful of Indigenous Peoples.



## C. Complexity and timeline of ground searches

There is significant complexity to search and recovery work. As Dr. Scott Hamilton has noted, determining the location of unmarked burials requires a historic understanding of the institutions' operations and the patterns relating to how children died and where they were buried.<sup>114</sup>

The search for unmarked burials involves identifying the location and boundaries of former Indian Residential School cemeteries as well as other unmarked burials, including potentially clandestine/hidden burials. Indian Residential School cemeteries may contain unmarked burials since they were often established informally, poorly documented and regulated by the federal government. The federal government also gave insufficient consideration to how these graveyards would be cared for after Indian Residential Schools closed.<sup>115</sup>

Due to the complexity of these searches, there is a need to develop a tailored search plan based on the particular site being searched. The Canadian Archaeological Association (CAA) Working Group on Unmarked Graves has developed important guidelines when searching for unmarked burials.

The CAA Working Group and other experts indicated that multiple sources of information must be gathered and analyzed, including Survivor truths, archival records, and maps. All data should then be organized in a timeline<sup>116</sup> to document the history of construction, operation, renovations, closure, and repurposing of the buildings and lands over time.<sup>117</sup>

After gathering all this data into a timeline, using multiple sources of information, priority areas for ground searching can then be identified.<sup>118</sup> Due to the many variables that may impact remote sensing results, it may be necessary, depending on the terrain, to use several methods of remote sensing in the same area to verify the results.

Data must be collected and archived carefully to document how the data was processed. This is important to enable test results to be replicated.<sup>119</sup> Ideally, peer review should be done to check data analysis and interpretation.<sup>120</sup> Given the lack of available experts to analyze data, Indigenous people should be trained to develop this expertise.

Each step of the process can take years – from gathering Survivors' truths, obtaining and reviewing records, gaining access to sites, creating and carrying out robust ground search plans, to analyzing the results. In addition, as new information is learned from Survivor truths and records reviewed, further searches may be required of other areas within the same sites, or at new sites. As a result, the timeline for completing this search and recovery work is likely to span over a decade.



## The Canadian Archaeological Association's Working Group on Unmarked Graves' Pathway Framework

The CAA Working Group on Unmarked Graves created a guideline document called Recommended Pathway for Locating Unmarked Graves Around Residential Schools ("Pathway Framework"), which highlights that the investigations of lands where missing children might be buried is complicated by physical and social geography and by shifting land use. Many areas have changed over time, so information about the history of land use, geology, and development of a site is needed to create a tailored search plan for that site.

The Pathways Framework notes the following important considerations for those leading or supporting Indigenous communities in conducting searches:

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

This Pathway Framework also provides important guidance on respecting Indigenous protocols and ceremonies, seeking appropriate permissions, working respectfully with Indigenous communities and Survivors, as well as emphasizing the need for health and wellness supports for Survivors and community members.



## Survivor-led Ground Search at the Mohawk Institute

*This is heavy work that needs to be done. As Survivors, we take comfort in knowing that this Sacred work is being done in a good way, with our community members' participation.*

- Sherlene Bomberry, Survivor of the Mohawk Institute<sup>121</sup>

The Survivors' Secretariat was established to search the grounds of the former Mohawk Institute for unmarked burials, which spans over 600 acres. The Institute was the longest running Indian Residential School in Canada, operating from 1828 to 1970. The Survivors' Secretariat is governed by a Board of Directors comprised of seven Survivors of the Mohawk Institute.

The work of the Survivors' Secretariat is an example of a Survivor-led approach to ground searching. Survivors provided direction on which areas should be searched, and which area should be prioritized.

Prior to commencing the ground search, Survivors and community members were trained in how to operate the ground penetrating radar (GPR) machines, and Cultural Monitors were hired to ensure that Haudenosaunee and Anishinaabe laws, customs, ceremonies, protocols and processes are respected and observed during the search processes.

Over the Fall of 2021, 60 grids were laid for GPR scanning. 37 of these grids were scanned before snowfall stopped their work. Data from the GPR was then sent to experts for processing and analysis.

The Survivors' Secretariat also implemented the Reclaiming Our Role – Youth Supporting Survivors Program with funding from the National Indian Brotherhood Trust. This Program is focused on training young people from Six Nations of the Grand River and other impacted communities to operate the ground penetrating radar machines on lands associated with the Mohawk Institute.<sup>122</sup> Jesse Squire, a program participant said: "I felt very inclined to put my name forward to become a part of the work... My great-grandfather attended the residential school, so it's been very important for me and my family to find out the truth of what happened, and where the children went."<sup>123</sup>



Mohawk Institute, John Boyd / Library and Archives Canada



Farm grounds at the Mohawk Institute, John Boyd / Library and Archives Canada

As of August 2022, the Secretariat had GPR scanned a total of 387 ten by ten metre grids. This represents approximately 1.5% of the total area to be searched.<sup>124</sup> The Secretariat has estimated that it will take several more years to search all the land associated with the Mohawk Institute.<sup>125</sup>

The Survivors' Secretariat is also gathering archival and modern-day maps, records, and documents to support their ground searches of the Mohawk Institute. The Secretariat is working collaboratively with the City of Brantford to update official maps. In addition, the City has agreed to alert the Secretariat of any development that may be planned on lands associated with the former Mohawk Institute.<sup>126</sup>

### Findings to date on the complexity and timeline of ground searches:

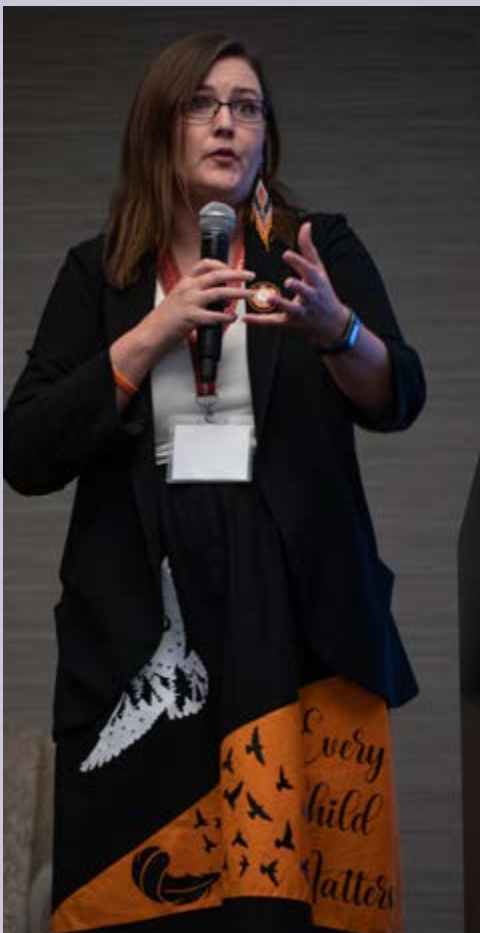
- 13. There is jurisdictional complexity in the context of search and recovery work. Different laws apply depending on the legal status of the sites and the legal frameworks in place.
- 14. Each site requires a unique search plan depending on the geography and history of the site. The different terrains of sites, the development on the site, and the environmental conditions all affect ground search plans. These factors often require the use of different search technologies in different areas of the same sites or several technologies in the same area.
- 15. At some sites, there are multiple properties and/or buildings that need to be searched. In some instances, the Indian Residential School building was relocated to other sites.
- 16. There may be delays in expert analysis of the data collected from remote-sensing search technologies, such as ground penetrating radar. Currently, there are few experts in Canada who have the specialized experience and skills to analyse data to identify potential burials.
- 17. An immediate priority should be to establish a dedicated program for Indigenous people to receive training and certification in remote sensing technologies and to interpret results from GPR and other non-invasive survey methods<sup>127</sup> in the context of searching for unmarked burials. Sufficient funding and supports should be provided for Indigenous people interested in receiving this training.
- 18. Recognized institutions, including Indigenous technical institutions, should offer these courses with an established curriculum that is comprehensive and adapted for cultural relevancy.



# Emerging Practice: Providing Culturally Respectful Archaeological and Search Technology Support and Guidance to Indigenous Communities

## The Institute of Prairie and Indigenous Archaeology, University of Alberta

Under the direction of Dr. Kisha Supernant (Métis/Papaschase/British), the Institute of Prairie and Indigenous Archaeology (the “Institute”), is an Indigenous-led institute that is committed to supporting Indigenous-engaged archaeological research, to developing educational approaches that integrate Indigenous ways of knowing and being into archaeological teaching and training, and to changing cultural heritage policies in ways that reflect the values of Indigenous communities in western Canada. The Institute is not only the first of its kind in Canada; it is the first one focused on Indigenous archaeology in the world.<sup>128</sup>



Dr. Kisha Supernant, the Institute of Prairie and Indigenous Archaeology at the National Gathering in Edmonton

The Institute’s focus has centred around developing and applying technologies, including ground penetrating radar and drones, that allow archaeologists to survey sites with less impact to the sites themselves. These methods can be less time consuming, less expensive, and cause less disturbance than archaeological excavation. This is an important consideration when searching for the unmarked burials of children who died at Indian Residential Schools and other associated institutions.<sup>129</sup>

Using these less-invasive technologies, the Institute’s researchers have identified areas of unmarked graves and the boundaries of burial grounds at former Indian Residential School sites. The Institute is also currently working with the National Centre for Truth and Reconciliation to create a protocol for the archaeological surveying of Indian Residential Schools sites.<sup>130</sup>





## Developing new platforms for reciprocal training between Musqueam (xwməθkwəyəm) Indian Band and the Laboratory of Archaeology, University of British Columbia

At the University of British Columbia (UBC), Dr. Andrew Martindale is part of a team working with the Penelakut Tribe in British Columbia to locate the unmarked graves of children who died while in the care of the Kuper Island Indian Residential School. The team from UBC describes their role as that of researchers and witnesses. Coming in as outsiders, the UBC team has focused on “developing trust, and the interactional expertise necessary to work well together, with a good heart.” For their part, the Penelakut are seeking “a reciprocal process of testing, training, and mutual attunement” in this relationship.<sup>131</sup>



Kuper Island Indian Residential School, Image H-07256 courtesy of the Royal BC Museum

The search for unmarked burials on the former site of the Kuper Indian Residential School began in 2014. Initially the search was funded through the Truth and Reconciliation Commission, but when funding ran out, Dr. Martindale and other project members, including Eric Simmons (UBC), performed the site investigation at the former institution on a volunteer basis. In July 2021, Penelakut “disclosed to neighbouring First Nations that more than 160 unmarked graves were found on the grounds of the former residential school.”<sup>132</sup>

Dr. Martindale is also working to bring together representatives from the Musqueam (xwməθkwəyəm) Indian Band and the UBC’s Laboratory of Archaeology (LOA) to co-develop training and on-the-job experience for xwməθkwəyəm (Musqueam people). This training can be used toward accreditation for work in the cultural resource management sector or in meeting British Columbia’s criteria for archaeological permit holders. The aim is to make post-secondary education and accreditation accessible to a wider range of xwməθkwəyəm. The curriculum is being “jointly delivered by a Musqueam Archaeology Office sessional instructor and a UBC Anthropology faculty member,” to amplify “Indigenous voices and perspectives, and center Indigenous ways of knowing.”<sup>133</sup>

There is also a series of xwməθkwəyəm-LOA knowledge exchanges that focus on cross-cultural learning and reciprocal training. Participating xwməθkwəyəm are compensated for the knowledge, guidance and time they contribute to research and curriculum design. The initiative also engages with xwməθkwəyəm youth, encouraging them to think about work in archaeology and cultural resource management as potential career paths.<sup>134</sup> Over time, this initiative is intended to advance future practices and programs that emphasize reciprocal, Indigenous community-led research.

In June 2021, Musqueam Chief and Council passed a resolution directing UBC LOA and the Musqueam Archaeology Office to work together to provide guidance to communities considering the use of GPR in the search for children missing from Indian Residential Schools.<sup>135</sup> Together, they have developed a [GPR training course](#) to provide training to First Nations community members to gain the skills to confidently complete or participate in GPR studies. This course is provided free of charge and is open only to First Nations communities.

## D. Shortcomings of existing investigation processes

Existing criminal and death investigation systems in Canada, including police, coroners, and prosecutions arise from and reflect colonial methods and processes. The shortcomings of existing colonial legal processes demonstrate institutional and systemic patterns that have resulted in a denial of justice for the missing children and their families and communities. These systemic patterns can be traced from the beginning of the Indian Residential School System through to today.

The TRC noted that various police, including the RCMP and provincial police, were involved in apprehending Indigenous children and forcibly transferring them to Indian Residential Schools.<sup>136</sup> In addition, police, including municipal police, were compensated by Canada to track and capture children who escaped from Indian Residential Schools and return them to the institutions.<sup>137</sup> The TRC further noted that the few police investigations relating to abuses perpetrated on the children rarely resulted in criminal prosecutions<sup>138</sup> and several RCMP investigations of abuse and mistreatment of children by teachers, priests, nuns and other officials at Indian Residential Schools were compromised by the federal government.<sup>139</sup> As such, there is now a significant lack of trust towards federal, provincial, and municipal police services in the context of investigations into the missing children and unmarked burials.<sup>140</sup>

In 2012, the TRC requested copies of all records in Canada's possession for every criminal conviction relating to Indian Residential Schools and Canada did not respond.<sup>141</sup> With the limited documents available to it at the time, the TRC found that 31 people had been criminally convicted of abusing children at Indian Residential Schools. In a chapter called "A Denial of Justice", the TRC was critical of the fact that there were few criminal prosecutions during the operation of Indian Residential Schools. This lack of prosecutions is a cause of concern still today.<sup>142</sup> On June 24, 2021, the Native Women's Association of Canada wrote to the Attorney General of Canada to demand that:

- All sites of former Indian Residential Schools immediately be declared crime scenes;
- Investigations be conducted to determine how each and every Indigenous child buried at those sites died, and who is responsible for their deaths; and
- Charges be laid against people still living who are found to be the perpetrators of these crimes, including the members of the religious orders that ran the institutions, as well as the governments and the churches that were complicit.<sup>143</sup>

In the context of death investigations by coroners or medical examiners, mandatory investigations are only initiated in certain circumstances defined by provincial and territorial legislation, for example, when deceased persons or human remains are unexpectedly discovered. Coroners and medical examiners have discretionary powers to initiate an investigation if they receive information about the possible existence of a body; however, they tend to exercise these powers carefully. Police and coroner's investigations are focused on determining the circumstances of the individual crime or death and neither are designed to respond to mass, systemic human rights violations. In addition, various reviews and inquiries across Canada have found that coroners and medical examiners have not served Indigenous people and communities well.<sup>144</sup>

## What Criminal Charges could be laid in the Context of the Missing Children and Unmarked Burials?

*Criminal Code* charges can be laid against both individuals and organizations. This may include churches and government, where there is proof that a senior representative was involved in the criminal act.<sup>145</sup> In order to charge someone with a crime, the *Criminal Code* provisions of the time when the offence is alleged to have occurred must be applied<sup>146</sup> and the person who committed the crime(s) must still be alive.<sup>147</sup>

Due to the lengthy time span that Indian Residential Schools operated, a historical analysis of several *Criminal Code* provisions is required. The *Criminal Code* was enacted in 1892 and has been amended many times over the years. Most, if not all, of the criminal charges that could be laid in relation to what happened to the missing children and unmarked burials would have been crimes at the time they occurred including murder, manslaughter, abandoning child, negligence, failing to provide necessities of life, indignity to a dead body, and accessory after the fact.<sup>148</sup>

### Who Can Prosecute?

Provincial crown prosecutors have jurisdiction to prosecute *Criminal Code* offences in each province.<sup>149</sup> However, the Attorney General of Canada can take over *Criminal Code* prosecutions in specific cases.<sup>150</sup> Federal crown prosecutors have jurisdiction to prosecute offences under the *Criminal Code* in Nunavut, the Northwest Territories, and the Yukon.<sup>151</sup>

Under the federal *Crimes Against Humanity and War Crimes Act*,<sup>152</sup> the RCMP can lay charges, but the consent of the Attorney General of Canada or Deputy Attorney General is required to prosecute.<sup>153</sup> Federal prosecutors have exclusive jurisdiction to prosecute these cases, and this cannot be delegated.<sup>154</sup>

## Redefining “Forensic Interest” in Ontario

In August 2020, three human bones were uncovered when utility workers were digging a trench on private property on Glenwood Drive in Brantford, Ontario. Pursuant to the *Coroners Act*<sup>155</sup> and section 95 of the *Funeral, Burial and Cremation Services Act*,<sup>156</sup> the Brantford Police and Office of the Chief Coroner for Ontario (OCC) were notified of the discovery. After forensic analysis, the OCC determined that the remains were human and radiocarbon dating indicated that there was a 77.9% probability that they pre-dated 1814. It was therefore determined that the remains did not have “recent medico-legal significance”<sup>157</sup> and as a result, there was “no forensic interest.”<sup>158</sup> As such, the matter was then turned over to the Registrar of Burials for an archaeological assessment.

The soil was removed from the trench and deposited at a different site to be inspected. Prior to the inspection of this soil, and during the archaeological assessment, a communication error occurred, and the soil was again moved, to a third location. When the inspection of the soil finally took place, an additional human bone was found.

The archaeological assessment involved consulting with the Mississaugas of the Credit First Nation, the Haudenosaunee Development Institute, Six Nations of the Grand River, and the Survivors’ Secretariat. This consultation revealed that:

- The property was approximately 3.2 kilometres from the former Mohawk Institute Indian Residential School.
- The property had been owned by Abraham Nelles, the principal of the Mohawk Institute between 1837 and 1872.<sup>159</sup>
- In 2003-2006, a condominium complex had been built on the property.
- An archaeological assessment had not been completed before the condominium complex was built.

These unusual circumstances caused the archaeological investigators to suspend fieldwork and consult with the Registrar of Burials. Discussions occurred between the Survivors’ Secretariat, the Chief Coroner and the Registrar of Burials and a decision was made to proceed with further investigation pursuant to the authority of the Office of the Chief Coroner. This further investigation determined that:

- a burial feature was present on the site;
- the human remains were likely moved from a different unknown location; and
- the remains had been disturbed three times: first, by a tree spade, second, by a shovel and finally, by those digging the trench.

The investigation concluded that although it was unclear whether the person operating the tree spade was aware they had disturbed the remains, it was likely that the person using the shovel was aware that they had dug into the bones. The disturbance with the shovel likely occurred during landscaping work in the early 2000s and was never reported to the authorities, in breach of the legislation in place at the time.

During the coroner-led investigation, the remains were exhumed. Over 500 small glass beads were located adjacent to the bones associated with the lower leg, consistent with presence on clothing. Indigenous Cultural and Human Rights Monitors, Wendy Hill and Beverly Jacobs from the Survivors' Secretariat, confirmed that the beads were from boy's or men's regalia, likely leggings or a breechcloth.

Further forensic analysis, including an osteological report, radiocarbon dating of the bone sample, and chemical dating of the glass beads supported the conclusion that the remains were from a boy between the ages of 11 and 14 years old, who had likely died in the late 1600s.



Wendy Hill, Cultural Monitor at the Survivors' Secretariat, speaking at the National Gathering in Toronto

## Determinations of “Forensic Interest”

In Ontario, the Office of the Chief Coroner (OCC) and the Ontario Forensic Pathology Service (OFPS) work together to lead death investigations. When skeletal unidentified human remains are discovered, a forensic anthropologist consultant from the OCC/OFPS determines whether they have “forensic interest” and whether the discovery warrants an investigation into how and why the person died. If the remains are determined to be “archeological or historical” in nature (i.e. older than 50 years old), no further death investigation is likely to occur by police or the coroner.<sup>160</sup> The factors that go into discretionary determinations of “forensic interest” are not set out in law or regulation.<sup>161</sup> Pursuant to ss.175(1) of Ontario Regulation 30/11, once the coroner declares that no foul play is suspected in relation to the human remains, the coroner must notify the Registrar responsible for burial sites under the *Funeral, Burial and Cremation Services Act* at the Ministry of Public and Business Service Delivery. The Registrar will then examine the facts to determine whether to issue an order against the landowner to have a burial site investigation conducted pursuant to s. 96(1) of the *Funeral, Burial and Cremation Services Act*.

The Glenwood Case illustrates that determinations of “forensic interest” by coroners are not straightforward, nor are they informed by Indigenous laws, principles, protocols, knowledge, and values. While radiocarbon dating of the bones led to the initial conclusion that the human remains were “historical” and therefore of no “forensic interest”, further evidence, and, crucially, the advocacy of Indigenous communities and Survivors required that this determination be reassessed. This further evidence included the location where the remains were found (near the Mohawk Institute and on land that had once been owned by one of the Institution’s principals), the archeologists’ finding that the remains had been disturbed multiple times, and osteological findings that the remains were from a young person. All these factors resulted in a reconsideration of the “forensic interest” determination. As the Chief Coroner for Ontario said: “In retrospect...given the proximity to the Mohawk Institute and the recognition of unmarked burials in locations that are at or associated with residential schools, this is obviously of forensic Interest.”<sup>162</sup>

## Emerging Practice: The Residential Schools Death Investigation Team, Office of the Chief Coroner, Ontario



From left to right: Dr. Dirk Huyer, Chief Coroner for Ontario, Donald Worme, K.C., I.P.C., criminal lawyer, and Chief of Police Darren Montour, Six Nations Police Service presenting at the National Gathering in Edmonton

The Chief Coroner for Ontario made significant policy changes following the Glenwood Case. In May 2022 the Office of the Chief Coroner committed to working collaboratively with Indigenous communities when human remains are found in the vicinity of Indian Residential Schools.<sup>163</sup> It also created the Residential Schools Death Investigation Team.

The Residential Schools Death Investigation Team (“Death Investigation Team”) was established by Dr. Dirk Huyer, the Chief Coroner for Ontario in May 2022. The Team consists of three police investigators currently drawn from the Ontario Provincial Police, Six Nations Police Service, and Brantford Police Service along with a civilian analyst. Members work on behalf of the Office of the Chief Coroner under the direction of Dr. Huyer.

The Death Investigation Team is reviewing deaths, at the request of Indigenous communities, that may be related to the 18 Indian Residential Schools that operated in Ontario as well as the St. Joseph’s Reform School, which is a site owned by the Ontario government where there have been at least nine deaths of children and youth.<sup>164</sup> The review includes deaths listed on the National Centre for Truth and Reconciliation (NCTR) Memorial Register, other deaths found during the research, and

the Office of the Chief Coroner’s “Unidentified Remains” files. Any suspicious death where there is potential criminality is referred to the Ontario Provincial Police’s Criminal Investigations Branch for follow-up.

For each of these cases, the Death Investigation Team is reviewing the records and documentation available to the Office of the Chief Coroner with the goal of answering the five questions that are asked in every coroner’s investigation:

- (a) Who died;
- (b) When they died;
- (c) Where they died (and, if not previously known, where they are buried);
- (d) How they died (medical cause of death); and
- (e) By what means the death occurred (e.g. natural causes, accident, homicide, suicide, or undetermined).

The Death Investigation Team has implemented a process that is respectful of Survivors, Indigenous families, and communities. This includes not duplicating research that is already being conducted by Indigenous-led researchers and investigation teams. The Death Investigation Team is also obtaining consent from Indigenous communities that are leading searches at the former institutions in Ontario before conducting research into deaths of children. To date, the Death Investigation Team is working collaboratively with several First Nations who are leading search and recovery efforts at five institutions in Ontario.

The Death Investigation Team has requested access to records contained in various archives, including at the NCTR, Statistics Canada, and Ontario Archives. It is noteworthy that the Office of the Chief Coroner has been granted access from the NCTR on the basis that it is conducting investigations under the authority of the Coroners Act, which has permitted unrestricted access to all records in the archive.

The Death Investigation Team has also been working with publicly available, open-source information. The benefits of relying on open-source information include:

- This information is immediately available;
- It may contain information outside of what can be found in various archives; and
- There are no restrictions on releasing the information and sharing it with the families and communities leading search and recovery efforts.

As of March 2023, using only publicly available information, the Death Investigation Team has identified 62 deaths of children at Indian Residential Schools in addition to the 433 already listed on the NCTR Memorial Register for Ontario (“additional deaths”). The Death Investigation Team has shared the information/records relating to these additional deaths with the Indigenous communities that they are working with, as well as with the NCTR. Open-source information that has helped to identify these children includes letters, books, yearbooks, and news articles. Further, they have answered the majority of the five investigative questions for 81 of the 433 deaths. The Death

Investigation Team is also available to meet with Survivors and others with information about the circumstances surrounding a particular child's death, when invited to do so. As Dr. Huyer said at the Edmonton National Gathering, "we know we are a government organization and that we need to earn trust. I understand the distrust...This is something that will be community-led, Survivor-led, if we are asked."

For these additional deaths, the Death Investigation Team has been able to locate children's names, exact or approximate dates of death, and the recorded circumstances or medical cause of their deaths. In some cases, burial markers or locations have also been identified, although many of these children's burials are yet to be located. Sometimes the information recovered about the circumstances and causes of the child's death has been provided to the NCTR as new information, including the time and place of death and which institution the child was taken to. This enabled the NCTR to remove these children's names from the NCTR's "Unknown List" and list their death in relation to a particular Indian Residential School.

In addition to its work on specific Indian Residential Schools, the Death Investigation Team is also reviewing the Office of the Chief Coroner's "Unidentified Remains" files. The purpose of this review is to determine whether:

- Cases require follow-up and further investigation, and if so, what other organizations should be engaged;
- Files may relate to deaths of children at Indian Residential Schools;
- Linkages can be made to missing and murdered Indigenous women and girls;
- Remains of Indigenous people currently in the care of the Office of the Chief Coroner/Ontario Forensic Pathology can be returned to Indigenous communities; and
- Current or future practices of the Office of the Chief Coroner can be improved in relation to unidentified remains.

The Death Investigation Team has considered the results of a previous review of unidentified remains files from 1965-1991 that was completed in 2012. The review identified the deaths of four children as "possible Indian Residential School deaths." The Death Investigation Team has determined that one of these four deaths merits further investigation.

The Death Investigation Team has also completed a review of 111 unidentified remains files from the period 1980-1985, 24 of these have been referred to the Ontario Centre for Missing Persons and Unidentified Remains for further investigation. Another 26 files have been identified as relating to persons who are "possibly Indigenous." In some of these cases, a connection with an Indigenous community has been made, and the remains have been reburied according to community wishes.

The Office of the Chief Coroner for Ontario has demonstrated how an organization can implement processes that support Indigenous-led search and recovery efforts in relation to the missing children and unmarked burials. It has shown leadership and has allocated human and financial resources to support the work, when requested, of Survivors, Indigenous communities, and leadership.



## Findings to date on shortcomings of existing investigation processes:

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



Memorial to all the Survivors and children who were taken to Cecilia Jeffrey Indian Residential School in northwestern Ontario

## E. Affirming Indigenous Data Sovereignty

Indigenous data sovereignty refers to the right of Indigenous Peoples to exercise ownership, control, access, and possession over their data. It recognizes the unique cultural, social, and political contexts in which Indigenous data is collected, analyzed, and shared. It recognizes the fact that a lot of data has been collected by non-Indigenous governments and researchers about Indigenous people. It recognizes that Indigenous knowledge has been appropriated and used in breach of Indigenous laws by non-Indigenous people and institutions for their benefit and at the detriment of Indigenous Peoples. This long history of disrespect and unauthorized use of Indigenous knowledge and data has created challenges for Indigenous Peoples in accessing and controlling their data and has led to the misrepresentation and erasure of Indigenous knowledge and perspectives.

Indigenous data sovereignty involves amending the laws that put power in the hands of government institutions, universities, and church organizations – the ‘creators’ or copyright holders of documents – and shifting that power back to the Indigenous people that are documented within records. Indigenous data sovereignty therefore seeks to promote Indigenous-led research methodologies, respecting community protocols for data sharing, and ensuring that data collected from Indigenous communities is used ethically and with the community’s consent. These practices include recognizing the cultural significance of data and the need to protect Indigenous data from unauthorized access or use. Indigenous data sovereignty also provides an opportunity for non-Indigenous researchers and organizations to learn from Indigenous knowledge and perspectives and collaborate in respectful and mutually beneficial ways.

Indigenous sovereignty is closely linked to the protection and stewardship of Indigenous lands and resources. The relationship between Indigenous data sovereignty and the sovereignty of Indigenous Nations and lands is founded on the fact that data is an integral part of Indigenous knowledge systems and is intimately tied to Indigenous lands, cultures, and communities. Indigenous Peoples’ relationships with their lands and knowledge systems are based on the accumulation of generations of knowledge about their environments, resources, and relationships.

Indigenous data sovereignty protects and asserts Indigenous sovereignty by enabling Indigenous Peoples to gather and analyze data about their lands and resources, monitor environmental impacts, and make decisions about their own futures. In this sense, Indigenous data sovereignty and sovereignty over lands are mutually reinforcing concepts. By asserting control over their own data, Indigenous Peoples can better protect and exercise their sovereignty over their lands, resources, and knowledge systems.



## National Centre for Truth and Reconciliation: The TRC Vision

At the National Gathering on Affirming Indigenous Data Sovereignty in Vancouver, former TRC Commissioner Dr. Marie Wilson explained that part of the TRC's Mandate was to establish a National Research Centre (NCR) – now the National Centre for Truth and Reconciliation (NCTR) – to house the Commission's records, Survivors' statements and the government and church records. The TRC Final Report said that,

*Archives may be viewed with distrust by First Nations, Inuit and Métis peoples. Many feel that much of their lives is contained in documents (most of which they have never seen) kept by the state in order to study and categorize them in a depersonalized manner. In various ways, existing archives have been ill-suited to serving the needs of Survivors, their families, and their communities. What Aboriginal peoples require is a centre of their own—a cultural space that will serve as both an archive and a museum to hold the collective memory of Survivors and others whose lives were touched by the history and legacy of the residential school system...*

*[The NCTR is to be] an evolving, Survivor-centred model of education for reconciliation. Implementing a new approach to public education, research, and recordkeeping, the centre will serve as a public memory “site of conscience,” bearing permanent witness to Survivors’ testimonies and the history and legacy of the residential school system...The concept of the National Centre for Truth and Reconciliation has deep roots. For many years, Survivors and their supporters called for a centre that would be a lasting legacy to Survivors’ own history and to Canada’s national memory.<sup>165</sup>*

Dr. Wilson described the Commission's vision for a National Research Centre as a “Sacred trust” – a promise made to Survivors that the Centre would be:

- **Independent** - records were never again to be hidden, denied, destroyed, or withheld;
- **National** - with affiliated partner institutions throughout the country; and
- **Accessible** - to Survivors, their families, and communities, researchers, educators, and the general public.

The TRC Survivors' Committee wanted the National Research Centre to continue the TRC's vision based on principles of reconciliation, the *UN Declaration on the Rights of Indigenous Peoples*, and the right to know. They wanted the TRC Commissioners, affiliated partner institutions, and the Parties to the Indian Residential Schools Settlement Agreement to have an ongoing role in the NRC. The Survivors' Committee also wanted to ensure that the NRC would continue gathering Survivors' statements and acquiring records.<sup>166</sup>

Dr. Wilson said that it is important to assess what progress the NCTR has made on fulfilling this promise. She emphasized that the NCTR must be seen to be doing more than what the government and some churches did in providing records. She also stressed that there is urgency to this work:

Survivors are aging, and their truths are part of family and community histories and the national narrative. She identified some key indicators that should be evaluated and asked the following questions:

- Are the affiliated institutional partners still involved? Is the circle of partnerships expanding? Is there public awareness of these partnerships?
- Does the NCTR governance model in relation to the University of Manitoba effectively support independence, accountability, transparency, and inclusivity?
- Is there timely access to records to build and ensure trust?
- Who decides on relevance? Are communities and families determining relevance?
- Do we know more about the names, genders, and numbers of children in Indian Residential Schools?
- Has community information been analyzed and incorporated into the National Death Registry for up-to-date accurate totals?
- Has a National Register of all Indian Residential School Survivors been established? Is it being monitored?<sup>167</sup>

Although it is unclear whether a full evaluation of the NCTR has been completed to determine whether it is honouring the TRC's vision, the experiences of many Indigenous communities point to barriers in accessing information key to finding the missing children and unmarked burials.



Dr. Marie Wilson, former TRC Commissioner, providing a Keynote Address at the National Gathering in Vancouver

## How the NCTR’s Governance Structure Creates Barriers to Community Access

The NCTR’s governance structure has created barriers for Indigenous communities to access records. At every National Gathering, Survivors, Indigenous families, and community researchers have described difficulties. It has become apparent that there is a lack of transparency and consistency in how decisions are made relating to which and how many records are disclosed.

Part of these difficulties are because multiple legislations apply to the NCTR and to the various records it holds. The provincial *National Centre for Truth and Reconciliation Act*, CCSM c. N20 (the “NCTR Act”)<sup>168</sup> confirms that the NCTR’s records are subject to both Manitoba’s *Freedom of Information and Protection of Privacy Act* (FIPPA)<sup>169</sup> and the *Personal Health Information Act* (PHIA)<sup>170</sup> (collectively, the “Manitoba Privacy Legislation”). Importantly, the NCTR Act sets out and limits the application of Manitoba Privacy Legislation to NCTR records. Section 11 of the NCTR Act provides that persons may access records about themselves or a family member<sup>171</sup> without having to make a formal access request under Manitoba Privacy Legislation.

As a provincially regulated organization, the NCTR is not technically subject to the federal access and privacy legislation covering federal public bodies.<sup>172</sup> However, some records may be subject to restrictions under federal legislation. The TRC was required to collect federal government records from Library and Archives Canada (LAC) and other federal departments. These records are subject to federal *Access to Information and Privacy* (ATIP) legislation.

The University of Manitoba’s policies also impact access to NCTR records. At the Vancouver National Gathering, Raymond Frogner, Head of Archives at the NCTR, explained that because the NCTR is housed within the University of Manitoba, all research requests are also subject to approval by a University Ethics Committee. This creates additional paperwork and bureaucratic processes for Survivors, their family members and community researchers to navigate.

It is important to note that the *National Centre for Truth and Reconciliation Act* does provide the NCTR’s Director with broad authority to collect, use and **proactively disclose** records. Section 7(1) of the NCTR Act indicates:

*To fulfill the mandate of the Centre as it relates to ensuring availability of the Centre records, the director is authorized to make Centre records available and to disclose any personal information, including personal health information, contained in the records, to the extent that the director considers it necessary to fulfill the mandate.*

In assessing whether to proactively disclose records, the Director “must consider all of the relevant circumstances, including whether the public interest in the disclosure clearly outweighs any invasion of privacy that could result from the disclosure.”<sup>173</sup> In practice, it is unclear how and to what extent the NCTR is relying on the proactive disclosure provision to facilitate access for communities searching for the missing children and unmarked burials.

Currently, the NCTR is negotiating Memorandums of Understanding/Agreement (MOUs/MOAs) with Indigenous communities to grant access to some of the records. Mr. Frogner observed that:

*[W]hen we are making the records available, and we want to open up all of the records for this research, the one way we found to get around [FIPPA], according to legal counsel, is to draft a Memorandum of Understanding. It's onerous, it's difficult, it's time consuming and it's extremely colonial. But this is the corner we've been painted into by the NCTR Act and, until it's redrafted, I don't see any other way that we can possibly make these records fully available for communities to use in their research.<sup>174</sup>*

Many Survivors and communities have identified concerns regarding the NCTR access processes, including;

- **Delays in Obtaining Access:** Many Survivors, family members and communities have reported that the NCTR access processes are slow and that it can take over 6 months before records are provided or access is granted to the archive;
- **Determining Relevance:** Some communities have reported that the NCTR determined what records were relevant to the community's search efforts, and merely provided copies of those records and did not grant access to the NCTR database for the community themselves to determine which records they required;
- **Restrictions on access and use of the records:** Some communities are being told that they cannot download documents to add to their own archives and can only view records for the purpose of finding names of children and deaths. One community even reported that they were told that the NCTR was "watching them" (i.e. monitoring which records they were accessing) indicating a mistrust of the community;
- **Lack of transparency with respect to the terms in the MOUs/MOAs:** The MOUs/MOA's are not publicly available, making it difficult to assess their consistency. It seems that different communities have different access, with some having more restrictions placed on them than others. It is unclear how the restrictions are determined by the NCTR; and
- **Lack of clarity about access to records added after the signing of the MOU:** It is also unclear whether the MOUs/MOA's will include access to any future records transferred to the NCTR since they explicitly refer to accessing "existing records."<sup>175</sup> This is problematic as the NCTR continues to seek records from various institutions and churches, yet has been slow to add the new records into the archives for communities to access.

These practices seem to contradict the spirit and intent of the TRC's vision for the NCTR and the principles of accessibility, transparency, consistency and accountability to Survivors and Indigenous communities.

## Making the TRC's Vision a Reality



Amber Kostuchenko speaking at the National Gathering in Vancouver

Survivors, Indigenous families, and communities are affirming Indigenous data sovereignty by working to gain control over, and manage, their own records. At the Vancouver National Gathering, Stó:lō Nation researcher Amber Kostuchenko said that access to records alone is insufficient: “We need repatriation of these records and copies of these records within the communities.” Her observation is consistent with affirming Indigenous data sovereignty and making the TRC’s vision for the NCTR a reality:

*[T]he Commission believes it will be especially important to ensure that communities are able to access the centre’s holdings and resources in order to produce histories of their own residential school experiences and their involvement in the truth, healing, and reconciliation process.*

*The centre will be a living legacy, a teaching and learning place for public education that will promote understanding and reconciliation through ongoing statement gathering, new research, commemoration ceremonies, dialogues on reconciliation, and celebrations of Indigenous cultures, oral histories, and legal traditions.<sup>176</sup>*

It is important to acknowledge the work that the NCTR has done towards fulfilling the Sacred trust it has been given. The NCTR has an important responsibility to uphold the promise made to Survivors to make the TRC’s vision of an Indigenous-led National Research Centre a reality. As Stephanie Scott, Executive Director of the NCTR, said in her presentation to the Standing Senate Committee on Indigenous Peoples on March 21, 2023:

*Since 2021, there has been an incredible increase in the volume of requests for records from Survivors, and frankly, we have been overwhelmed by the number and pace of requests, leading to the very regrettable delays in processing these requests. I am pleased to relate, however, that the federal government’s 2022 commitment of long-term, sustained core funding has enabled us to significantly expand our capacity. By the end of this month, the NCTR archives will have eliminated the backlog in requests, leading to a much-reduced time for Survivors and communities to receive copies of their records.<sup>177</sup>*



Survivor Eugene Arcand speaking at the National Gathering in Vancouver

Eugene Arcand, member of the NCTR Survivors' Circle, reminded participants at the Vancouver National Gathering of the importance of the NCTR in upholding the TRC's vision. He said:

*The National Centre is the only living legacy...[of] Residential School Survivors... This is our baby, this is ours...[and] it's up to us to take care of it... There are only a few of us left. This Centre is Sacred to us... The staff are doing their best. I've seen them cry. I've cried with them. Keep in mind...this is our baby.<sup>178</sup>*

## Findings to date on affirming Indigenous data sovereignty:

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





## Emerging Practice: Exercising Indigenous Data Sovereignty

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

The Stó:lō Nation's Xyólhmet Ye Syéwiqwélh (Taking Care of Our Children) Residential Schools Project focuses on archival and community research to identify children who died at or attended an Indian Residential School. Survivors, Elders, and Knowledge Keepers help oversee this work, which will contribute to the Lost Stó:lō Children Registry. The information for the Registry is being gathered through interviews with Stó:lō families and communities.

The Xyólhmet Ye Syéwiqwélh Residential Schools Project fits within the Stó:lō Nation's Indigenous data sovereignty framework. Reciprocity is an important principle for the Stó:lō Nation in the context of data and research. Reciprocity involves sharing the research with their own Survivors, families and communities as well as sharing the research with other affected Indigenous Nations.

The Stó:lō Nation's Research and Resource Management Centre ("the Centre") administers its own heritage policy and issues archeological permits. The Centre has also set up its own Stó:lō Nation Research Registry to assert Stó:lō control over any community-based research being conducted in the Stó:lō Nation. The Centre's application process requires researchers to submit their research project plan and provide a copy of the final research document to the community. This ensures that communities in the Stó:lō Nation benefit from and maintain control over this information. The Stó:lō Nation is an important example of exercising Indigenous data sovereignty.

### The Sk̓wx̓wú7mesh Úxwumixw (Squamish Nation) Yúusnewas Project

*Something that was said to us by an Elder is: "This is the right time for this work. It's the right time because the ancestors are ready. It's the right time because the Survivors are strong. It's the right time because the community wants to know." And I think it's the right time because technology is actually here to help us now. It's accessible, and it can help us answer the questions we all have.*

Ashley Whitworth, Yúusnewas  
Project Manager



Ashley Whitworth presenting at the National Gathering in Vancouver

Yúusnewás means “taking care of each other,” which describes the Skwxwú7mesh Úxwumixw approach to researching and documenting the Indian Residential School experiences of their stélmexw (people). The Yúusnewás Project focuses on searching for the missing children and unmarked burials. This research starts with yúusnewás or taking care, and yúusnewás applies to how research is done and how the researchers understand and present data.

The Yúusnewás Project team includes archeologists, archivists, and researchers. They are tracking and analyzing massive amounts of data from different sources, including oral histories, health and financial data, and other records. The researchers are documenting all the open access information available before focusing on records that have access restrictions.

The Yúusnewás Project aims to build “an easy, accessible, friendly, collaborative, and cooperative platform” —a National Indigenous Archive—that would enable Indigenous communities to share information as they search for the missing children and unmarked burials.

Those leading search and recovery efforts will be able to add and link information inside the platform that will connect different pieces of data together, including oral histories. Simply entering a search for a child’s name will result in a visual on-screen display of all records related to that child from all institutions.

The Skwxwú7mesh Úxwumixw long-term goal and vision for the National Indigenous Archive is to eliminate unnecessary duplication of work, and to grow the archive as multiple communities contribute information.

Built by Indigenous people, for Indigenous people, this archival model will affirm Indigenous data sovereignty while dismantling barriers to accessing information.



## F. Challenges of responding to media and public disclosures

Survivors, Indigenous families, and communities who have publicly disclosed confirmations of potential unmarked burials have been inundated with media requests for interviews. In some cases, unethical journalists have trespassed on burial sites without permission. In other cases, members of the public have trespassed onto Indigenous burial sites and posted videos on social media. Many communities have had to adopt security measures to keep trespassers off the search sites. Communities are now sharing information and strategies to develop communications plans and protocols for dealing with media and trespassers.



Every Child Matters shirt placed outside the former site of the Nanaimo Indian Hospital, which is secured by a tall fence and barbed wire.

## Tk'emlúps te Secwépemc

In May 2021, news of the potential 215 unmarked burials at the former site of the Kamloops Indian Residential School swept the world. As one community member noted:

*We had no idea when we started... that this was going to happen. The only thing we planned was to put up a fence so people wouldn't be walking over the children. We did not intend that it become an international conversation. Survivors wanted to come and pay respects because they were the ones that buried the children.*



Kamloops Indian Residential School, Canada. Ministère de la citoyenneté et de l'immigration / Bibliothèque et Archives Canada / PA-185532

The news became public through a leak to the media. There was no communications plan yet in place. Many members of the community learned about the results from outside sources, which was traumatizing for Survivors, families, and community members. The community had little time to ensure adequate health supports were put in place to support them. As Kúkpi7 Rosanne Casimir, Elected Chief of Tk'emlúps te Secwépemc, said:

*Delivering the news to the community was devastating. For those who were not home, we put a letter on their door... Some had to read the letter alone. It hit all of us like a ton of bricks. It still hits me.*

Once the news was public, the Tk'emlúps te Secwépemc were overwhelmed with media. At the Vancouver National Gathering, Kúkpi7 Casimir reflected on the challenges and lessons the Tk'emlúps te Secwépemc learned in navigating the national and international media. She told participants that some media outlets were ethical; their reporting was fact-based, honoured Survivors' truths, was respectful of cultural protocols, and journalists tried to use a trauma-informed approach when interviewing Survivors and community members. However, the community also received predatory and exploitive media requests that they had to filter. They had to deal with many uninvited visitors, including media and denialists, who did not always respect this Sacred site. Some breached cultural protocols, taking photos and video recordings of the burial site area without consent.

Denialists entered the site without permission. Some came in the middle of the night, carrying shovels; they said they wanted to "see for themselves" if children are buried there. Denialists also attacked the community on social media. Kúkpi7 Casimir explained that the hate and racism was so intense that she no longer uses social media without heavy filters. She said that the toxicity of denialism on social media needs more attention.



Kúkpi7 Rosanne Casimir, Elected Chief of Tk'emlúps te Secwépemc presenting at the National Gathering in Vancouver

Based on these experiences, Kúkpi7 Casimir provided some advice to those leading similar work:

- Create a communications strategy;
- Ensure resources and staff are in place to implement the communications strategy;
- Make mental health supports available to leaders, staff, Survivors, and community members affected by media intrusions and coverage;
- Set boundaries and protocols with media;
- Have dialogues that respect Survivors' truths;
- Know the media's agenda; and
- Support, protect, and honour those that this information will impact.

She concluded that the Tk'emlúps te Secwépemc experiences with media and denialism demonstrate the need for communities to maintain strict control of investigation sites and information provided to the media. She said:

*This is more than a media story whose time is coming and going, we have to ensure justice and accountability keeps going in the long-term. [We need to] pressure the government and the churches to do the right thing so our Survivors can find peace.*

## Cowessess First Nation

Barbara Lavalley from Cowessess First Nation is a Survivor and Lead Researcher in recovering the missing children and unmarked burials associated with the former Marieval Indian Residential School. She said that when Cowessess First Nation publicly confirmed that ground penetrating radar had found 751 anomalies on the site, the community was bombarded with media requests. The first contact with media was very difficult. Unfortunately, the number was leaked to the media without the necessary context explaining that the anomalies were in a community cemetery, where most of the graves were unmarked. It was necessary for the community to correct these misinterpretations and explain that this is not a "mass grave" site.<sup>179</sup>

Although some members of the media may want to come to the sites with good intentions, according to Lavallee, “freelance journalists crossed the line so many times.” Reporters were hiding in the tall grass, sneaking into the site, and flying helicopters or drones over the site for footage. The community issued a media embargo to stop all journalists from publishing information about the Cowessess investigation and from gaining access to the investigation site. They also implemented site access restrictions. However,

these measures did not stop some media from attempting to gain access, which interfered with the team’s ability to continue the search with ground penetrating radar (GPR).

Lavallee said that Cowessess First Nation now has a policy preventing media from reporting on new developments at their site until the work is completed. Since the initial number of anomalies found



Marieval Indian Residential School, Société historique de Saint-Boniface Archives (SHSBA), Oblats de Marie-Immaculée Province oblate du Manitoba / Délégation 0096, 116159

by GPR was taken out of context by media and sensationalized, no more information will be shared with media until the community can identify each burial and each missing child.

She also said that whenever news about unmarked burials at Indian Residential School sites appear in the media, including relating to Cowessess, communities have been targeted by denialists. She said that her community has learned that the best response to denialism is no response at all.



Barbara Lavallee, Cowessess First Nation, presenting at the National Gathering in Vancouver

# Findings to date on challenges of responding to media and public disclosures:

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



Memorial to all Survivors and children who attended the Kamloops Indian Residential School

## Emerging Practice: shíshálh Nation asserts sovereignty over its truths

*The news of unmarked graves at Residential Schools across Canada have been deeply painful and incredibly challenging for shíshálh people and for all Indigenous peoples across Canada. The truth is being heard by many settler Canadians in new ways, information Indigenous peoples have been telling Canadians for generations. There are many more truths that will be heard in the coming months. It is a horrifying and devastating history that must be grappled with.*

- Xwash Steven Feschuk, hiwus, and Council



St. Augustine's Indian Residential School, [National Centre for Truth and Reconciliation](#),  
[10a-c000480-d0052-001](#)

On April 20, 2023, the shíshálh Nation announced the recovery of unmarked, shallow graves of 40 children near the former St. Augustine's Indian Residential School. Their investigation, which started in early 2022, is part of an ongoing archeology project with the University of Saskatchewan. The shíshálh Archeological Research Project has involved consultation with Survivors, historical research, and ground-penetrating radar. According to the team, there are still more areas to be searched.



However, the community is pausing the work, taking time to reflect and find the best path forward. Chief yalxwemult' Lenora Joe released a video statement on the findings to date and made it clear that the community was prioritizing the well-being and safety of Survivors, community members, and staff through ceremony and cultural supports. The video and statement released by the shíshálh Nation is an emerging practice that demonstrates how a community can assert control over its own narrative and set boundaries with media and the general public.

In the video statement, Chief yalxwemult' Lenora Joe addresses the media's preoccupation with numbers, and notes how this focus is becoming normalized. Chief Joe said, "I ask you to not focus on the numbers. Not all of the missing children have been found, and many will never be found." She asks people to think of these children as relations, as children who have living connections, and whose families are grieving them. She said that these children are more than just numbers in a news story. The shíshálh Nation will not be disclosing exact locations of the burials, and the community asks that the children be referred to as children, rather than remains.

The statement made by the shíshálh Nation subtly addresses denialism by stating that "[w]hether or not unmarked graves are found, there is enough documented oral and archival evidence to say that these burials do or did exist." The community acknowledges that the voices of Survivors, who have first-hand accounts of what happened in Indian Residential Schools, should be prioritized over anything else.

Chief Joe acknowledged that while there will be many questions about the findings and what will come next, she asks that the media and the public respect the community's process to heal and understand that "asking questions that seem innocent could be triggers and bring up trauma." The shíshálh Nation will be taking time to pause, and will not be speaking to the media or elaborating further. They have asked for media to use their statement and release video for their press, and not to contact the community leadership or its members for comment. The shíshálh Nation says that if people want to offer their support they could "wear an orange shirt, fly your flags at half-mast, and cherish moments with your children and your families."

While media has published on the shíshálh Nation's findings, they have only been able to report on what the community has said in their media release and what the University of Saskatchewan was willing to comment on concerning the investigation. This emerging practice signals a way forward for communities who want to release their findings on their own terms informed by their community's best practices and in accordance with Survivors' and Elders' directions.



## G. Increase in the violence of denialism

Many international experts point out that denialism is the last step in genocide. Denialism is not harmless, yet its destructive impacts are not widely recognized or understood.<sup>180</sup> Canada is a case in point. There are disputes between Indigenous communities and governments over issues of jurisdictional control, ownership, and use of land. Denialism can fuel these disputes and create greater conflicts, particularly in the context of missing children and unmarked burials. The burden of countering denialism should not rest on the shoulders of Survivors or those attempting to heal from the trauma relating to the search and recovery of the missing children and unmarked burials.

A core group of Canadians continue to defend the Indian Residential Schools System. Some still deny that children suffered physical, sexual, psychological, cultural, and spiritual abuses, despite the TRC's indisputable evidence to the contrary. Others try to deny and minimize the destructive impacts of the Indian Residential Schools. They believe Canada's historical myth that the nation has treated Indigenous Peoples with benevolence and generosity is true.

In 2017, just over a year after the TRC's Final Report was issued, then Senator Lynn Beyak delivered a speech in the Canadian Senate that had all the hallmarks of denialism. Beyak declared that Canadians should not dwell on the abuses that happened but focus instead on how children benefitted from the education provided by Indian Residential School staff, most of whom were "well-intentioned" and "kindly".<sup>181</sup> Historian Sean Carleton notes that,

*The Senator's comments also catalyzed further incidents of anti-Indigenous racism and residential school denialism in Canada that historian Matthew Sears calls 'The Beyak Effect.' After Beyak's speech, conservative pundits defended Beyak in the press, and some people posted 'IT'S OK TO BE WHITE' signs as well as posters defending residential schools on university campuses across the country that regurgitated Beyak's denialist talking points, including overemphasizing the system's positive attributes and questioning the validity of the TRC's findings. In short, Beyak's speech emboldened some settler Canadians to declare and defend their denialism publicly.<sup>182</sup>*

Most recently, denialists are attacking the credibility of Survivors' truths about missing children, unmarked burials, and cemeteries at Indian Residential Schools as sensationalist. They claim that Survivors are lying, exaggerating, or misremembering what happened because such atrocities could never have occurred in Canada. They characterize the existence of unmarked burials to be 'fake news', despite the fact that these are well documented in Vol. 4 of the TRC Final Report.<sup>183</sup>

Every time an announcement of anomalies, reflections or recoveries relating to the existence of unmarked burials is made, Indigenous communities are being attacked by denialists challenging these findings. This violence is prolific and takes place via email, telephone, social media, op-eds and, at times, through in-person confrontations.

In February 2023, MP Leah Gazan observed that “denying genocide is a form of hate speech. That kind of speech is violent and re-traumatizes those who attended residential school.”<sup>184</sup> She is proposing to draft legislation that would make Indian Residential School denialism a hate crime. In response, Crown-Indigenous Relations Minister Marc Miller said that “Residential school denialism attempts to hide the horrors that took place in these institutions. It seeks to deny Survivors and their families the truth, and distorts Canadians’ understanding of our shared history.”<sup>185</sup> He said that he is interested in reviewing the proposed legislation.<sup>186</sup>

*The more that residential schools are in the headlines, the more backlash we seem to be facing. There are people out there who continue to deny this truth, who don't want to admit that the schools inflicted these harms on Indigenous peoples and that the schools were purposely designed to do that. These deniers look at the accomplishments of individual Survivors and, instead of acknowledging the strength and resilience of those individuals, they say, “Look at all the good the residential school did for you.” What they don't see is the intergenerational loss of our source of being, the loss of our connection to all Creation, our loss of our languages, our cultures, our identity amongst our families and our communities.*

*These deniers ignore the established facts about residential school history, including the documented reality that most children who died in the schools were never returned to their families. Instead, the deniers called the search for unmarked burials “fake news,” and it has really become more and more common in the news to hear “fake news.” These residential school deniers are not representative of most Canadians. We know this. Denialism is a fringe movement, but it includes individuals with power and influence to be quoted in the media and abroad. And we all know by now how fringe movements can gain momentum if they are given enough attention and airtime.*

- Barbara Cameron, Survivor<sup>187</sup>

## Findings to date on the increase in the violence of denialism:

29. Denialism is a uniquely non-Indigenous problem; it therefore requires non-Indigenous people to actively work to counter denialism and to create and implement strategies to do so.
30. Broad public support for Survivors, families, and communities conducting search and recovery work can be strengthened through public education about the history and ongoing legacy of Indian Residential Schools in Canada.
31. Urgent consideration should be given to legal mechanisms to address denialism, including the implementation of both civil and criminal sanctions.
32. Consistent with Article 15 of the Declaration, Canada has an obligation to combat denialism and ensure that education and public information reflects the truth about missing children and unmarked burials. This is important to ensure non-repetition in accordance with the UN's 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.'<sup>188</sup>



## H. Lack of sufficient, long-term funding

The federal government, along with several provincial and territorial governments, have provided some necessary funding to support Survivors, Indigenous families and communities leading the searches for missing children and unmarked burials. This funding is important and must continue. However, significant concerns and barriers remain relating to the provision of sufficient, long-term funding for search and recovery efforts.

The process of searching for and recovering unmarked burials and missing children requires dedicated staff in many areas, including to:

- Gather Survivor truths;
- Gather information and liaise with affected families;
- Create and implement engagement plans within the lead community and with other affected communities;
- Provide wellness supports for Survivors and community members;
- Access records;
- Conduct research in archival records;
- Create a community database to store and protect information gathered;
- Hire technical teams to map sites and create search plans;
- Purchase required equipment and technology;
- Organize commemorative and memorialization events; and
- Manage and respond to media inquiries.

Survivors and communities should not have to do search and recovery work off the corner of their desks. Instead, they need sufficient funding to hire the required personnel and experts that they choose, to carry out this responsibility and implement strategies, frameworks, and processes over the longer-term.

Annual funding is too constrained; what is needed is long-term, sustainable funding in recognition that this work is likely to span decades.



## Findings to date about lack of sufficient, long-term funding:

33. Concerns regarding the funding that is currently available include:

- **Lack of clarity about how to access funding:** Those leading search and recovery work have indicated that navigating the complex applications and requirements to be approved for funding can be time-consuming and may require applying to multiple levels of governments and various departments within governments, for different types of funding.
- **The time-limited nature of the funding available:** The time-limited nature of the funding being provided does not reflect the length of time that is required to search the sites, given the complexity of these searches and investigations.
- **Limits on who can access funding:** Initially funding was provided only to 'Lead Communities' (those whose lands the Indian Residential School was located on) and not to other Indigenous communities whose children were taken to Indian Residential Schools. Communities that are not Lead Communities also require funding to participate in search and recovery efforts.
- **Limits on the uses of funding:** Various restrictions have been placed on the use of funds, including that only former Indian Residential School properties (i.e. recognized Indian Residential Schools under the Indian Residential Schools Settlement Agreement)<sup>189</sup> could be searched; and that the funding could not be used for legal assistance, exhumation and DNA matching. Some, not all, of these restrictions have been lifted, without notifying those leading search and recovery work. Funding to search the grounds of any, and all, State-funded, church-run institutions that Indigenous children were transferred to should be made available.

34. There is a need for sufficient, long-term funding to cover the many costs associated with search and recovery efforts, including health supports, researchers, databases, search technicians, lawyers, forensic specialists, testing, exhumation and repatriation, commemoration and any other necessary costs that may arise. In the absence of sufficient funding and other supports, Survivors, Indigenous families, and communities are left with having to do this Sacred work without knowing if they will be able to complete it.

35. Consistent with Articles 11 and 12 of the Declaration, appropriate funding and supports for Survivors, Indigenous families, and communities leading search and recovery work should be put in place until the completion of all searches and investigations relating to unmarked burials and missing children.



## I. Need for Indigenous health and wellness supports

Survivors, Indigenous families, and communities are experiencing individual and collective trauma in relation to the search and recovery of unmarked burials and missing children. Many Survivors are actively participating in search and recovery efforts by walking the grounds of former Indian Residential Schools and associated sites to point out where unmarked burials may be located. This means that Survivors are often stepping back into their own trauma to help find the missing children.

Those participating in search and recovery work also experience trauma. In addition, every time there is another confirmation of unmarked burials, it causes collective trauma for Indigenous people, families, and communities. These confirmations contribute to the constant reminder of the atrocities that have been perpetrated against Indigenous Peoples by the Canadian government and churches and of the on-going, intergenerational impacts of the harmful, assimilative, genocidal laws and policies.

Unfortunately, non-Indigenous medical systems and interventions have contributed to ongoing traumas for Indigenous people, families, and communities. Sometimes, whether intentionally or not, these systems can retrigger or worsen existing trauma. An overreliance on non-Indigenous approaches to health, such as Western accredited health care professionals, ten-minute appointments, pharmaceuticals, and other non-Indigenous methods, do not truly support Indigenous people as they heal from colonial trauma.

Many Indigenous communities have identified the need for Indigenous-led healing and wellness services. In March 2023, it was announced that Tk'emlúps te Secwépemc would receive federal funding to construct a new healing centre in the community to provide culturally relevant and trauma-informed programs

to support individuals and their families in their spiritual, mental, emotional, and physical healing.<sup>190</sup>

The First Nations Health Authority is supporting this initiative as well. Colleen Erickson, Board Chair of the First Nations Health Authority called the healing house a “precedent-setting healing model.”<sup>191</sup>



Tissues of participants being offered to the Sacred Fire at the National Gathering in Vancouver



*When we're triggered, we can go on a downward or an upward spiral... When we go into those healing spaces, we can access traumatic memories in that loving supportive space without having to be flooded or dissociate or have negative coping mechanisms to deal with that, and to start to reprogram our brain. This is one of the benefits of having access to our ceremonies and to our medicines and to our Healers as part of our own health systems. [These] have been systemically dismantled by the Canadian state and they need to be systematically repaired.*

- Dr. James Makokis, MD

*Grief relating to unmarked graves is a public health emergency.*

- Dr. Cornelia (Nel) Wieman, MD



*The fact that funding gets poured into the Western health system led mainly by non-Indigenous people who don't have the same respect for our knowledge of Indigenous health systems is a barrier to having Indigenous-led, culture-led, Knowledge Keeper-led health systems.*

- Dr Marcia Anderson, MD





# Findings to date on the need for Indigenous health and wellness supports:

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



# Emerging Practice: Indigenous-led Approaches to Addressing Trauma in the Search and Recovery of Missing Children

## The Kaatagoging Initiative



St. Mary's Indian Residential School, Shingwauk Residential Schools Centre/Nishnawbe Aski Nation collection

*We always burn a plate, a Spirit dish...the children are hungry, the ones that are left on our site that didn't have an opportunity to have proper ceremonies to make it home...but they're still part of our community.*

- Elder Eleanor Skead, Survivor of St. Mary's Indian Residential School

The Kaatagoging Initiative is a Survivor-led search for unmarked burials at the former Catholic-run St. Mary's Indian Residential School site. Between 1897 and 1972, over 6,114 children were taken to the St. Mary's Indian Residential School. Archival records show that at least 36 children died during the operation of this Institution. Survivor truths, however, show that the number of children who died is believed to be significantly higher.

Kaatagoging means “growing together” in Anishaabemowin. The Kaatagoging Initiative is guided by four principles:

<p><b>Weweni</b> (Take our time) “Any decisions we make today can affect future generations for many generations.”</p>	<p><b>Bebekaa</b> (Doing it right) “There are consequences to the decisions being made. This is a Sacred, spiritual process. It needs to be done right.”</p>	<p><b>Biiziindun</b> (Listen) “Listen carefully. Everyone will be heard and hear others.”</p>	<p><b>Gego Gotachiken</b> (Don't be afraid) “Survivors felt the oppression of those institutions that took away their voice, their identity. We encourage Survivors to speak up.”</p>
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The Kaatagoging Initiative's approach reflects the importance of Indigenous-led processes to address the intergenerational, multi-dimensional impacts of the trauma associated with missing children and unmarked burials. At the Winnipeg National Gathering in November 2022, Elder Eleanor Skead noted:

*[We] emphasize connection to land and language as primary healing needs. Our land holds our healing, our healing systems. There are Sacred sites... in every single reserve. By building that sense of community we're reclaiming those Sacred sites.*



Pine Creek Indian Residential School, Société historique de Saint-Boniface Archives (SHSBA), Oblats de Marie-Immaculée Province oblate du Manitoba / Délégation 0096, 115484

## **Minegoziibe Anishinabe's Search and Recovery for Missing Children and Unmarked Burials**

The Minegoziibe Anishinabe are leading search and recovery efforts in relation to the former site of the Catholic-run Pine Creek Indian Residential School, which operated from 1890 to 1969. At the Winnipeg National Gathering, Chief Derek Nepinak spoke of the care that was brought to establishing the

search and recovery processes in Minegoziibe Anishinabe. He stressed that the whole community – including Survivors, Spiritual Leaders, Fire Keepers, Grandmothers and Grandfathers, and Elected leadership – were involved in establishing the process and protocols.



Niiabin Makwa (Derek J. Nepinak), Chief of the Minegoziibe Anishinabe

*As a community, we undertook to walk this difficult path together, so that the grandchildren of our grandchildren would know that their ancestors were strong and resilient people who survived the very worst times of the genocidal policies of colonization.*

Chief Nepinak explained that the name of the Gego Mawiken Project means “Don’t Cry” in Anishinaabemowin. It is meant to evoke and record what the church attempted to take away from the children:

*Students were always told they couldn’t express emotions, couldn’t cry. So we decided to entrench this message so that future generations wouldn’t forget what we have survived... We wanted to refer to the project in our own language because this project is about repatriation. It’s about reclaiming our language, our culture, and our unique connection to our ancestral lands. In this way, we hope to promote the healing of self, our families, and our community.*

Chief Nepinak described how the community is taking care not to judge or push people away from engaging, regardless of their spiritual beliefs. They have included the local Catholic priest in engagement sessions, and they encourage everyone who attends to pray in the way they know how. He also indicated that they have Traditional Medicines and mental health supports on-site for every meeting, engagement, and ground search update. These supports include Traditional Helpers as well as trained mental health and crisis intervention professionals.

While endorsing an approach that balances diverse needs, Chief Nepinak confirmed the central importance of Anishinabe protocols and ceremonies:

*Difficult discussions need to happen within the safety of our ceremony...each engagement, ground search and community update always involves these [Pipe, Water and Drum] Ceremonies... We committed that a four-day Sacred Fire would be lit at the start of each phase of ground searches. This Sacred Fire is out of respect for the lost children who did not return home to their families...[it] has created opportunities for community members to come to the Fire and share their thoughts and their feelings. The ceremonies set the stage for respectful discussion and ensures the safety of everyone involved. Not everyone participates, but all are respected.*



Memorial to all Survivors and children who were taken to Pine Creek Indian Residential School

## J. Repatriation of the children

Survivors, Indigenous families, and communities have different ideas about what repatriation involves and how and when it should take place. It is difficult to decide whether exhumations should be done. Some believe that the children should be left to rest where they are buried. Others are of the view that the children cannot rest because they have not been properly or respectfully buried by their loved ones or with appropriate Indigenous ceremonies specific to the child's community's practices and beliefs.

Decisions relating to exhumation, DNA testing and repatriation are complex because at many sites, the closest Indigenous community may be leading search and recovery efforts, yet many, if not most, of the missing children who are potentially buried in the unmarked graves, may be from other Indigenous Nations across Canada. As a result, decisions relating to exhumation and repatriation requires Nation-to-Nation decision-making involving multiple Indigenous Nations.

There are examples as recent as 2011 of instances where the government refused to fund the repatriation of a child who died while being forced to attend an Indian Residential School.

## The 37-Year Struggle to have Charlie Hunter Returned Home

Charlie Hunter was five-years old when he was first taken to St. Anne's Indian Residential School in Fort Albany.<sup>192</sup> His parents were told they had a legal obligation to turn their children over to the institution or face consequences. He was taken by canoe and bush plane almost 400 kilometres by air from his home in Weenusk First Nation in Northern Ontario.<sup>193</sup> On October 22, 1974, Charlie, aged 13, was skating with his friends on a frozen lake at the St. Anne's Indian Residential School. While skating, Joseph Koostachin, who was partially blind, fell through the ice into the cold lake. Charlie came to his aid and was able to pull Joseph to safety. In doing so, Charlie slipped under the ice. His friends yelled for help and the groundskeeper, Joseph Kataquapat, rushed over to pull Charlie from the water. After fifteen minutes of being underwater, the groundskeeper was finally able to retrieve Charlie's lifeless body. The headmaster sent Charlie's body to Timmins, Ontario for an autopsy.<sup>194</sup>

Charlie was buried in Moosonee, Ontario, over 500 km, by air, away from Weenusk First Nation. Charlie's family was never provided with a reason for why he was buried in Moosonee and they were never consulted about funeral arrangements. They asked repeatedly for him to be returned to his home community. At the time, the Hunter family had to pay \$650 to charter a plane to attend Charlie's funeral, which to them was a small fortune.<sup>195</sup>

Charlie's death had a devastating impact on his whole family. His father, Mike Hunter, spent the next 35 years fighting to bring Charlie's body home. After nearly four decades of unsuccessful attempts, he finally asked Charlie's younger sister, Joyce Hunter to take over the efforts to bring Charlie home.<sup>196</sup>

Joyce contacted lawyers, the coroner, and the federal government. The family told the Truth and Reconciliation Commission of Canada about their struggles to repatriate Charlie to Weenusk. In 2011, the family wrote to the then Minister of Aboriginal Affairs and Northern Development, John Duncan, who expressed sympathy but did not provide funding. As Charlie's parents aged, it became more and more urgent to bring Charlie home.<sup>197</sup>

Eventually, Joyce met Peter Edwards, a reporter with the Toronto Star, who agreed to publish a story highlighting her family's struggle to bring Charlie home.<sup>198</sup> In the article, Peter Edwards reported that for years, the family had questions:

- Why wasn't there any adult supervision of the boys when the boys snuck off to go skating on the lake?
- Why wasn't there a coroner's inquest to examine the circumstances of Charlie's death?
- Why was he buried so far from his home?
- Why won't the people who took Charlie away from his family pay to bring him home?<sup>199</sup>

Many people who read the article were impacted. Joyce Hunter recalls that their family was



Charlie Hunter fishing with his father

Charlie saved, and Joseph Kataquapat, the individual who pulled Charlie's body out of the icy lake and tried in vain to revive him.<sup>200</sup>

Reflecting on the long journey to bring Charlie home, Joyce said: "What was done to my family was done on purpose. It was done with malice. It was done to erase what they were as human beings. But in the end all we wanted was to have our brother come home. It took the Canadian people just two weeks to do what the federal government wouldn't do for my parents in a lifetime."<sup>201</sup>

After the funeral, Charlie's father, Mike Hunter, said, "He's finally back home, and I can visit him anytime I want."<sup>202</sup>

overwhelmed with other stories from families of children who died or went missing from Indian Residential Schools. They realized their story was one of many families who experienced the devastating loss of a child.

After reading the article, some members of the public offered to pay for Charlie's casket; others offered to pay for his tombstone. The Toronto Star readership came together and raised \$20,000 to repatriate Charlie back home.

On August 17, 2011, a funeral was held for Charlie in his home community. Mike Hunter spoke of the funeral as an opportunity for the family to heal. Among the funeral attendees was Joseph Koostachin, the person whose life

## Findings to date on repatriation of the children:

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

## K. Land Back: Repatriation of cemetery and burial sites

*There is an urgent need to center Indigenous protocols and laws to protect and care for these lands.*

- Participant, Edmonton National Gathering

Many First Nations, Inuit, and Métis communities want the lands where cemeteries and burial sites are located to be repatriated to their Nations to ensure that these sites are properly protected. The TRC noted that European States seized Indigenous territories in North America and across the globe, using the Doctrine of Discovery—a series of papal bulls issued by the Roman Catholic Church in the 15th century to justify claiming sovereignty over “uncivilized” Indigenous Peoples, and dispossessing them of their lands without their knowledge or consent.<sup>203</sup>

Specifically, the Doctrine of Discovery was used by European colonizers to assert sovereignty over Indigenous territories that they considered to be *terra nullius* (a Latin term meaning “empty or vacant lands”).

Although the Doctrine of Discovery was recently repudiated by the Catholic Church,<sup>204</sup> this repudiation has not had any practical consequences in Canada. This racist legal doctrine has never been questioned in Canadian law and is used to justify the assertion of Crown sovereignty over Indigenous territories, including controlling reserve lands under the *Indian Act*.

As previously noted, jurisdictional issues relating to the legal control of property where cemeteries and unmarked burials exist on Indian Residential School and associated sites are complex. Potential options for returning this land will vary depending on the circumstances of each specific site. For example, those that remain under the legal control of the federal government may be transferred as part of broader Treaty negotiations (including Treaty Land Entitlements and Specific Claims Agreements) under the *Addition of Lands to Reserves and Reserve Creation Act*.<sup>205</sup>

Canada is currently reviewing the Additions to Reserve policy and is engaging with First Nations on redesigning the policy. As it currently works, however, the Additions to Reserve process is a lengthy and complicated process that does little to address the immediate concerns of Survivors, Indigenous families, and communities leading search and recovery work.<sup>206</sup>

The Canadian government granted churches legal ownership of significant property holdings across the country, including sites of early mission schools and Indian Residential and Boarding schools and Federal hostels. The number of sites this involves remains unclear and will require further research to determine.

The Indian Residential School Legacy Secretariat at Indigenous Services Canada (ISC) is working with Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and the National Centre for Truth and Reconciliation (NCTR) to gather information relating to current ownership, jurisdiction and condition of former Indian Residential School sites and buildings. This collaborative work includes an environmental scan of 174 locations of 140 former Indian Residential Schools recognized under the



Indian Residential Schools Settlement Agreement. At the Edmonton National Gathering, the federal government made a commitment that the results of this work will be open and publicly accessible when completed.

Some church entities are actively engaging with Indigenous communities to return land where cemeteries and unmarked burials are located. For example, at the National Gathering in Edmonton, The Rt. Rev. Dr. Carmen Lansdowne, Moderator of the United Church of Canada, made a call to settlers and colonial institutions to develop an understanding of and support for the Land Back Movement.<sup>207</sup> She talked about the work that the United Church is doing to return the land where former United Church Indian Residential Schools were located back to Indigenous communities. She said that this is especially important in cases where land is still held by the church on reserve lands.

## Returning the Land: Regina Indian Industrial School Cemetery

At the Edmonton National Gathering, Sarah Longman, Board Chair of the Regina Indian Industrial Residential School Commemorative Association, described the decade long effort to identify the children who were never returned home from the Regina Indian Industrial School. The Industrial School operated from 1891 to 1910 and was run by the Presbyterian Church of Canada. The former site of the Industrial School spans 329 acres in the southwest corner of what is now Regina. At least 39 different Indigenous communities had children taken to the [Regina Indian Industrial School](#).

In 2012, GPR results identified over 32 possible unmarked burials at the site of the institution's cemetery. A subsequent search identified the unmarked burials of six more children outside the fence line of the cemetery. Provincial heritage designation was sought and granted for the site to protect it from development. In 2019, the land was transferred by the federal government to the Regina Indian Industrial School Commemorative Association. The 38 burials located have been protected and commemorated.



Regina Indian Industrial School, R-A1878 / Provincial Archives of Saskatchewan

# Findings to date on repatriation of cemetery and burial sites:

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



## L. Accountability and justice

Survivors, Indigenous families, and communities are calling for accountability and justice against individual perpetrators and against the government and churches both at the domestic and international level. Questions remain regarding what domestic and international mechanisms may exist to hold those accountable in the context of colonial genocide, crimes against humanity, and mass human rights violations.



Dr. Chile Eboe-Osuji, former President of the International Criminal Court delivering a Keynote Address at the National Gathering in Edmonton

## Rome Statute of the International Criminal Court

### Article 7

- (1) For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation and forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other forms of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
  - (i) Enforced disappearance of persons;
  - (j) The crime of apartheid;
  - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The International Criminal Court investigates and, where warranted, prosecutes individuals charged with the gravest crimes of concern to the international community, including genocide and crimes against humanity.<sup>208</sup> At the international level, there are challenges in seeking justice for the missing children and their families at the International Criminal Court (ICC). While the definition of genocide articulated in the Rome Statute would almost certainly encompass the architects of the Indian Residential School System, the Court's jurisdiction is limited to events that occurred after July 1, 2002.

At present, the International Criminal Court will not investigate Canada for crimes against humanity either. In June 2021, a group of Canadian lawyers sent a formal request to the Chief Prosecutor of the ICC to open a preliminary investigation about whether the “deaths, mass unmarked grave and general treatment of the 215 deceased children [at Kamloops Indian Residential School] constitute crimes against humanity.”<sup>209</sup> The Chief Prosecutor declined the request, in part because “they felt they were prevented [from doing so] as the deaths occurred before Canada ratified the crimes against humanity law”<sup>210</sup> in 2000.

The ICC's refusal to investigate Canada for crimes against humanity does not preclude Indigenous Peoples from exploring other potential avenues of investigation using international legal options, including establishing an ad hoc or hybrid tribunal.<sup>211</sup>

At the domestic level,<sup>212</sup> investigations of crimes against humanity should not be conducted by the RCMP, provincial or municipal police services who have failed to sufficiently investigate reports of abuse and deaths in Indian Residential Schools. Indigenous Peoples have little reason to trust national, regional, or local police services that were themselves complicit in the Indian Residential School System.

At the National Gatherings to date, it has become clear that in the context of missing children and unmarked burials, accountability and justice may mean different things to different people, including:

- Establishing a domestic and/or international commission of inquiry or truth tribunal;
- Prosecuting individual perpetrators;
- Holding government and church institutions accountable;
- Protecting the unmarked burials;
- Pausing or stopping planned development until searches and investigations for unmarked burials are completed;
- Conducting appropriate Indigenous ceremonies;
- Providing funding for family members to visit and commemorate the burial site of their loved one, once located;
- Reparations and redress;
- Returning lands where burials are located to Indigenous communities; and
- Identifying and repatriating the children to their families and communities.

## The Ongoing Challenge for Métis Survivors of Île-à-la-Crosse Residential Boarding School

*Our Survivors continue to go unrecognized. It's almost as if their truths don't matter as much as other students.*

- Cassidy Caron, President, Métis National Council<sup>213</sup>

Métis Survivors, families, and communities face unique challenges and barriers in searching for their missing children and unmarked burials. At the heart of their struggle for recognition, accountability, justice, and healing is a historical and ongoing injustice. First, when the institutions were in



operation, neither the federal, provincial, or territorial governments wanted to take responsibility for providing per capita funding in relation to the Métis children that were taken to the institutions. Second, Survivors who attended Métis institutions were excluded from the Indian Residential Schools Settlement Agreement (IRSSA), making them ineligible for compensation. The Île-à-la-Crosse Residential Boarding School in Saskatchewan is one of many institutions that remains “unrecognized” under the IRSSA.<sup>214</sup>

It is important to understand how the historical and ongoing non-recognition of Métis Peoples impacts their efforts to locate their missing children and unmarked burials at both “recognized” and “unrecognized” institutional sites. The thousands of Métis children who were sent to these institutions were subjected to the same colonial violence, abuse, and neglect, as First Nations and Inuit children.

Cassidy Caron, President, Métis National Council, speaking at the National Gathering in Edmonton

## Search and recovery work for Métis children and unmarked burials at “recognized” Indian Residential Schools

*Our Métis citizens and children should not get lost in the broader discussions related to residential schools. That's why it's important we do the ground truthing to identify any children buried in unmarked graves in the St. Albert area. We will work to identify them, acknowledge their existence by telling their story and hopefully have those stories contribute to the healing within our families and to the process of reconciliation that needs to happen, and is happening.*

- President Audrey Poitras, Métis Nation of Alberta<sup>215</sup>

In the early 20th century, the government of Canada established partnerships with Catholic, Anglican, and Protestant (United, Presbyterian, and Methodist) churches to operate Indian Residential Schools across the country. Under these agreements, Canada established policies and administered the system while the churches ran the day-to-day operations of the institutions. However, the TRC found that “[w]hen it came to the Métis, the partners had differing agendas.”<sup>216</sup> The federal government wanted to restrict admissions to children who had “Indian status” as defined under the *Indian Act*, maintaining that the provinces had jurisdictional responsibility for Métis education. The churches however, wanted to convert as many Indigenous children as possible to christianity, including Métis children.<sup>217</sup> While the federal government’s policy goal was to pay the churches on a per capita basis only for children with “Indian status,” in practice, the TRC found that,

*[T]he policy was never clear and its implementation was far from consistent. A constant tension existed within government between a desire to control costs and a desire to control a perceived social menace. The first impulse favoured a restricted admissions policy; the second, a more open policy. The churches, struggling with difficulties in recruiting sufficient numbers of students, often viewed the enrolment of children of mixed descent as a way to fill their schools. In some cases, they were able to charge Métis parents a fee. In other cases, provincial governments paid them to accept students; and in yet others, the churches succeeded in having the federal government agree to pay for the education of non-status children.*<sup>218</sup>

One consequence of this jurisdictional policy gap is that although thousands of Métis children were sent to Indian Residential Schools across the country, their attendance was poorly documented in institutional records. This makes it especially difficult for Métis Survivors, families, and communities to trace the forced transfers of their children who were never returned home.

There is a high possibility that many Métis children are lying alongside First Nations and Inuit children in unmarked burials in cemeteries at former Indian Residential School sites. This raises complex and sensitive questions about how best to locate, protect, commemorate, and where requested, repatriate, the bodies and Spirits of Métis children in accordance with Métis laws, protocols and burial practices. In some cases, collaborative Nation-to-Nation agreements and protocols are being established to support this work. Métis Survivors, families, and communities associated with “recognized” Indian Residential Schools are eligible for federal funding to support their search and recovery work, and, to date, Métis organizations in Alberta, Saskatchewan, Manitoba, Ontario, and Northwest Territories have received some federal funding.<sup>219</sup>



## Search and recovery work for Métis children and unmarked burials at “unrecognized” Residential Schools

*Recognize us, we are people and compensate us and say you are sorry...We would like to get acknowledged that we are people. We want to move on in life... We want to put this to rest and go to bed without having to think of what happened.*

Emilien Janvier, Survivor of Île-à-la-Crosse Residential Boarding School<sup>220</sup>

Survivors, families, and communities associated with an “unrecognized” Indian Residential School face significant obstacles in their search and recovery efforts. These obstacles are one aspect of a much broader political and legal struggle for recognition. Survivors of the Île-à-la-Crosse Boarding School (the “Île-à-la-Crosse Boarding School”) have been fighting for this recognition for decades. Located in the northwestern Saskatchewan village of the same name (or, in Cree, sâkitawâhk), the Île-à-la-Crosse Residential Boarding School first opened as a day school in 1847, and operated as a Catholic mission, residential and day boarding school until 1972.<sup>221</sup>

Over its long history, the Île-à-la-Crosse Residential Boarding School was funded by one or both federal and provincial governments. It was run by different Catholic orders, operated under different names and in different locations, and burned down three times. This has contributed to the difficulties that Survivors face in accessing records of children that were taken there.<sup>222</sup> Because it was “operated by a Religious Organization”, Canada has denied that it had any responsibility for its administration.<sup>223</sup> But what is clear is that, like other Indian Residential Schools, the Île-à-la-Crosse Residential Boarding School was an institution of forced attendance, neglect, and abuse. Children were forbidden from speaking Michif or Cree, and risked being beaten if they did not speak English or French.<sup>224</sup> Many children lost their Indigenous languages. An unknown number of children also lost their lives. The federal and Saskatchewan governments, however, continue to deny responsibility for the harms they caused at this Institution.



Jordyn Burnouf, Advisor, Métis Nation – Saskatchewan seated beside Emilien Janvier, Survivor of Île-à-la-Crosse Residential Boarding School, who is speaking at the National Gathering in Toronto



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Société historique de Saint-Boniface\_OMI

Île-à-la-Crosse Residential Boarding School, Société historique de Saint-Boniface Archives (SHSBA), Corporation archiépiscopale catholique romaine de Keewatin - Le Pas 0484, N5181

This lack of access to justice continues to cause harm to Survivors, their families, and the communities. Jim “Jimmy D” Durocher, a Red River Métis Veteran and Elder, spent nine years at Île-à-la-Crosse Residential Boarding School as a “day student.” At the Winnipeg National Gathering, he said that the government’s lack of recognition is an ever-more urgent issue because “75% of the Survivors are dead. They’re gone.”<sup>225</sup>

TRC Call to Action 29 calls “upon the parties, and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed upon set of facts.” To date, this Call has not been met in relation to Île-à-la-Crosse Survivors, despite their ongoing, concerted efforts to reach an agreement with Canada.



*On July 19, 2019, the Île-à-la-Crosse Boarding School Steering Committee, the Métis Nation of Saskatchewan, and the Government of Canada signed a Memorandum of Understanding for Île-à-la-Crosse Exploratory Discussions (the “MOU”). In the MOU, Canada acknowledged that Île-à-la-Crosse Boarding School Survivors were excluded from the IRSSA, and all the groups involved agreed on a framework for “Exploratory Discussions.” These were preliminary discussions about what might be involved in negotiating a settlement for the Survivors. The Exploratory Discussions never got past the preliminary stages, and no settlement was reached with Canada.<sup>226</sup>*

Survivors and intergenerational Survivors of the Île-à-la-Crosse Residential Boarding School have documented their struggles for recognition, justice, and healing. Most recently, in December 2022 Survivors and families launched a class action lawsuit against the governments of Canada and Saskatchewan to hold them responsible, under Canadian law, for the harms and losses caused at the Île-à-la-Crosse Residential Boarding School.<sup>227</sup> The proposed lawsuit is brought on behalf of all First Nation, non-status, Inuit, and Métis Survivors, including day and boarding students, as well as the family members of those who have died.<sup>228</sup> At the same time, the Survivors and their lawyers remain willing to restart negotiations with Canada under the MOU that is still in effect, and to encourage the Province of Saskatchewan to join the settlement efforts.<sup>229</sup>

Non-recognition under the IRSSA has broad, rippling effects. One effect is that community-led searches for missing children and unmarked burials relating to these institutions are not eligible for federal funding.<sup>230</sup> The National Centre for Truth and Reconciliation’s National Student Memorial Register includes the names of some of the children who died at Île-à-la-Crosse Residential Boarding School, but it is believed that there are likely more deaths to be identified.<sup>231</sup> There is a cemetery at the institution’s former site, but without funding and other necessary supports, Métis Survivors, families and communities are not able to begin the search and recovery work.

Both “recognized” and “unrecognized” Indian Residential School sites hold truths about what happened to Métis children. Until these truths are revealed, Métis Survivors, families, and communities will continue to seek recognition, accountability, justice, and healing.



## Findings to date on accountability and justice:

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



## Tseshaht First Nation Releases 26 Calls for Truth and Justice

*We cannot let these findings become just another statistic. Our 26 Calls for Truth and Justice ensure any further investigations into what happened at this 'school' are done independently and that Survivors, their families and our community are given wellness support they need to heal.*

*They are also vitally important in ensuring that Canadians and future generations continue to learn about the atrocities that happened to our people over generations. There is no reconciliation without truth and there can be no change without justice.*

- Tseshaht elected Chief Wahmeesh (Ken Watts)<sup>232</sup>

After 18 months of search and recovery work, on February 21, 2023, the Tseshaht First Nation publicly announced that through a combination of remote sensing technologies, the team had located at minimum 17 suspected unmarked burial sites of children who were never returned home from the former Alberni Indian Residential School (AIRS). The team investigating the missing children and unmarked burials is called ?uu?atumin yaqckwiimitqin (which means "Doing it for our Ancestors"). Through its research, the team has also confirmed that at least 67 children died at the Alberni Indian Residential School (the NCTR's Memorial Registry only lists 29 children).



Alberni Indian Residential School, James Coleman / Bibliothèque et Archives Canada / PA-123243

On May 2, 2023, the Tseshaht First Nation released 26 Calls for Truth and Justice directed to the Government of Canada, the Government of British Columbia, the Presbyterian Church in Canada, and the United Church of Canada. These Calls are aimed at supporting the healing of Survivors and victims of the Alberni Indian Residential School.

### **Justice**

1. Further legal investigations are to be done by an independent body consented to by Tseshaht. They are not to be led by the RCMP, given their history of removing children from their homes and placing them in residential schools, including AIRS.

## *Health*

2. Establish an independent body, consented to by Tseshaht, to perform an investigation/inquiry regarding medical records. Explore the interconnectedness between residential schools and Indian Hospitals.
3. Require ongoing commitment to health and wellness supports for Survivors and their families.

## *Funding*

4. Full funding for Tseshaht to hand deliver information to families of student deaths at AIRS so that it may be done in a culturally appropriate way.
5. Commit funding for nations and caretaker communities to do more research on students' deaths.
6. Create a Canadian or regional center of excellence for this research, scanning and investigative work for nations to learn from one another (building off the BC working group).
7. Sign long-term funding agreements with caretaker communities over four or five years that are predictable, sustainable and flexible.
8. Increase funding to address drug, alcohol, mental health and trauma in communities.
9. Develop an "intergenerational family impacts" initiative to support descendants of AIRS.
10. Fully fund security of potential unmarked graves and burials of the AIRS research sites.
11. Provide annual funding to host annual cultural events and ceremonies, such as National Indigenous Peoples Day, National Day for Truth and Reconciliation/Orange Shirt Day and all other cultural events Tseshaht hosts with respect to AIRS.

## *For Survivors*

12. Creating space for AIRS Survivors to have a special engagement with the Special Interlocutor.
13. Review the previous Indian Residential School settlement to determine the impacts on student deaths, if changes on any portions of the settlement are required and for Tseshaht to determine if a further review and further legal action is required.
14. Canada, churches/faiths and RCMP consider an updated apology to AIRS Survivors, their descendants and Tseshaht First Nation based on these new facts with respect to student deaths, unmarked graves and burials from AIRS and declaring this a genocide and cultural genocide.

## *Research*

15. Review legal barriers to research and scanning both provincial and federally, including nation accessibility to medical health records, and develop an action plan so research can be conducted and concluded.
16. Address existing barriers with privacy legislation that limit accessibility of medical records and the Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) database for Tseshaht First Nation.
17. Support Indigenous data governance with respect to caretaker community information of AIRS for Tseshaht First Nation.
18. Ensure the Special Interlocutor can make free and unfiltered recommendations based on First Nations and Survivor input into the final report, including Tseshaht First Nation and other caretaker communities' access to records in seeking truth and justice.

## *Medical and Nutritional Experiments*

19. Revisit the medical and nutritional experiments done on the children of AIRS and across Canada, as uncovered by researcher Dr. Ian Mosby. Fully fund research, investigation/inquiry and other work as required to bring justice to this issue which has completely fallen off the government's radar.

## *Education*

20. Develop a "Truth for Youth" age-appropriate curriculum for K-12, focused on those who did not make it home from residential schools. While there currently is curriculum in B.C. and across Canada, this was created before public knowledge of unmarked graves and burials.

## *Employment and Training*

21. Support the development of training for First Nations on all aspects of scanning, research, and other important technical work, such as drone LiDAR, so that First Nations may someday do all this work themselves instead of hiring external companies.



## *Infrastructure*

22. Under Canada's Indian Residential School Infrastructure Fund:

- a. Canada fully funds Tseshaht First Nation for the deconstruction of agreed to buildings (Caldwell Hall agreed to by Tseshaht) and pay all event costs for hosting such an event.
- b. Canada fully funds the construction of a new multiplex/community center, including a gymnasium, fitness gym, commercial kitchen and office space which replaces those of similar size and uses of current AIRS buildings (formerly standing main building, Ross Hall, Peake Hall and the still-standing Caldwell Hall and Maht Mahs gym).
- c. When or if Tseshaht First Nation has consented to it, Canada fully funds deconstruction of the gymnasium from AIRS (now known as Maht Mahs).
- d. Canada funds the full assessment, feasibility, design and removal of former AIRS utilities and infrastructure of water and sewer.

## *Memorialization*

23. Canada, B.C., churches and others fully fund all memorialization projects, including AIRS Survivor priority of a memorial with the names of all students who attended AIRS with a gazebo and more (like those seen at war memorials) in Tseshaht territory.

24. Memorial fund for Survivors' headstones. Survivor paraphrased quote: "If Canada can help pay for headstones of war veterans, why can't they pay for our warriors (Survivors) who had to go through the war of the residential schools?"

## *United and Presbyterian Church*

25. In collaboration with Tseshaht First Nation, Canada and B.C., provide necessary funding to Tseshaht, including but not limited to:

- a. Construction and operations of a Health, Wellness and Healing Centre on Tseshaht territory to address the impacts of AIRS on survivors and their descendants.
- b. Continued research and scanning.
- c. Memorialization projects, including Tseshaht's planned initiative.

## *RCMP*

26. Canada, in consultation with and at the consent of Tseshaht First Nation, will conduct an independent/inquiry review to determine the role of the RCMP with respect to AIRS.

The Tseshaht First Nation calls upon the Prime Minister of Canada, the Premier of BC, and all government officials, the RCMP and the churches to meet with them as soon as possible to develop a solid action plan and resources to implement these 26 Calls for Truth and Justice.

## Part 6: Creating a new Indigenous-led Legal Framework

As mentioned, the Mandate includes making recommendations for a new federal legal framework to protect unmarked burial sites and support the recovery of the missing children. The creation of a new legal framework could be considered narrowly, through reforms to formal legislation only. Based on what Survivors, Indigenous families, and communities have shared to date about the barriers they have been experiencing, this would be utterly inadequate. A more comprehensive approach is required.

### Naming Genocide

The TRC and the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Final Report identified the immense onslaught of harmful, assimilative laws and policies that Indigenous Peoples have endured, resisted, and survived in the face of mass human rights violations.<sup>233</sup> Importantly, both the TRC and the National Inquiry into MMIWG concluded that these assimilative laws and policies constitute genocide towards Indigenous Peoples.<sup>234</sup>

At TRC hearings, many Survivors used the term genocide to name what Canada and the churches did to them as children in the Indian Residential Schools. Former TRC Chair, the Honourable Murray Sinclair explained that the only reason that the Commission did not make a finding of genocide and rather used the term “cultural genocide,” was because the TRC could not, in accordance with its terms of reference, make legal findings of civil or criminal liability.<sup>235</sup> He said that long before the TRC, Indigenous people have used the term genocide to describe the violence and oppression they have experienced for many generations at the hands of government, churches, and Canadian society.<sup>236</sup>

In Justice Sinclair’s view, “it is important to acknowledge the residential school legacy as genocide because, first and foremost, Survivors themselves raised the issue. For many of them, recognition of colonial malevolence is necessary for the process of reconciliation to move forward.”<sup>237</sup> Failing to acknowledge the deliberate genocidal harm inflicted on Indigenous children becomes a barrier to reconciliation and reinforces a culture of denialism in the Canadian population.

In 2019, the Final Report of the National Inquiry into MMIWG concluded that the systematic violence perpetrated against Indigenous Peoples within Canada constitutes colonial genocide.<sup>238</sup>

*The violence the National Inquiry heard about amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit, and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures, evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.<sup>239</sup>*

Unlike mass killings of a targeted population most associated with the Holocaust, or genocides in Rwanda, Cambodia, or Bosnia, for example, colonial genocide evolves slowly, over time, in systemic patterns of colonization that aims to destroy Indigenous Peoples' cultures and distinct identities. Successive federal, provincial, and territorial governments enacted assimilationist laws and policies that systematically seized Indigenous lands and resources, forcibly relocated Indigenous communities, disrupted traditional governance and legal systems, attacked family bonds between parents and children, and banned languages, cultural and spiritual ceremonies and practices.<sup>240</sup> These methods included seemingly innocuous bureaucratic practices of government departments tasked with implementing laws, policies, and programs associated with Indigenous Peoples.<sup>241</sup>

There is also a growing recognition amongst Canadians that the Indian Residential School System constituted genocide. In May 2015, shortly before the TRC Final Report was released, then Supreme Court of Canada Chief Justice Beverley McLachlin gave a public speech declaring that Canada developed an “ethos of exclusion and cultural annihilation” targeting Indigenous Peoples and that Canada’s assimilation laws and policies “in the language of the 21st century [is] cultural genocide.”<sup>242</sup>

In June 2019, Prime Minister Justin Trudeau told Canadians that the government accepted the National Inquiry into MMIWG’s conclusion that Canada committed genocide against Indigenous Peoples.<sup>243</sup> In July 2022, in media interviews after he delivered an apology to Survivors for the Catholic Church’s role in the Indian Residential School System, Pope Francis said that what happened in the Indian Residential Schools was genocide.<sup>244</sup>

## Convention on the Prevention and Punishment of the Crime of Genocide

### Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

### Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.



On October 27, 2022, the House of Commons passed NDP MP Leah Gazan's motion with unanimous consent recognizing the Indian Residential Schools System as genocide. The motion states:

*That, in the opinion of the House, this government must recognize what happened in Canada's Indian [R]esidential [S]chools as genocide, as acknowledged by Pope Francis and in accordance with [A]rticle II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.*

These are important first steps for Canada to formally recognize the genocide and mass human rights violations that Indigenous Peoples within Canada have experienced at the hands of successive governments.

In 2015, the TRC called for the *UN Declaration on the Rights of Indigenous Peoples* to be the framework for reconciliation in 21st century Canada. The work to implement the United Nations Declaration in response to TRC Calls to Action 43-44 has only just begun.<sup>245</sup> On June 21, 2021, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* came into effect. This legislation affirms that the *UN Declaration on the Rights of Indigenous Peoples* must be applied to federal law in Canada and commits the Government of Canada to take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. The Act requires the federal government, in consultation and collaboration with Indigenous Peoples, to develop a national Action Plan. In March 2023, the federal government publicly released a [What We have Learned to Date](#) report and a [draft Action Plan](#) with the aim of finalizing the Action Plan in June 2023.

Work on implementing the Declaration is also taking place at the provincial level. British Columbia (BC) passed Bill 41, *The Declaration on the Rights of Indigenous Peoples Act* on November 28, 2019. On March 30, 2022, the Province of British Columbia released the [Declaration on the Rights of Indigenous Peoples Act Action Plan, 2022-27](#), which was co-developed in consultation and collaboration with Indigenous Peoples in BC.

Dr. Sheryl Lightfoot, current North American Representative of the UN Expert Mechanism on the Rights of Indigenous Peoples, has observed that in making reconciliation contingent on implementing the UN Declaration, the TRC invited Canada to be bold in its efforts to address the ongoing legacy of colonialism. This, in turn, would set a new international benchmark for "any society seeking reconciliation with Indigenous Peoples through truth and reconciliation processes."<sup>246</sup>

Building on the TRC's bold vision of reconciliation, a similarly robust approach is necessary when considering what a new legal framework should include and requires examining the question through the broader lens of reparations.<sup>247</sup> Studies of reparations case law and processes across the globe confirm that all these measures are essential to individual and collective victims of violence whose rights have been violated by a State. Reparations must involve truth-finding because unless truth is revealed, families will continue to suffer, and public denialism can flourish. Without legislative and institutional reform, apologies and promises that similar violations will not be repeated ring hollow to victims. If perpetrators are not held to account, victims may feel they must compromise their right to justice to receive the supports to which they are entitled.<sup>248</sup>

States that have violated their domestic and international legal obligations, resulting in substantive harms, have a political, legal, and ethical duty to make reparations. Studies have shown that reparations are most effective when they include both material and symbolic measures. Material measures may include monetary compensation, funding for healing or community projects, and the return of land. Symbolic measures may include apologies, commemoration, public education, and the rewriting of national history. The public must recognize and acknowledge that the State has violated the human rights and dignity of victims and support reparations measures. Finally, reparations are most effective when the process itself has direct input from victims.<sup>249</sup>

From this broader perspective, it is evident that various forms of reparations must be included in a new legal framework. This framework must be governed by Indigenous laws, the UN Declaration and international law. This framework must also affirm and uphold Indigenous legal jurisdiction and sovereignty. New legislation, policies, and funding must support reparation measures for truth-finding, healing, accountability, and justice across multiple legal jurisdictions.

## What are Reparations?

Many people think the term “reparations” applies only to financial compensation. However, in addition to compensation, there are other forms of reparations, including:

- Repatriation of children;
- Return of lands;
- Apology;
- Rewriting national history;
- Public education;
- Commemoration and memorialization; and
- Legal and policy reform.



Dr. Chief Wilton Littlechild, Survivor, lawyer, former TRC Commissioner, delivering a Keynote Address at the National Gathering in Edmonton

The UN Declaration provides important guidance in relation to the search and recovery of missing children and unmarked burials. At the first National Gathering in Edmonton, Alberta, Dr. Chief Wilton Littlechild, former TRC Commissioner, former North American representative to the UN Permanent Forum on Indigenous Issues, and the UN Expert

Mechanism on the Rights of Indigenous Peoples, spoke of the need to set the search and recovery work in the broader international context of Indigenous Peoples' political and legal rights.

Dr. Chief Littlechild said that Articles 7-12 of the UN Declaration in conjunction with Indigenous laws provide the necessary elements of a new legal framework. This would provide robust protections of burial sites before, during and after searches have occurred. It would ensure that the process of searching for and recovering missing children is Indigenous-led and meets Indigenous criteria for conducting this work respectfully in accordance with Indigenous laws.

Survivors, Elders, and Knowledge Holders at the National Gatherings have emphasized that the application of Indigenous laws is essential to community-led processes of truth finding, healing, commemoration, accountability, and justice. This is consistent with the TRC's finding that:

*Reconciliation will be difficult to achieve until Indigenous Peoples' own traditions for uncovering truth and enhancing reconciliation are embraced as an essential part of the ongoing process of truth determination, dispute resolution, and reconciliation.<sup>250</sup>*

A central principle within the *UN Declaration on the Rights of Indigenous Peoples* is the need to uphold Indigenous laws.

Most of the Articles in the UN Declaration are relevant to the search and recovery of unmarked burials and missing children. The Articles on non-discrimination (Articles 1, 2, 9, 14, 15, 17, 22, 24, 44); freedom from persecution, forced assimilation and genocide, including the forcible removal of children from one group to another (Articles 7, 8); freedom from forced relocation (Article 10); self-determination (Article 4); revitalizing Indigenous legal and governance systems (Articles 5, 9, 13, 18, 19, 25, 27, 34, 35, 40); protecting Indigenous cultural traditions, customs and burial sites (Article 11, 31); return of lands (Article 8 and 28); repatriation of human remains (Article 12); and compensation, redress, and justice (Article 8, 11 and 40) are all relevant to supporting Survivors, Indigenous families, and communities with the search and recovery of missing children and unmarked burials. These Articles make clear that Indigenous communities are entitled to have their cultural integrity safeguarded, their ancestral territories and burial grounds protected, and the remains of their loved ones repatriated.



## Emerging Practice: The Yukon Residential Schools Missing Children Working Group



Judy Gingell and Adeline Webber, Yukon Residential Schools Missing Children Working Group

The Yukon Residential Schools Missing Children Working Group (Working Group), formerly known as the Choooutla Residential School Project, is working to investigate the sites of the Choooutla, Whitehorse Baptist, Aklavik and St. Paul's Indian Residential Schools and other sites where children were taken.<sup>251</sup> Part of the Working Group's mandate is to prepare and support Indigenous people in the Yukon Territory with any trauma that might resurface through this work. The Working Group has representatives from most of the First Nations in Yukon Territory, and they are recruiting and training more people to help with research and to interview Survivors.<sup>252</sup>

Adeline Webber, Chair of the Working Group, and Judy Gingell, the Vice-Chair, said that they are committed to working with Survivors and communities to "find out as much as they can, as gently as possible." Starting in the summer of 2023, the Working Group team, that includes statement gatherers and wellness supports, will travel to all Yukon First Nations communities. The research mandate of the Working Group involves Survivor interviews, archival records, and historical maps, which when combined will help determine possible burial locations well before the Working Group starts any ground searches. Adeline Webber said that the Catholic and Anglican churches have been cooperative in providing access to archival documents.<sup>253</sup>

While the project originally focused only on the Choooutla Indian Residential School, the Working Group is now housed with the Council for Yukon First Nations and will be expanding its research mandate and site searches to other Indian Residential Schools.<sup>254</sup> The ground scanning work at the Choooutla Indian Residential School site will begin in June 2023. The results of those scans will be presented to the community first, and they will decide when to share the information with the public, and whether any further work will need be done to examine the results.<sup>255</sup>

The Working Group is consulting to determine protocols for the identification of missing children and unmarked burials for each of the First Nations involved. In the case of the Choooutla Indian Residential School site, Adeline Webber said that nothing would be done with those possible unmarked burials without consulting all the First Nations whose children were taken to that

Institution.<sup>256</sup> The Carcross/Tagish First Nation plans to hold a ceremony when the Chootla site search finishes. Ground searches at the other sites will commence in 2024, starting with the Whitehorse Baptist Indian Residential School site and could continue past 2025.<sup>257</sup>

One advantage of the Working Group leading search and recovery efforts at all the Indian Residential Schools in the Yukon is that it avoids duplication, supports the consolidation of data, and enables knowledge sharing among First Nations communities across the Yukon.



This mixed media interactive piece by artist Ashley Russell is travelling to First Nations throughout the Yukon. Survivors and loved ones are invited to write the name or memories of those who were never returned home from Indian Residential Schools on Feathers and hang them on the Orange Shirt. Afterwards, the Feathers will be burned in a Sacred Fire to send the messages to the Creator and help families to release their grief.

## An Indigenous-led Process is Essential

There is growing consensus at the international level that Indigenous Peoples' individual and collective rights are not adequately respected and enforced. This has been confirmed by truth and reconciliation commissions and other inquiries and tribunals designed to address human rights violations and historical injustices perpetrated against Indigenous Peoples. International legal principles and recommendations from these various commissions and inquiries note that Indigenous Peoples should not only be treated as victims of colonization, genocide and violence but as holders of rights that have been violated systematically by the State.<sup>258</sup> These commissions and inquiries stress the importance of ensuring that Indigenous Peoples must be active participants, have a leadership role, and have decision-making powers in matters that impact their lives and communities.

There is also consensus at the international level that more needs to be done to advance reconciliation, including making reparations for the harms perpetrated by States on Indigenous Peoples in the name of colonialism. The UN Expert Mechanism on the Rights of Indigenous Peoples (UN Expert Mechanism) observed that “[t]he concepts of reparation and reconciliation are closely interlinked and often overlap...In designing, implementing and analysing attempts at reparation and reconciliation, [I]ndigenous peoples and States should take into consideration that the **process is as important as the outcome**. Indigenous perspectives need to be incorporated at all stages, and [I]ndigenous peoples' full and effective participation is essential if the outcomes of such processes are to be successful and, indeed, legitimate.”<sup>259</sup>

This statement by the UN Expert Mechanism emphasizes several important aspects of what Indigenous-led means in the context of the search and recovery of the missing children and unmarked burials:

- The process matters and must be respectful of Survivors, Indigenous families, and communities; and
- To be legitimate, the perspectives and full participation of Survivors, Indigenous families, and communities need to be incorporated at all stages.

### UN Declaration on the Rights of Indigenous Peoples

#### Article 18:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own [I]ndigenous decision-making institutions.

At the National Gathering in Edmonton, Fredy Peccerelli, Executive Director of the Forensic Anthropology Foundation of Guatemala (FAFG), addressed the importance of an Indigenous-led process when he explained the work that FAFG is doing with Mayan communities in Guatemala who have been victims of genocide. He emphasized that reparations in relation to truth-finding, accountability, and justice, help to restore dignity to victims, families, and communities. He also emphasized that from the very beginning of the search process it is important for affected families and communities to be involved. He noted that taking action to find out what happened to missing loved ones is, in itself, a way forward through the grief and trauma of having a loved one disappeared by the State.

Indigenous-led principles and processes must guide every aspect of searches and investigations relating to the missing children and unmarked burials, in accordance with Indigenous protocols and laws. This includes access to and protection of data and records, ground searches, health and wellness, forensic investigative techniques, and accountability and justice mechanisms. Most importantly, Indigenous communities must lead the gathering of Survivors' truths as they are best placed to do so from an Indigenous rights-based perspective, using a trauma-informed approach.



## Emerging Practice: Williams Lake First Nation: A Secwépemc Approach to Gathering Survivors' Truths

Williams Lake First Nation has developed a trauma-informed process governed by Secwépemc sovereignty and legal principles to gather Survivors' truths to support search and recovery work at the St. Joseph's Mission Indian Residential School. The Williams Lake First Nation's Interview Process provides an opportunity for Survivors to share their truths and has processes for non-Indigenous people, such as the former staff of the institution or ranch workers, to participate in an interview as well. The Williams Lake First Nation prioritizes interviewees whose age is more advanced or with deteriorating health, arranges Indigenous language translation, as needed, and ensures health supports are available to interviewees before, during, and after the interview takes place.



Nancy Sandy, Williams Lake First Nation, presenting on search and recovery efforts at the National Gathering in Edmonton

Importantly, the search and recovery process is based on Williams Lake First Nation's inherent jurisdiction. The following eight Secwépemc Legal Principles guide the Interview Process and acknowledge the interviewees' truths:

1. The way things are or were in your memory (Tśílem).
2. Remembering the actions around you (Cwecwelpúsem).
3. Understanding that there were places you could not go to or boundaries you could not cross (Lleqméntes ell ta7ulécw).
4. Telling your story as you remember it (Lexeyém).
5. Recognizing that you listened to what occurred, and you are acting upon what you have seen and heard (Íkelélnem).
6. Recognizing the respect one must hold for one another (Xyemstwecw).
7. Recognizing that sharing is to be kindhearted and generous (Xqwenqwnélltše).
8. Recognizing the medicine used in telling your story is powerful (Qíx te Melámen).



## An Indigenous-led process is essential (cont'd)

An Indigenous-led process should be guided by the following key principles:

- Decisions about what steps are required leading up to, during, and after searches, including which outside experts to involve, must be made by Survivors, Indigenous families, and communities;
- Governments, churches, archives, museums, universities, and other institutions must respect and uphold Indigenous Peoples' right to oversight and decision-making in the search and recovery process. This requires colonial institutions to cede power/control to Survivors, Indigenous families, and communities to develop, implement, and evaluate initiatives and collaborative agreements at community, regional and national levels. This is so even if these colonial institutions/ organizations are providing the funding to support search and recovery efforts;
- Where national or regional policies or laws are being considered, Indigenous sovereignty must be respected. All levels of government must consult in good faith with Survivors, community leadership, Indigenous national/provincial /territorial political organizations, and Indigenous bodies with the required expertise (such as the National Advisory Committee on Residential Schools Missing Children and Unmarked Burials) with respect to any decisions being made that impact search and recovery efforts.

Although there are instances where true co-development and partnership between governments and Indigenous communities is occurring, all too often, “co-development” and “partnership” are euphemistic terms that governments rely on when making unilateral decisions. It is not appropriate for the federal government to make decisions for or on behalf of Survivors, Indigenous families and communities leading this Sacred work. Rather, Indigenous Peoples have the sovereignty and jurisdiction to make these decisions themselves. It is for Indigenous Peoples to determine who their “partners” will be and who they wish to work collaboratively with to find the missing children and unmarked burials.

Search and recovery work is not a “program” or a “partnership” between the federal government and Indigenous communities. Rather, it is about finding the missing children and ensuring those responsible for creating the conditions that contributed to their deaths are held accountable. These searches and investigations are aimed at revealing the truths and the horrors about the:

- Conditions that children endured while in the care of the State and churches at Indian Residential Schools and other institutions that led to their deaths;
- Lack of notification to the families with respect to their child's death or location of their burial;
- Lack of respectful burials for the missing children; and
- Failure to protect these burials and treat these children with the honour, dignity, and respect that they deserve.

This work includes investigating governments, churches and other institutions that participated in the neglect, mistreatment, and criminal acts that caused children's deaths associated with Indian Residential Schools. For there to be trust in the process, governments and churches cannot lead, or be seen to lead, any of the investigations. They need to stand by and provide support to Indigenous people as requested without interference, conditions or restrictions.

## The Importance of Indigenous-led Approaches to Search and Recovery Work

Canada breached the foundational principle that search and recovery efforts must be Survivor and Indigenous-led when it signed a \$2.2M Technical Arrangement with the International Commission on Missing Persons (ICMP)<sup>260</sup> on February 1, 2023. The Technical Arrangement creates a non-Indigenous parallel process to the Indigenous-led processes that are already in place in Canada and may result in conflicting recommendations and solutions.

The Technical Arrangement indicates that the ICMP will engage with Indigenous communities across the country regarding options for the identification and repatriation of missing children, including assessing interest in DNA matching and other forensic approaches. Significant concerns about this Technical Arrangement have been raised and include:

- the lack of transparency in relation to Canada's negotiations with the ICMP, and the failure to seek input from Survivors, Indigenous leadership, communities and organizations on the Technical Arrangement;
- ICMP's lack of demonstrated experience and cultural competency in working with Indigenous people and communities;
- ICMP's lack of understanding regarding Indigenous Peoples' section 35 Constitutionally protected Aboriginal and Treaty Rights;
- the ICMP's view that Indigenous Peoples are not sovereign Nations and as such the ICMP cannot contract directly with Indigenous Nations; and
- the lack of transparency and accountability to Indigenous Peoples regarding ICMP's reports and recommendations.

The Technical Arrangement provides Canada with broad oversight of the ICMP, including the right to comment on its draft report, but it does not provide the same opportunity to Survivors, Indigenous leadership or organizations. These wide-ranging powers are concerning because of Canada's role in creating, financing, and administering the Indian Residential School System.

The ICMP's approach involves a non-Indigenous organization coming here to Canada, receiving a significant amount of funding from the federal government, and then leaving. This does not constitute an Indigenous-led process. When Survivors and Indigenous communities questioned whether the ICMP could act independently without influence or interference from Canada, Kathryne

Bomberger, the ICMP's Director-General was reported as saying that:

*she understands why clauses like that may stir up concern given Indigenous communities' distrust of the federal government, but she said the commission takes its independence seriously. "This is a hugely political issue in every single area I've ever worked," she said. "It's a highly emotional issue, and I completely understand that. But I'm not worried about this being an independent report."<sup>261</sup>*

Ms. Bomberger's comment that she is "not worried" is troubling and shows her inexperience in working with Indigenous people, communities, and Survivors. She has specifically been told on numerous occasions by Survivors and Indigenous people directly working on recovering the missing children, **that they are worried**. Instead of dismissing these concerns as unfounded, the ICMP should have taken Survivors' concerns seriously and addressed them. To date, this has not been done.

Numerous concerns and questions have also been raised about the ICMP's ability to conduct trauma-informed search and recovery work in Indigenous communities. Brenda Reynolds, member of the National Advisory Committee on Residential Schools Missing Children and Unmarked Burials (NAC) said that "the Arrangement does not demonstrate being trauma-informed because it is not led by Survivors. Trauma-informed means that you are giving a voice and taking advice from Survivors. It is not demonstrated anywhere in the Arrangement that there is even a Survivors' Circle."

On May 29, 2023, the NAC issued a public statement that it will not participate in a national engagement process led by the ICMP because it is not Indigenous-led. The NAC emphasized that "any process must recognize, respect and uphold Indigenous peoples' right to self-determination and other inherent rights."

By contrast, the Forensic Anthropology Association of Guatemala (FAFG) has developed expertise in supporting Indigenous-led search and recovery work. FAFG has been supporting Mayan families to find loved ones who were disappeared during an armed conflict that spanned more than three decades (1960-1996) in Guatemala. FAFG has developed a multi-disciplinary approach to



Fredy Peccerelli, Executive Director of the Fundación de Antropología Forense de Guatemala (FAFG) presenting at the National Gathering in Edmonton

conduct forensic analyses of unidentified persons recovered in mass, unmarked graves that is respectful of and incorporates Mayan laws, ceremonies, protocols, families, and communities.

FAFG is completely independent of government. FAFG's forensic work is recognized internationally and in response to requests to support forensic work in other countries, FAFG has also developed "forensic academies." The forensic academies provide a training program to support the development of local knowledge and forensic analysis capacity that is respectful and inclusive of Indigenous families, communities, laws, and protocols. The outcome of FAFG's approach supports Indigenous self-determination and the principle of free, prior, and informed consent. This ensures that funding, expertise, control over the data and decision-making stays within Indigenous communities leading search and recovery work. FAFG has created a dignifying process for the families of missing persons and supports Indigenous-led search and recovery work that is respectful, listens, hears, and responds to Indigenous people's concerns.

While Canada claims to be upholding the principles of an Indigenous-led approach to search and recovery work, its actions in relation to unilaterally entering an Arrangement with the ICMP indicate the opposite. Canada's decision to favour ICMP over other organizations that are better suited to support Indigenous-led search and recovery work is problematic. As the FAFG's work demonstrates, the ICMP model is not the only model for doing this Sacred work. Survivors, Indigenous families, and communities must be able to freely choose which organization(s) they wish to work with.

## Indigenous Laws are Vital to Creating a Framework for Reparations

*Indigenous law is a crucial resource for Indigenous peoples...[and] is a fundamental aspect of being collectively and individually self-determining as peoples. Indigenous law is about building citizenship, responsibility in governance, challenging internal and external oppressions, safety and protection, lands and resources, and external political relations with other Indigenous peoples and the state.*

- Dr. Val Napoleon<sup>262</sup>

Indigenous laws must govern every element of a Reparations Framework in the context of the missing children and unmarked burials. This is consistent with a key TRC finding:

*A critical part of the [reconciliation] process involves repairing damaged trust by making apologies, providing individual and collective reparations, and following through with concrete actions that demonstrate real societal change. Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions. It is important that all Canadians understand how traditional First Nations, Inuit, and Métis approaches to resolving conflict, repairing harm, and restoring relationships can inform the reconciliation process.<sup>263</sup>*



Elder Tom Porter providing the Keynote Address at the National Gathering in Toronto

Here the TRC emphasized the importance of the process itself, including the need to rebuilt trust, establish respectful relationships, respect Indigenous laws and legal traditions, and uncover the truth in accordance with Indigenous truth-finding processes.

One aspect relating to the reality of unmarked burials of the missing children that is particularly painful to communities is that these little ones were buried without proper ceremonies. At the Toronto National Gathering, Mohawk Elder Tom Porter said:

*[The] children whose graves are not found are stuck there... That's why it's important to find where they are. And then each Nation has to consult with their oldest Elder – the ones that still know the history and the original teachings of the Creator – to consult on how to handle that... That's when our young will be free and that's when we can begin our work to make sure the next generations will never be lost again.*

Article 11(2) of the UN Declaration provides that “States must provide redress through effective mechanisms, which may include restitution, developed in conjunction with [I]ndigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.” This includes reparations for the families and communities in relation to the missing children and unmarked burials.

As previously discussed, Survivors, Indigenous families, and communities may hold different views about the appropriate form of reparations, including decisions relating to exhumation and repatriation of the children. Indigenous laws, protocols and processes have proven, effective methods, to resolve conflicts within and between communities, including to help determine what form of reparations are required. The UN Expert Mechanism on the Rights of Indigenous Peoples concluded that:

*The question of reparation can be particularly controversial...Although an examination of these concepts in international law is crucial...it is also of paramount importance to address [I]ndigenous concepts of recognition, reparation and reconciliation. These are often based on [I]ndigenous peoples' understanding of harm and trust and have individual and collective dimensions. Indigenous peoples also see recognition, reparation and reconciliation as a means of addressing colonization and its long-term effects and of overcoming challenges with deep historical roots. In this regard, recognition of [I]ndigenous peoples' claims to their lands, the decolonization of education systems and the recognition of [I]ndigenous juridical systems and customary laws should be considered an essential part of recognition, reparation and reconciliation.<sup>264</sup>*

Indigenous laws are being applied in community-led search and recovery processes. Elders and Knowledge Holders are a key part of these processes, sharing knowledge about Indigenous laws in relation to burials and commemorating and protecting these burial sites. Every Nation has its own laws and protocols around burial rights – these include rights as well as obligations under Indigenous laws.

At the Toronto National Gathering, Scott Fox, Youth from Ga Na, Blood Tribe, Blackfoot Confederacy in Standoff, Alberta, said:

*In our territory, we have a place where nobody lives (the big sandhills) that is the resting place of our people. We had a distinct way to honour the people who left us. There were ceremonies, there were songs. And for our children in unmarked burials, they have yet to receive this. There is a place in our heart that aches because we have not yet sent them off in our Sacred way.<sup>265</sup>*

As the TRC and the UN Expert Mechanism make clear, relying solely on Western reparative models of accountability and justice is inadequate for Indigenous Peoples. These models fail to uphold Indigenous legal principles and criteria for determining



Scott Fox presenting on the Youth Panel, National Gathering in Toronto

truths, repairing harms, restoring well-being, and creating respectful, peaceful relationships. This inadequacy confirms a long-known truth: Indigenous people are in the best place to determine, in accordance with their laws and protocols, what is appropriate for accountability and justice, and the best way to honour the missing children and protect the unmarked burials.

## Closing Words

The Indian Residential Schools Settlement Agreement and the Truth and Reconciliation Commission of Canada were crucial first steps toward reparations to fully address the harms suffered by Indigenous children, their families, and communities because of the Indian Residential School System. As the TRC emphasized, however, there is further work to be done to find the truth about the identities of the missing children; the causes of their deaths; the locations of their burials; and the number of children who are missing.

The search and recovery of the missing children and unmarked burials is important to reveal the full extent of the atrocities committed by the State and churches at Indian Residential Schools and other institutions. This work requires a comprehensive response that not only addresses the historical harms but also responds to the ongoing impacts of colonial violence, genocide and mass human rights violations relating to the fact that children are still missing and there are unmarked burials of these children that still need to be located. This requires new legislation, regulations, policies, and legal and procedural protections.

In the coming year, I will continue to listen to, and learn from Survivors, their families, and communities. I will remember to be a voice for the missing children. I will turn my attention to hearing from communities about what they seek in a Reparations Framework, and will focus on the following ten interconnected and necessary elements of reparations:

1. Indigenous Laws
2. International and Domestic Laws and Tribunals
3. Genocide and Crimes Against Humanity Laws and Processes
4. Truth-finding
5. Accountability and Justice
6. Repatriation
7. Healing
8. Apology
9. Commemoration
10. Denialism, Bystanders, and Public Education



Onistaya Kopi (Elder Keith Chiefmoon), Survivor, Ga Na, Blood Tribe Blackfoot Confederacy; Elder Fred Campion, Nêhîyaw (Plains-Cree); and Elder Pauline Shirt, Survivor of Blue Quills Indian Residential School and Co-Founder of Wandering Spirit Survivor School in Toronto

This work must be done to ensure that future generations of Indigenous and non-Indigenous children do not inherit the burden of Canada and the International community's failure to hold Canada and the churches accountable for the horrific mistreatment, neglect and disrespect of the missing children and their burials sites. A Reparations Framework must strengthen accountability and justice and establish a meaningful foundation for advancing reconciliation across Canadian society in the years ahead.

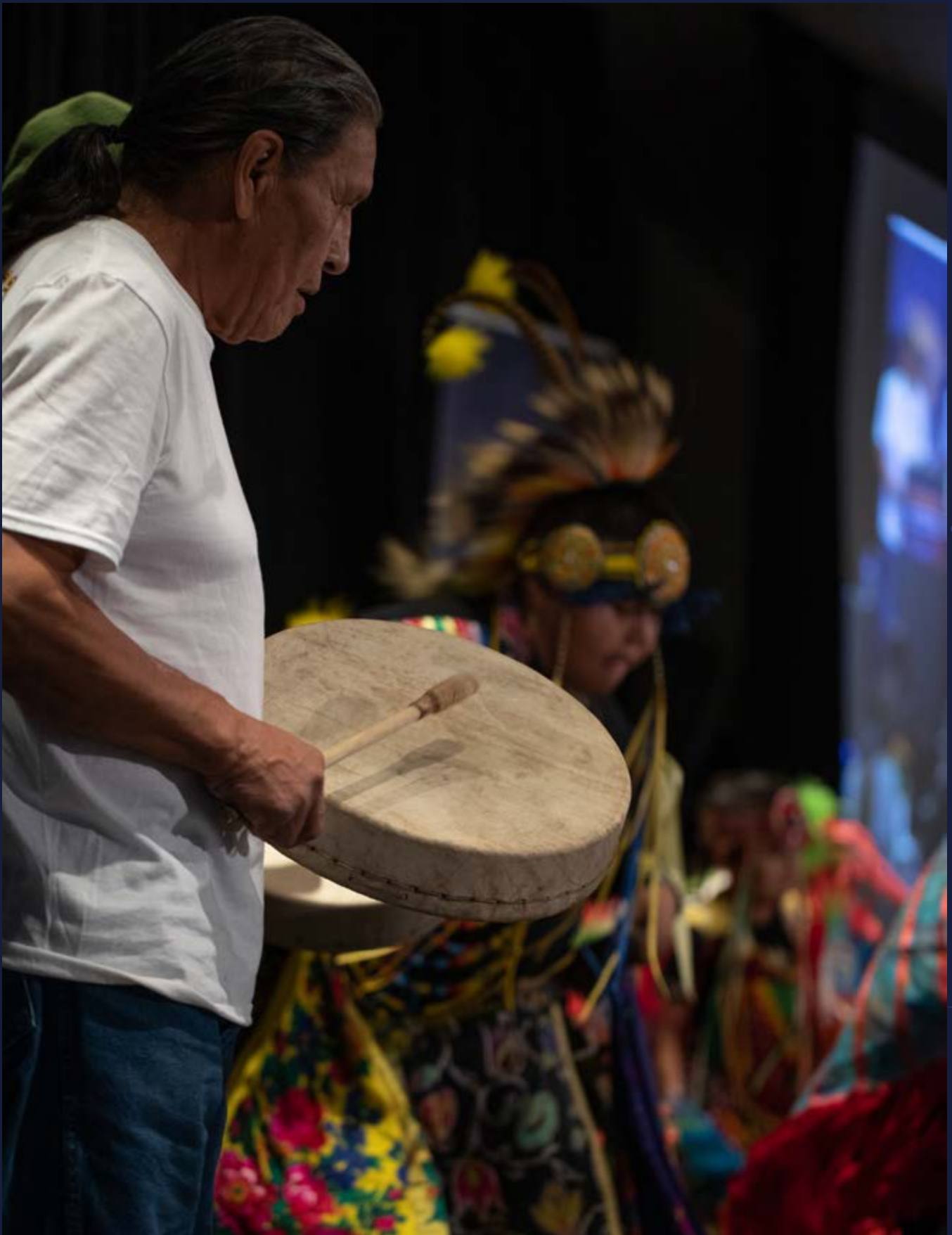
Together these reparations measures must uphold Indigenous Peoples' individual and collective rights to self-determination, freedom, human dignity and security, and protection from ongoing genocide, violence, colonization, and forced assimilation. They must uphold Indigenous Peoples' individual and collective rights to reparations from the State, and must also include apology, commemoration, and the rewriting of national history and public education to counter denialism. Most importantly, these reparations measures must support Survivors, Indigenous families, and communities leading the Sacred work of searching for and recovering the missing children and unmarked burials over the long-term.



Elders having been saying that the Spirits of the children are still here. People can feel them. There are things the children are doing to get noticed. Many have said that in Tk'emlúps te Secwépemc, and at other sites where unmarked burials exist, the children are speaking. They are telling those who are willing to listen that they need to be found and that ceremonies and proper protocols need to be conducted to help their Spirits journey home to rest with their ancestors.

In all this Sacred work, we must each take action – whether as individuals, governments, churches or other institutions – to bring honour, dignity, and respect to the missing children. We are accountable to these children, and we must fight for justice for them. We cannot rest until we heed the voices of the children and work together to bring them home. It is our Sacred Responsibility.





Elder Wilson Bearhead and the Rain-O'Chiese Family Dancers at the National Gathering in Edmonton

# Appendix A

## INTERIM REPORT FINDINGS

### *Access to and destruction of records*

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

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

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

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

## *Access to and protection of sites*

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

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

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

## *Complexity and timeline of ground searches*

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

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

### *Shortcomings of existing investigation processes*

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

### *Affirming Indigenous data sovereignty*

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

### *Challenges of responding to media and public disclosures*

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

### *The increase in the violence of denialism*

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

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

### *Lack of sufficient, long-term funding*

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



## *Need for Indigenous health and wellness supports to address trauma*

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

## *Repatriation of the children*

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

### *Land back: Repatriation of cemetery and burial sites*

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

### *Accountability and justice*

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

## Endnotes

<sup>1</sup> Jane Sponagle, “After 50-year search, Inuk mother finds daughter’s grave 2,000 km from home”, CBC News, 17 July 2016, <https://www.cbc.ca/news/canada/north/mother-daughter-grave-search-1.3682042>.

<sup>2</sup> In the 1940s, the federal government, through the RCMP, implemented the Eskimo Identification Number system for purposes of government administrative efficiency. As Pat Grygier describes: “Every Inuit was given a number, which was imprinted on a plastic disc that was usually worn around the neck or on the arm, like an army ‘dog tag’”; Pat Sandiford Grygier, *A Long Way from Home: The Tuberculosis Epidemic among the Inuit*, (Montreal: McGill-Queen UP, 1994), 48-49.

<sup>3</sup> The terms “Indian Residential Schools” and “Indian Residential School System” are used to refer to the institutions, including “federal hostels” that were funded by the Canadian government, and administered by various church entities, for the direct purpose of removing First Nations, Inuit and Métis children from their families and communities to forcibly assimilate them within Canada. Some have chosen to drop the use of the term “Indian” from “Indian Residential Schools” and instead use the term “Residential Schools” on the basis that the inclusion of the term “Indian” may provide the incorrect impression that Inuit and Métis children were not forced to attend these institutions. The System, however, that was set up and imposed on Indigenous Peoples was formally and legally known as the “Indian Residential School System”. The Independent Special Interlocutor chooses to use the historical and formal name for two reasons: (1) it emphasizes the explicitly racist intent of this System; and (2) it differentiates them from private boarding schools. The term used is in no way meant to deny or diminish the experiences of any Survivors of Indian Residential Schools, whether First Nation, Inuit or Métis.

<sup>4</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), 1. [TRC, *Summary Report*].

<sup>5</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a* (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019), 54 [National Inquiry into MMIWG, *Final Report*].

<sup>6</sup> Hansard, No. 119, 44th Parliament, 1st Session, 27 October 2022, <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-119/hansard>.

<sup>7</sup> TRC, *Summary Report*, 333-34.

<sup>8</sup> At the Battleford Industrial School in Saskatchewan, 74 unmarked graves were identified and excavated in 1974, through archival research, surface examination, and excavation ([Burial Ground Re-Consecrated \(archive.org\)](#)). The Sacred Heart Mission School in Fort Providence, Northwest Territories had a community research project from 1992-1994 that identified 248 names of children and mission residents who were buried on a site that is now unmarked. A memorial with the names listed was erected on the site ([Fort Providence plans search for unmarked graves \(cabinradio.ca\)](#)). In 1996, 34 caskets connected to the Dunbow Industrial School site in High River, Alberta were exposed after river flooding eroded the unmarked burial site ([Horrors of residential schools existed not far from Okotoks - WesternWheel.ca](#)). Saddle Lake Cree Nation has recovered a number of partial remains of children near the former Blue Quills Indian Residential School site since 2004 ([Human remains found near Alberta residential school site likely children, First Nation says | CBC News](#)). At the site of the Regina Indian Residential School in 2012, an archeological investigation supported by historical records confirmed 22 remains of children and indicated there could be an additional 35-50 unmarked graves ([shatteringthesilenceRIIS.pdf \(uregina.ca\)](#)). During a waterline construction project in 1992, 19 unmarked graves were uncovered on the site of the Muscowequan Indian Residential School ([2015-050\\_001\\_008.pdf \(algomau.ca\)](#)) an additional 10-15 potential graves were identified by ground-penetrating radar in 2019 ([‘There was a heaviness’: Alberta anthropologists locate unmarked graves of residential schoolchildren | CBC News](#)).

<sup>9</sup> It is important to note that many children who died while in the care of the state and churches at Indian Residential Schools are buried in cemeteries across Canada. These may be marked graves but are often unmarked burials in segregated areas of the cemeteries reserved for Indigenous people. Families often were not informed of children being buried in these cemeteries, whether their graves are marked or unmarked.

<sup>10</sup> Courtney Dickson and Bridgette Watson, “Remains of 215 children found buried at former B.C. residential school, First Nation says”, CBC News, 29 May 2021, <https://www.cbc.ca/news/canada/british-columbia/tk-emlúps-te-secwépemc-215-children-former-kamloops-indian-residential-school-1.6043778>.

- <sup>11</sup> Marek Tkach, “Manitoba first nation works to identify 104 potential graves at former Brandon residential school”, Global News, 14 June 2021, <https://globalnews.ca/news/7947060/manitoba-brandon-first-nation-residential-school-graves/>.
- <sup>12</sup> Bryan Eneas, “Sask. First Nation announces discovery of 751 unmarked graves near former residential school”, CBC News, 25 June 2021, <https://www.cbc.ca/news/canada/saskatchewan/cowessess-marieval-indian-residential-school-news-1.6078375>.
- <sup>13</sup> Alex Migdal, “182 unmarked graves discovered near residential school in B.C.’s Interior, First Nation says”, CBC News, 1 July 2021, <https://www.cbc.ca/news/canada/british-columbia/bc-remains-residential-school-interior-1.6085990>.
- <sup>14</sup> “More than 160 unmarked graves found near another B.C. residential school site: Penelakut Tribe”, CTV News Vancouver, 12 July 2021, <https://bc.ctvnews.ca/more-than-160-unmarked-graves-found-near-another-b-c-residential-school-site-1.5506774>.
- <sup>15</sup> Bethany Lindsay and Bridgette Watson, “93 potential burial sites found near former B.C. residential school”, CBC News, 25 January 2022, <https://www.cbc.ca/news/canada/british-columbia/williams-lake-st-josephs-residential-school-1.6326467>.
- <sup>16</sup> Leanne Sanders, “Keeseekoose First Nation says 54 potential graves at former schools” APTN National News, 15 February 2022, <https://www.aptnnews.ca/national-news/keeseekoose-first-nation-says-54-potential-graves-at-former-saskatchewan-residential-schools/>.
- <sup>17</sup> Daniela Germano, “169 potential graves found at site of former residential school in northern Alberta”, CBC News, 1 March 2022, <https://www.cbc.ca/news/canada/edmonton/potential-graves-grouard-mission-kapawe-no-first-nation-1.6368924>.
- <sup>18</sup> Mickey Djuric, “‘Just the beginning:’ 14 graves found at former residential school in Saskatchewan”, CP24, 20 April 2022, <https://www.cp24.com/news/just-the-beginning-14-graves-found-at-former-residential-school-in-saskatchewan-1.5869337>.
- <sup>19</sup> Stephanie Cram, “Ground searches underway or planned at most of Manitoba’s former residential school sites”, CBC News, 29 May 2022, <https://www.cbc.ca/news/canada/manitoba/residential-school-site-ground-searches-1.6468557>.
- <sup>20</sup> Danton Unger, “Search in Sagkeeng First Nation in Manitoba identifies 190 anomalies in the ground”, CTV News, 6 June 2022, <https://winnipeg.ctvnews.ca/search-in-sagkeeng-first-nation-in-manitoba-identifies-190-anomalies-in-the-ground-1.5934960>.
- <sup>21</sup> Sara Connors, “Search finds remains of a child at former Qu’Appelle Indian Residential School in Saskatchewan”, APTN National News, 12 January 2023, <https://www.aptnnews.ca/national-news/search-finds-remains-of-a-child-at-former-quappelle-indian-residential-school-in-saskatchewan/>.
- <sup>22</sup> “Wauzushk Onigum Nation finds 171 anomalies during search of St. Mary’s school site”, APTN National News, 17 January 2023, <https://www.aptnnews.ca/national-news/wauzushk-onigum-nation-finds-171-anomalies-during-search-of-st-marys-school-site/>.
- <sup>23</sup> Elena Rardon, “Probe into former Alberni residential school resets the death toll at 67”, Alberni Valley News, 21 February 2023, <https://www.alberniavalleynews.com/news/probe-into-former-alberni-residential-school-resets-the-death-toll-at-67/>.
- <sup>24</sup> Jeremy Appel, “Up To 179 Remains Could Be In Saddle Lake Mass Grave”, Penticton Herald, 31 March 2023, [https://www.pentictonherald.ca/spare\\_news/article\\_9f77b3a3-6a38-581e-b961-cb1dbbf01fbb.html](https://www.pentictonherald.ca/spare_news/article_9f77b3a3-6a38-581e-b961-cb1dbbf01fbb.html).
- <sup>25</sup> “Results of the shishálh Ground Penetration Radar”, Shishálh Nation, 20 April 2023, <https://shishalh.com/2023/04/20/results-of-the-shishalh-ground-penetration-radar/>.
- <sup>26</sup> At the National Gathering on Unmarked Burials: Supporting the Search and Recovery of Missing Children, Panel Presentation: Search Technology: What technology exists, what does it do and not do?, September 13, 2022, search technology experts, Dr. Kisha Supernant, Dr. Sarah Beaulieu, and Paul Bauman emphasized the importance of Survivor truths to create a tailored search plan for a specific site and to prioritize areas of interest to be searched first. Dr. Scott Hamilton also emphasizes the primacy of Survivor truths in searching sites for unmarked burials; “Criteria and indicators of unmarked graves associated with Indian Residential Schools”, unpublished, 1-2.

<sup>27</sup> Angela Sterritt, “‘This is a heavy truth’: Tk’emlúps te Secwépemc chief says more to be done to identify unmarked graves”, CBC News, 15 July 2021, <https://www.cbc.ca/news/canada/british-columbia/kamloops-residential-school-findings-1.6084185>.

<sup>28</sup> The word “schools” has been placed in quotes because many Survivors, Indigenous families and communities say that these institutions bore little resemblance to the public schools that non-Indigenous Canadians attended. Instead, they were more like prisons where inmates are assigned numbers to replace their names, everyday life is regimented, and high levels of violence exist. In addition, those who attended these “schools” received substandard education due to the fact that a significant amount of time during the day was spent working to raise funds for the “school” and attending church services for the purposes of religious indoctrination.

<sup>29</sup> Truth and Reconciliation Commission of Canada (TRC), *Missing Children and Unmarked Burials: Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), 131-132. [TRC, *Final Report*]. In 2021, the Deh Gáh Got’îê First Nation Chief Joachim Bonnetrouge, announced that the community was planning to lead further investigations into the unmarked graves (“Unmarked graves located near Sacred Heart Residential School”, Indian Residential School History and Dialogue Centre, <https://collections.irshdc.ubc.ca/index.php/Detail/occurrences/436>).

<sup>30</sup> It is worth noting that some Indigenous communities in Alberta and Ontario who received funding from the federal government’s \$20M Commemoration Project Fund as part of the Indian Residential Schools Settlement Agreement (IRSSA), focused specifically on memorializing the burial sites of children on former Indian Residential School cemetery sites. Between 2011 and 2013, 144 Survivor-led commemoration projects were funded. An important part of many of these projects was placing memorial monuments, cairns, and markers at the sites listing the names of the children who survived or died there to honour and remember them. For general information on the Commemoration Project Funds, see “Indian Residential Schools Settlement Agreement – Commemoration”, Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect6>. On the scope, breadth, and creativity of commemoration projects, see TRC, *Final Report*, Vol. 6, 182-184. For project descriptions, see “Commemoration 2012-2013 - Project Descriptions” and “Commemoration 2011-2012 - Project Descriptions”, Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, <https://www.rcaanc-cirnac.gc.ca/eng/1370974253896/1571581972784>; and <https://www.rcaanc-cirnac.gc.ca/eng/1370974213551/1571581835196>.

<sup>31</sup> Josh Bugera, “National Chief RoseAnne Archibald visits Keeseekoose FN”, SaskToday.ca, 10 March 2023, <https://www.sasktoday.ca/central/kamsack-times/national-chief-roseanne-archibald-visits-keeseekoose-fn-6642111>. In speaking about the recovery of unmarked burials at former Indian Residential School sites across Canada, National Chief RoseAnne Archibald said she had “difficulty calling them schools as she believes they were built for an ulterior purpose; Archibald regarded the buildings as ‘Former institutions of assimilation and genocide.’ She went on to say, ‘Their purpose was to assimilate us and they were a tool for genocide against our children. They were there to destroy our families and to tear apart the social fabric of our communities.’”

<sup>32</sup> TRC, *Final Report*, Vol. 6, 47-48.

<sup>33</sup> In his subsequent role as Assembly of First Nations National Chief, Fontaine continued to advocate for Survivors, was a plaintiff in civil litigation and was a member of the AFN negotiations team on the Indian Residential Schools Settlement Agreement.

<sup>34</sup> Day scholars were students who attended an Indian Residential School during the day but did not stay there overnight; see Day Scholars Survivor and Descendant Class Settlement Agreement, Court File No. T-1542-12, *Gottfriedson et al. v. Her Majesty the Queen in Right of Canada*, <https://www.justicefordayscholars.com/wp-content/uploads/2021/06/Gottfriedson-Settlement-Agreement-FINAL-Signatures-Added.pdf>.

<sup>35</sup> “Independent Special Interlocutor to work with Indigenous communities on protection of unmarked graves and burial sites near former residential schools”, Government of Canada, Department of Justice Canada, 8 June 2022, <https://www.canada.ca/en/department-justice/news/2022/06/independent-special-interlocutor-to-work-with-indigenous-communities-on-protection-of-unmarked-graves-and-burial-sites-near-former-residential-schools.html>.

<sup>36</sup> *Anderson v Canada (Attorney General)*, 2016 NLTD (G) 179, [https://kmlaw.ca/wp-content/uploads/2016/11/Reasons\\_20161107.pdf](https://kmlaw.ca/wp-content/uploads/2016/11/Reasons_20161107.pdf).

- <sup>37</sup> “Statistics on the Implementation of the Indian Residential Schools Settlement Agreement”, Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, 19 February 2019, <https://www.rcaanc-cirnac.gc.ca/eng/1315320539682/1571590489978#sec2>.
- <sup>38</sup> TRC, *Final Report*, Vol. 6, 162.
- <sup>39</sup> TRC, *Final Report*, Vol. 4, 6.
- <sup>40</sup> TRC, *Final Report*, Vol. 4, 10.
- <sup>41</sup> TRC, *Final Report*, Vol. 4, 21.
- <sup>42</sup> O’Reilly WT, *Annual Report of the Inspector of Prisons and Public Charities for the Asylum for Idiots, of the Province of Ontario*, (1882) 3.
- <sup>43</sup> Kevin Jackson, “Victorian Madness in Ontario: A Mad Peoples History of the Mimico Branch Asylum, 1882-1908,” Research Paper, Graduate Program in Critical Disability Studies, York University, August 2016, [https://madnesscanada.com/wp-content/uploads/Kevin\\_Jackson.MRP\\_FINAL.August.2016-1.pdf](https://madnesscanada.com/wp-content/uploads/Kevin_Jackson.MRP_FINAL.August.2016-1.pdf), 13.
- <sup>44</sup> Megan O’Toole, “Forgotten deceased mental health patients memorialized at newly named Lakeshore Psychiatric Hospital Cemetery,” National Post, 29 July 2012, <https://nationalpost.com/news/lakeshore-psychiatric-hospital-cemetery>.
- <sup>45</sup> Sean Leathong, “Group works to identify unmarked graves of First World War Veterans”, CTV News, 27 October 2020, <https://toronto.ctvnews.ca/group-works-to-identify-unmarked-graves-of-first-world-war-veterans-1.5163548>.
- <sup>46</sup> O’Toole, “Forgotten deceased mental health patients”.
- <sup>47</sup> It is worth noting that some information in the vital statistics online databases is not accurate, so it is important to also secure as many paper copies of original records as possible. Since both online and paper records may contain inaccuracies, researching as many records as possible is important to gather the most accurate information.
- <sup>48</sup> The TRC noted that student labour was a common practice at Indian Residential Schools. Indigenous boys were placed with local farms to live and work during harvest season while Indigenous girls were sent to White families to work as domestic servants: TRC, *Final Report*, Vol. 1, Part 1, 338-342. The TRC also found that students received a substandard education at Indian Residential Schools and during many school hours, students were forced to work within the school to maintain its operations, including on school farms and doing laundry and other domestic tasks (329-338).
- <sup>49</sup> For a detailed account of the search and the barriers encountered see William Osborne and Margaret Anne Lindsay, “The Three Sisters”, University of Manitoba Centre for Human Rights Research, 27 July 2021, <https://chrr.info/blog/the-three-sisters/>.
- <sup>50</sup> One example is at the St. Albert Municipal Cemetery near Edmonton, Alberta. Previously, what is now called the “Indigenous cemetery” was called the “Aboriginal cemetery.” This segregated part of the St. Albert Cemetery includes the unmarked graves of at least 98 former patients of the notorious Charles Camsell Indian Hospital. Kevin Ma notes that many of the names of those buried in the Aboriginal cemetery are school aged children: see Kevin Ma, “Time to honour St. Albert’s forgotten dead, say residents” St. Albert Gazette, 2 June 2021, <https://www.stalbertgazette.com/local-news/time-to-honour-st-alberts-forgotten-dead-say-residents-morin-mckennitt-littlechild-kamloops-heron-3834386>.
- <sup>51</sup> The Poppy Field is a section in a cemetery in Magog, Quebec.
- <sup>52</sup> The terms “Babyland” or the “Children’s Section” are commonly used in cemeteries to indicate areas set aside for stillbirths and child burials.
- <sup>53</sup> The French version of the letter and information request was sent to Quebec on January 9, 2023.
- <sup>54</sup> Maria-Louise Nanipou, “Awacak: naissance d’une organisation à la recherché des enfants autochtones disparus”, Radio-Canada, 13 octobre 2021, <https://ici.radio-canada.ca/espaces-autochtones/1831011/awacak-enfants-autochtones-disparus-francoise-ruperthouse>.
- <sup>55</sup> Bill 79, SQ 2021, c. 16.
- <sup>56</sup> Virginie Ann, “Quebec names ex-journalist to help Indigenous families find answers on missing kids”, The Canadian Press, 9 June 2021, <https://globalnews.ca/news/7935424/quebec-bill-79-to-help-indigenous-families-find-answers-on-missing-kids/>.

- <sup>57</sup> The Act makes clear in section 2 that it applies to health and social services offered before 31 December 1992.
- <sup>58</sup> Section 5 of the Act specifies that families must request the information prior to September 1, 2031; however, the Act does indicate that the Government of Quebec may extend the deadline for a maximum of two years and may consider further extensions.
- <sup>59</sup> This list of types of records is from Special Advisor Anne Panasuk's presentation at the National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty, Session 1 - What Records are Available and How to Access Them, January 17, 2023.
- <sup>60</sup> Lindsay Richardson and Shushan Bacon, "It's horrible': Quebec now searching for over 130 missing Indigenous children", APTN National News, 28 April 2023, <https://www.aptnnews.ca/national-news/ghost-babies-report-quebec-indigenous-children-missing/>.
- <sup>61</sup> For an overview of the history of the Indian Act in relation to Treaties, and Indigenous resistance, see TRC, *Final Report*, Vol. 1, Part 1, 105-131.
- <sup>62</sup> TRC, *Final Report*, Vol. 6, 48.
- <sup>63</sup> TRC, *Final Report*, Vol. 6, 48.
- <sup>64</sup> TRC, *Final Report*, Vol. 6, 51.
- <sup>65</sup> John Borrows, *Canada's Indigenous Constitution*, (University of Toronto Press, 2010), 129-130, cited in TRC, *Final Report*, Vol. 6, 45.
- <sup>66</sup> Ontario Office of the Chief Coroner, Residential Schools Death Investigation Team, January 2023. Of note, the NCTR Memorial Register lists only 24 names of children who died while in the care of St. Anne's Indian Residential School. The Residential Schools Death Investigation Team has been searching publicly available records to determine the identities of other children and has identified 7 additional children.
- <sup>67</sup> *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283, at paras 117-118.
- <sup>68</sup> Affidavit of Edmund Metatawabin, May 11, 2020 at para 23, filed in the case of *Fontaine v. Canada (Attorney General)*, 2021 ONSC 2921.
- <sup>69</sup> *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283.
- <sup>70</sup> *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283 at para 226.
- <sup>71</sup> See *Canada (Attorney General) v. Fontaine*, 2017 SCC 47. The court ordered that all IAP records must be destroyed by 2027 except if a claimant specifically elects to preserve their records.
- <sup>72</sup> See *Fontaine v. Canada (Attorney General)*, 2021 BCSC 164 at para 44.
- <sup>73</sup> See *Myers v. Canada (Attorney General)*, 2015 BCCA 95 and *Fontaine v. Canada (Attorney General)*, 2014 ONSC 283 at para 160.
- <sup>74</sup> See *Fontaine v. Canada (Attorney General)*, 2017 BCSC 946, at para 20.
- <sup>75</sup> *Fontaine v. Canada (Attorney General)*, 2018 ONSC 103 at para 103-136; 148-167.
- <sup>76</sup> *Fontaine v. Canada (Attorney General)*, 2021 ONSC 2921. Note that Canada has not disclosed all the documents in its possession. It has claimed that some are privileged or confidential.
- <sup>77</sup> *J.W. v. Canada (Attorney General)*, 2019 SCC 20 at para 27.
- <sup>78</sup> The application for leave to appeal the Ontario Court of Appeal's decision in *Fontaine v. Canada (Attorney General)*, 2021 ONCA 931 was dismissed by the Supreme Court of Canada, without reasons, on October 20, 2022.
- <sup>79</sup> Jorge Barrera, "Ottawa shredded school records," APTN National News, reprinted in Anishnabek News, 7 May 2013, <https://anishnabeknews.ca/2013/05/07/ottawa-shredded-school-records/>.
- <sup>80</sup> The Independent Assessment Process (IAP) to adjudicate sexual and physical abuse claims and award individual monetary compensation, was one of five components of the 2006 Indian Residential Schools Settlement Agreement. The court supervised IRSSA also included a Common Experience Payment (CEP) to provide monetary compensation to individual Survivors based on verified school attendance; a health support program, the establishment of a Truth and Reconciliation Commission, and a commemoration program. For a comprehensive account of the litigation and details of the IRSSA, see: TRC, *Final Report*, Vol. 5, 185-218; see also the Supreme Court of Canada decision, *Fontaine v. Canada (Attorney General)*, 2017 SCC 47.

<sup>81</sup> The Joint-Orentlicher Principles adopted by the UN Commission on Human Rights state that victims of mass human rights violations have the right to know the truth, the right to justice, and the right to reparations: United Nations Commission on Human Rights, Subcommittee on the Prevention of Discrimination and Protection of Minorities, The Administration of Justice and the Human Rights of Detainees: Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political), revised *Final Report* prepared by Mr. Jointet to the Subcommittee decision 1996/199, UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 1997-10-02, updated by Diane Orentlicher, UN Doc. E/ CN.4/2005/102 (18 February 2005) and UN Doc E/CN.4/2005/102/Add.1 (8 February 2005).

<sup>82</sup> “Brandon Residential School”, The Children Remembered, United Church of Canada, <http://thechildrenremembered.ca/school-locations/brandon/>.

<sup>83</sup> Catherine McBain, “De-Colonial Intersections of Conservation and Healing: The Indian Residential School System” Master of Architecture Thesis, Carleton University 2021 at 87 citing Elsie Catcheway, “Destroying the evidence of our past.” Grassroots News, 18 April 2006, [https://curve.carleton.ca/system/files/etd/b4e8f676-b87d-49bf-9a84-0e0d89dca075/etd\\_pdf/d849f1d75c6fb3776ae91ca44c94b3d/mcbain-decolonialintersectionsconservationandhealing.pdf](https://curve.carleton.ca/system/files/etd/b4e8f676-b87d-49bf-9a84-0e0d89dca075/etd_pdf/d849f1d75c6fb3776ae91ca44c94b3d/mcbain-decolonialintersectionsconservationandhealing.pdf).

<sup>84</sup> RG10 GRB/BAN W84-85/402 Box/Vol # 13761 Admission of Pupils – Brandon Industrial – residential School Part # 01 1895-01-01- 1933 -12 -31; RG 10, volume 3891, file 95,833-23, letter, Indian Commissioner for Manitoba and the North-West Territories, Hon. David Laird, 16 February 1900 <http://data2.archives.ca/e/e315/e007855851.jpg> and <http://data2.archives.ca/e/e315/e007855852.jpg> 16 December 2022; RG10 GRB/BAN W84-85/402 Box/Vol # 13761 Admission of Pupils – Brandon Industrial – residential School Part # 01 1895-01-01- 1933 -12 -31; RG10 GRB/BAN W84-85/402 Box/Vol # 13761 Admission of Pupils – Brandon Industrial – residential School Part # 01 1895-01-01- 1933 -12 -31; “Dinsdale List” provided by the United Church of Canada Archives, Conference of Manitoba Northwestern Ontario & All Native Circle Conference. It is very likely that this list was based at least partially on Library and Archives Canada, Register of admissions and discharges related to the Brandon Industrial School [textual record], 1895-1923, R216-451-0-E, RG10-C-VI.

<sup>85</sup> Library and Archives Canada, RG10 GRB/BAN W84-85/402 Box/Vol # 13761, “Admissions and Discharges;” Library and Archives Canada, RG10, Volume 6256, File 576-1, part 1, T Ferrier to JD McLean, Secretary, Department of Indian Affairs, May 29, 1912. For more information about the cemetery, see: Clare Cook, David Cuthbert and Anne Lindsay, “A Cup of Cold Water: Alfred Kirkness and the Brandon Residential School Cemeteries”, Manitoba Historical Society, Summer 2015, [http://www.mhs.mb.ca/docs/mb\\_history/78/brandoncemeteries.shtml](http://www.mhs.mb.ca/docs/mb_history/78/brandoncemeteries.shtml), at paras 29-38.

<sup>86</sup> Clare Cook, David Cuthbert and Anne Lindsay, “A Cup of Cold Water: Alfred Kirkness and the Brandon Residential School Cemeteries”, Manitoba Historical Society, Summer 2015, [http://www.mhs.mb.ca/docs/mb\\_history/78/brandoncemeteries.shtml](http://www.mhs.mb.ca/docs/mb_history/78/brandoncemeteries.shtml).

<sup>87</sup> See Colin Slark, “The two histories of Turtle Crossing”, The Brandon Sun, 5 June 2021, <https://www.brandonsun.com/local/2021/06/05/the-two-histories-of-turtle-crossing>.

<sup>88</sup> Clare Cook, David Cuthbert and Anne Lindsay, “A Cup of Cold Water: Alfred Kirkness and the Brandon Residential School Cemeteries”, Manitoba Historical Society, Summer 2015, [http://www.mhs.mb.ca/docs/mb\\_history/78/brandoncemeteries.shtml](http://www.mhs.mb.ca/docs/mb_history/78/brandoncemeteries.shtml).

<sup>89</sup> Marney Blunt, “Calls for City of Brandon to buy back residential school cemetery land, currently a RV campground”, Global News, 4 June 2021, <https://globalnews.ca/news/7922915/calls-city-of-brandon-buy-back-residential-school-cemetery-land/>.

<sup>90</sup> Chelsea Kemp, “Southwestern Manitoba First Nation denied access to search for unmarked graves”, CBC News, 3 October 2022, <https://www.cbc.ca/news/canada/manitoba/sioux-valley-unmarked-graves-1.6603671>.

<sup>91</sup> Kahentinetha and Kwetiio, Kanien’keha:ka Kahnistensera (Mohawk Mothers), National Gathering on Unmarked Burials: Upholding Indigenous Laws, Panel Presentation: Indigenous Community Perspectives: Indigenous Laws and the Colonial Legal System, March 29, 2023.

<sup>92</sup> It is important to note that Inuit were sent to the Royal Victoria Hospital from the 1940s to the 1960s; see Pat Sandiford Grygier, *A Long Way from Home*, 196.

<sup>93</sup> Kanien’kehá:ka Kahnistensera and the Rotiskenrakehte’ Originating Application for Declaratory Relief and to Obtain an Interlocutory Injunction and a Permanent Injunction, paras 1-3.



- <sup>94</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 6.
- <sup>95</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 10.
- <sup>96</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 11.
- <sup>97</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 8.
- <sup>98</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 11.
- <sup>99</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 19.
- <sup>100</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 30.
- <sup>101</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 33.
- <sup>102</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 35.
- <sup>103</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, paras 20 & 29.
- <sup>104</sup> Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte' Originating Application, para 45.
- <sup>105</sup> Excerpt from the Kanien'kehá:ka Kahnistensera and the Rotiskenrakehte's Oral Submissions, 27 October 2022, *Kahentinetha, Kawenaa, Karennatha, Karakwine, Kwetii, Otsitsataken, Karionhiate v. Société Québécoise des Infrastructures, Royal Victoria Hospital, McGill University Health Centre, McGill University, Ville de Montréal, Stantec Inc. & Attorney General of Canada*.
- <sup>106</sup> *Kahentinetha, Kawenaa, Karennatha, Karakwine, Kwetii, Otsitsataken, Karionhiate v. Société Québécoise des Infrastructures, Royal Victoria Hospital, McGill University Health Centre, McGill University, Ville de Montréal, Stantec Inc. & Attorney General of Canada*, 27 octobre 2022, Montréal, 500-17-120468-221 (Cour Supérieure Québec), Para 29.
- <sup>107</sup> Paras 23 & 25.
- <sup>108</sup> Para 21.
- <sup>109</sup> Para 20.
- <sup>110</sup> Para 22.
- <sup>111</sup> Para 20.
- <sup>112</sup> Para 20.
- <sup>113</sup> The TRC noted the long history of aggressive litigation tactics being used by governments in the context of Aboriginal rights claims and characterized these tactics and behaviours as constituting a denial of justice and contrary to reconciliation: see, e.g. TRC, *Final Report*, Vol. 5, 32 & 202-204.
- <sup>114</sup> Scott Hamilton, "Where are the Children Buried?" 11 April 2015: <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/05/AAA-Hamilton-cemetery-FInal.pdf>.
- <sup>115</sup> Hamilton, "Where are the Children Buried?", 4.
- <sup>116</sup> Scott Hamilton, "Criteria and indicators of unmarked graves associated with Indian Residential Schools," 2022, unpublished, 2
- <sup>117</sup> Hamilton, "Criteria and indicators," 5-6.
- <sup>118</sup> Hamilton, "Criteria and indicators", 6.
- <sup>119</sup> Hamilton, "Criteria and indicators", 27.
- <sup>120</sup> Hamilton, "Criteria and indicators", 31.
- <sup>121</sup> "We Are The Witnesses: How a group of Survivors are working to uncover and share the truth about what happened at the Mohawk Institute", Survivors' Secretariat, 10 January 2022, <https://survivorssecretariat.ca/we-are-the-witnesses/>.
- <sup>122</sup> "Rising Up: Lifting The Voices & Contributions of Indigenous Youth", Survivors' Secretariat, 2 November 2022, <https://survivorssecretariat.ca/rising-up-lifting-the-voices-contributions-of-indigenous-youth/>.
- <sup>123</sup> Faiza Amin, "The continuing search for missing children and unmarked graves", CityNews, 30 September 2022, <https://toronto.citynews.ca/2022/09/30/search-for-missing-children-unmarked-graves/>.

- <sup>124</sup> “The Survivors’ Secretariat Welcomes the Community and Invited Guests to a Year in Review Open House”, Survivors’ Secretariat, 31 August 2022, <https://survivorssecretariat.ca/pressreleases/the-survivors-secretariat-welcomed-the-community-and-invited-guests-to-a-year-in-review-open-house/>.
- <sup>125</sup> “We Are The Witnesses”, Survivors’ Secretariat.
- <sup>126</sup> “Searching the Grounds of the Mohawk Institute”, Survivors’ Secretariat, 12 January 2022, <https://survivorssecretariat.ca/searching-the-grounds-of-the-mohawk-institute/>.
- <sup>127</sup> These non-destructive survey methods may include magnetometry, electrical resistivity, and cadaver dogs.
- <sup>128</sup> “Institute of Prairie and Indigenous Archaeology”, University of Alberta, 9 May 2023, <https://www.ualberta.ca/prairie-indigenous-archaeology/index.html>; <https://www.ualberta.ca/prairie-indigenous-archaeology/people/director.html>; and <https://www.ualberta.ca/prairie-indigenous-archaeology/research/remote-sensing.html>.
- <sup>129</sup> “Institute of Prairie and Indigenous Archaeology”, University of Alberta.
- <sup>130</sup> “Institute of Prairie and Indigenous Archaeology”, University of Alberta.
- <sup>131</sup> Alison Wylie, Eric Simons, & Andre Martindale, “Bearing Witness: What Can Archaeology Contribute in an Indian Residential School Context?”, In *Working with and for Ancestors: Collaboration in the Care and Study of Ancestral Remains*, eds. Chelsea H. Meloche, Katherine L. Nichols & Laure Spake, (Routledge, 2021) 21-31, 21, 25.
- <sup>132</sup> Don Bodger, “More than 1,500 march in support of Penelakut First Nation after unmarked graves found”, 100 Mile Free Press, August 2, 2021, <https://www.100milefreepress.net/home2/more-than-1500-march-in-support-of-penelakut-first-nation-after-unmarked-graves-found/>; “Work with Penelakut Tribe”, University of British Columbia, <https://indigenousscience.ubc.ca/ground-penetrating-radar-gpr-partnership-between-musqueam-and-ubc/work-penelakut-tribe>.
- <sup>133</sup> “Developing new platforms for reciprocal training between Musqueam (xwməθkwəyəm) Indian Band (MIB) and the Laboratory of Archaeology (LOA)”, University of British Columbia, <https://isp.ubc.ca/2022/09/14/reciprocal-archeological-and-anthropological-training-programs/>.
- <sup>134</sup> “Developing new platforms for reciprocal training between Musqueam (xwməθkwəyəm) Indian Band (MIB) and the Laboratory of Archaeology (LOA)”, University of British Columbia, <https://isp.ubc.ca/2022/09/14/reciprocal-archeological-and-anthropological-training-programs/>.
- <sup>135</sup> UBC, Ground-penetrating Radar (GPR) Partnership between Musqueam and UBC: [Ground-penetrating Radar \(GPR\) Partnership between Musqueam and UBC | Indigenous/Science](#)
- <sup>136</sup> TRC, *Final Report*, Executive Summary, 37, 116, 164. Note that First Nations Police Services were the only police services that never participated in apprehending and returning children to Indian Residential Schools.
- <sup>137</sup> TRC, *Final Report*, Executive Summary, 61, 119. The TRC also noted that “in some cases the students or parents were obliged to paying the costs incurred in locating and returning runaways”: TRC, *Final Report*, Vol. 1, Part 1, 583.
- <sup>138</sup> TRC, *Final Report*, Executive Summary, 166. The TRC concluded that parental concerns about children being mistreated or abused at Indian Residential Schools were often disregarded by police; TRC, *Final Report*, Vol. 1, Part 2, 422. The National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) that police have been shown indifference and victim-blaming and have been unwilling to investigate the disappearances or deaths of many Indigenous women, girls and 2SLGBTQQIA people; see National Inquiry into MMIWG, *Executive Summary*, 37.
- <sup>139</sup> TRC, *Final Report*, Executive Summary, 165.
- <sup>140</sup> The RCMP report, “The Role of the Royal Canadian Mounted Police during the Indian Residential School System”, 2011, concluded that there was a lack of trust between Indigenous people and the RCMP (4), the RCMP were mostly present to return children who ran away and fine parents who did not send their children to school (6); and the RCMP assisted Indian Agents with the removal of children from their homes (135): [PS64-71-2009-eng.pdf \(publications.gc.ca\)](#). In addition, both the TRC and the National Inquiry into MMIWG emphasized the lack of trust between Indigenous people and police in their *Final Reports*.
- <sup>141</sup> TRC, *Final Report*, Vol. 1, Part 2, 412.
- <sup>142</sup> Rachel Gilmore, “What can Canada do to prosecute residential school crimes? Here’s what we know” Global News, 29 July 2021: <https://globalnews.ca/news/8067396/residential-school-abuse-perpetrators-charges-survivors/>.

- <sup>143</sup> Native Women's Association of Canada, "NWAC Demands Criminal Charges Against Governments, Churches, & Others Responsible for Deaths of Thousands of Children at Indian Residential Schools," Press Release, 24 June 2021: <https://nwac.ca/media/2021/06/nwac-demands-criminal-charges-against-governments-churches-others-responsible-for-deaths-of-thousands-of-children-at-indian-residential-schools>.
- <sup>144</sup> Stephen T. Goudge, *Inquiry into Pediatric Forensic Pathology in Ontario*, Toronto: Ontario Ministry of the Attorney General, 2008), 49-50; Gerry McNeilly, *Broken Trust: Indigenous People and the Thunder Bay Police Service* (Office of the Independent Police Review Director, 2018), see OIPRD Case Reviews 94-155; William H. Davies, *Alone and Cold: The Davies Commission Inquiry Into the Death of Frank Paul*, Interim Report (Vancouver: Davies Commission Inquiry into the Response of the Criminal Justice Branch, 2009) 13; National Inquiry into MMIWG, *Final Report*, Vol. 1a, 672.
- <sup>145</sup> *Criminal Code*, s. 22.1 and s. 22.2.
- <sup>146</sup> Pursuant to s. 11(g) of the Canadian *Charter of Rights and Freedoms*, the criminal law cannot be applied retroactively. This means no person can be convicted of an offence that was not illegal at the time it was committed.
- <sup>147</sup> *Criminal Code*, s. 650(1).
- <sup>148</sup> All of these offences have been in the *Criminal Code* since 1892. The offence of "causing death by criminal negligence" was added in 1985.
- <sup>149</sup> *Criminal Code*, s. 2.
- <sup>150</sup> Where charges are laid against a person that include both *Criminal Code* and federal offences, provincial and federal crowns may prosecute the case together. Alternatively, the provincial Attorney General can appoint a federal prosecutor as an "ad hoc" provincial prosecutor to prosecute a *Criminal Code* charge jointly with a federal charge: see, e.g. *R v Luz*, 1988 CanLII 4529, 5 OR (3d) 52 (HCJ).
- <sup>151</sup> *Criminal Code*, s. 2, "Attorney General" (b)(i).
- <sup>152</sup> S.C. 2000, c. 24.
- <sup>153</sup> *Crimes Against Humanity and War Crimes Act*, s. 9(3).
- <sup>154</sup> *Crimes Against Humanity and War Crimes Act*, s. 9(3). See also Fannie Lafontaine, "The Unbearable Lightness of International Obligations: When and How to Exercise Jurisdiction under Canada's Crimes against Humanity and War Crimes Act", 23 *Rev. quebecoise de droit int'l* 1 (2010), 26-27.
- <sup>155</sup> R.S.O. 1990, c. C.37.
- <sup>156</sup> S.O. 2002, c. 33.
- <sup>157</sup> Dr. Tracy Rogers, Forensic Anthropological Assessment (9 January 2022) in Appendix 4 of the Parslow Heritage Consultancy Inc., Stages 1-3 Archaeological Assessment – Glenwood Drive (5 April 2022), p. 120. The Chief Coroner for Ontario kindly shared this report with the Office of the Independent Special Interlocutor.
- <sup>158</sup> Kate McCullough, "Brantford discovery prompts review into cases where human remains were found in vicinity of residential schools", *The Hamilton Spectator*, 20 October 2021, <https://www.thespec.com/news/hamilton-region/2021/10/20/ontario-chief-coroner-residential-school-burial-sites.html>.
- <sup>159</sup> See the Dictionary of Canadian Biography entry for Abram (Abraham) Nelles, 1805-1884. [http://www.biographi.ca/en/bio/nelles\\_abram\\_11E.html](http://www.biographi.ca/en/bio/nelles_abram_11E.html).
- <sup>160</sup> "2020-2021 Annual Report of the Ontario Forensic Pathology Service", Office of the Chief Coroner of Ontario, 2021, <https://www.ontario.ca/document/2020-2021-annual-report-ontario-forensic-pathology-service/2020-2021-results#section-6>, Section 7: Forensic anthropology. [OFPS 2020-1 Annual Report].
- <sup>161</sup> This is the case in other provincial and territorial jurisdictions across Canada as well.
- <sup>162</sup> Kate McCullough, "Brantford discovery".
- <sup>163</sup> Kate McCullough, "Brantford discovery".
- <sup>164</sup> The Residential School Death Investigation Team is also keeping track of records that may provide information about missing and murdered Indigenous women and girls during its review of records.
- <sup>165</sup> TRC, *Final Report*, Vol. 6, 151.

- <sup>166</sup> Excerpt from Dr. Wilson's slide presentation at the National Gathering on Indigenous Data Sovereignty and Community Control over Information and Knowledge, Keynote Address, January 17, 2023.
- <sup>167</sup> Excerpt from Dr. Wilson's slide presentation at the National Gathering on Indigenous Data Sovereignty and Community Control over Information and Knowledge, Keynote Address, January 17, 2023.
- <sup>168</sup> C.C.S.M. c. N20, <https://web2.gov.mb.ca/laws/statutes/ccsm/n020.php?lang=en>.
- <sup>169</sup> CCSM c. F175, <https://web2.gov.mb.ca/laws/statutes/ccsm/f175.php?lang=en>.
- <sup>170</sup> CCSM c. P33.5, <https://web2.gov.mb.ca/laws/statutes/ccsm/p033-5.php?lang=en>.
- <sup>171</sup> "Family member" is not defined under the NCTR Act or Manitoba Privacy Legislation.
- <sup>172</sup> The relevant federal legislation is the *Access to Information Act*, RSC 1985 c. A-1 and the *Privacy Act*, RSC 1985, c. P-21.
- <sup>173</sup> NCTR Act s. 8(2). In accordance with this provision, the Centre's Director has broad authority and discretion to fulfill the Centre's mandate by creating a robust framework for proactively disclosing any and all of its records. In disclosing such records, the Centre must ensure that doing so is not an unreasonable invasion of an individual's privacy, contrary to a court order, or inconsistent with any access restrictions agreed to with the originating source of the record.
- <sup>174</sup> Raymond Frogner, National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty, Indigenous Archives: Facilitated Dialogue, January 17, 2023.
- <sup>175</sup> The NCTR is actively working to have additional federal, provincial, and church records transferred to it. See, for example, "Directive to preserve all information related to historical harms committed against Indigenous children", Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, 4 April 2022, <https://www.rcaanc-cirnac.gc.ca/eng/1650554077064/1650554104202>. It is noteworthy that the federal government has established a Residential Schools Documents Advisory Committee, composed of Survivors, First Nations, Inuit and Métis community members, and federal and expert representatives, to guide the identification, review and sharing of Indian Residential School-related documents. Chief Cadmus Delorme has been appointed Chairperson of this Committee: see Darnell Dobson, "Chief Cadmus Delorme appointed as chairperson of the new Residential School Documents Advisory Committee", National Centre for Truth and Reconciliation, 21 February 2023, <https://nctr.ca/chief-cadmus-delorme-appointed-as-chairperson-of-the-new-residential-school-documents-advisory-committee/>.
- <sup>176</sup> TRC, *Final Report*, Vol. 6, 155.
- <sup>177</sup> "The Standing Senate Committee on Indigenous Peoples: Evidence", Parliament of Canada, Senate of Canada, 21 March 2023, <https://sencanada.ca/en/Content/Sen/Committee/441/APPA/33EV-56063-E>.
- <sup>178</sup> National Gathering on Unmarked Burials: Affirming Indigenous Data Sovereignty and Community Control over Knowledge and Information, January 17, 2023.
- <sup>179</sup> See, for example, Dan Jones, "Not a mass grave said Cowessess Chief, as 751 unmarked graves discovered at Marieval residential school", Missinipi Broadcasting Corporation Radio, 24 June 2021, <https://www.mbcradio.com/2021/06/hot-a-mass-grave-said-cowessess-chief-as-751-unmarked-graves-discovered-at-marieval-residential-school>.
- <sup>180</sup> See for example, Gregory H. Stanton, "The Ten Stages of Genocide", Genocide Watch, 1996, <https://www.genocidewatch.com/tenstages>; and John Cox, Amal Khoury, and Sarah Minslow, eds., *Denial: The Final Stage of Genocide* (London and New York: Routledge, Taylor & Francis Group, 2022).
- <sup>181</sup> Sean Carleton, "'I don't need any more education': Senator Lynn Beyak, residential school denialism, and attacks on truth and reconciliation in Canada", *Settler Colonial Studies* 11, no. 4 (2021): 466, DOI: 10.1080/2201473X.2021.1935574.
- <sup>182</sup> Sean Carleton, "'I don't need any more education': Senator Lynn Beyak, residential school denialism, and attacks on truth and reconciliation in Canada", *Settler Colonial Studies* 11, no. 4 (2021): 466, DOI: 10.1080/2201473X.2021.1935574.
- <sup>183</sup> Kisha Supernant and Sean Carleton, "Fighting 'denialists' for the truth about unmarked graves and residential schooling," CBC News, 3 June, 2022, <https://www.cbc.ca/news/opinion/opinion-residential-schools-unmarked-graves-denialism-1.6474429>.

- <sup>184</sup> Olivia Stefanovich, “NDP MP calls for hate speech law to combat residential school ‘denialism’”, CBC News, 18 February 2023, <https://www.cbc.ca/news/politics/should-residential-school-denialism-declared-hate-speech-1.6744100>.
- <sup>185</sup> Olivia Stefanovich, “NDP MP calls for hate speech law to combat residential school ‘denialism’”, CBC News, 18 February 2023, <https://www.cbc.ca/news/politics/should-residential-school-denialism-declared-hate-speech-1.6744100>.
- <sup>186</sup> Olivia Stefanovich, “NDP MP calls for hate speech law to combat residential school ‘denialism’”, CBC News, 18 February 2023, <https://www.cbc.ca/news/politics/should-residential-school-denialism-declared-hate-speech-1.6744100>.
- <sup>187</sup> Witness Testimony, “The Standing Senate Committee on Indigenous Peoples: Evidence”, Parliament of Canada, Senate of Canada, 21 March 2023, <https://sencanada.ca/en/Content/Sen/Committee/441/APPA/33EV-56063-E>.
- <sup>188</sup> General Assembly Resolution A/RES/60/147 (2005). In 2005, the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These Basic Principles and Guidelines articulate a coherent set of principles relating to the right of victims to remedy and reparation in the context of violations of their human rights (see International Commission of Jurists, “The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide”, Revised Edition, 2018 at 16: <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>).
- <sup>189</sup> The Indian Residential Schools Settlement Agreement (IRSSA) was negotiated as a result of one of the largest class actions in Canadian history, brought by Survivors of Indian Residential Schools that operated in Canada. The IRSSA came into effect in September 2007. Under IRSSA, the Government of Canada has ‘recognized’ 140 former Indian Residential Schools. There are a number of other institutions that Indigenous children were forced to attend where there were also residential components but these institutions are not recognized under the IRSSA.
- <sup>190</sup> “\$12.5 million announced to build new healing house in Tkémilúps te Secwépemc”, Tkémilúps te Secwépemc, First Nations Health Authority, Government of Canada, 23 March 2023, <https://tkemlups.ca/wp-content/uploads/joint-news-release-ttes-fnha-isc.pdf>.
- <sup>191</sup> “\$12.5 million announced to build new healing house in Tkémilúps te Secwépemc”, Tkémilúps te Secwépemc, First Nations Health Authority, Government of Canada, 23 March 2023, <https://tkemlups.ca/wp-content/uploads/joint-news-release-ttes-fnha-isc.pdf>.
- <sup>192</sup> Peter Edwards, “This is about reuniting a family, even in death”, The Toronto Star, 4 March 2011, [https://www.thestar.com/news/gta/2011/03/04/this\\_is\\_about\\_reuniting\\_a\\_family\\_even\\_in\\_death.html](https://www.thestar.com/news/gta/2011/03/04/this_is_about_reuniting_a_family_even_in_death.html).
- <sup>193</sup> “St. Anne’s (Fort Albany)”, National Centre for Truth and Reconciliation, <https://nctr.ca/residential-schools/ontario/st-annes-fort-albany/>.
- <sup>194</sup> Charlie Angus, “Charlie Hunter’s Long Journey Home from Residential School,” Huff Post Canada, 20 October 2016, [https://www.huffpost.com/archive/ca/entry/charlie-hunters-long-journey-home-from-residential-school\\_b\\_12586494](https://www.huffpost.com/archive/ca/entry/charlie-hunters-long-journey-home-from-residential-school_b_12586494).
- <sup>195</sup> Edwards, “Reuniting a family”.
- <sup>196</sup> Edwards, “Reuniting a family”.
- <sup>197</sup> Edwards, “Reuniting a family”.
- <sup>198</sup> Edwards, “Reuniting a family”.
- <sup>199</sup> Edwards, “Reuniting a family”.
- <sup>200</sup> Peter Edwards, “Charlie Hunter’s finally home with his family”, The Toronto Star, 19 August 2011, [https://www.thestar.com/news/canada/2011/08/19/charlie\\_hunters\\_finally\\_home\\_with\\_his\\_family.html](https://www.thestar.com/news/canada/2011/08/19/charlie_hunters_finally_home_with_his_family.html).
- <sup>201</sup> Angus, “Charlie Hunter’s Long Journey Home”.
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- <sup>204</sup> Holy See Press Office, “Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the ‘Doctrine of Discovery,’” The Vatican, 30 March 2023 at paras 6 & 7: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html>.
- <sup>205</sup> “Additions to Reserve”, Government of Canada, Indigenous Services Canada, <https://www.sac-isc.gc.ca/eng/1332267668918/1611930372477>; *Addition of Lands to Reserves and Reserve Creation Act* (S.C. 2018, c. 27, s. 675).
- <sup>206</sup> “Call for proposals opened to support the Additions to Reserve Policy redesign”, Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, 20 March 2023, <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2023/03/call-for-proposals-opened-to-support-the-additions-to-reserve-policy-redesign.html>.
- <sup>207</sup> On the Land Back Movement, see “Land Back – A Yellowhead Institute Red Paper”, Yellowhead Institute, October 2019, <https://redpaper.yellowheadinstitute.org/wp-content/uploads/2019/10/red-paper-report-final.pdf>.
- <sup>208</sup> The ICC also investigates and tries individuals charged with war crimes (an act committed during armed conflict that violates international humanitarian laws designed to protect civilians) and crimes of aggression (the use of armed force by a State against the sovereignty, integrity, or independence of another State).
- <sup>209</sup> “RE: Communication and Referral seeking a Preliminary Examination of the Prosecutor of the International Criminal Court be commenced proprio motu pursuant to Article 15 of the Rome Statute of the International Criminal Court”, APTN News, 3 June 2021, [https://www.aptnnews.ca/wp-content/uploads/2021/06/ICC-Complaint\\_June-3-2021.pdf](https://www.aptnnews.ca/wp-content/uploads/2021/06/ICC-Complaint_June-3-2021.pdf).
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- <sup>211</sup> Ad hoc tribunals were set up by the United Nations in the context of the former Yugoslavia (International Criminal Tribunal for the former Yugoslavia) and Rwanda (International Criminal Tribunal for Rwanda); see Marc Nerenberg & Phillippe Larochelle, “We Were Sailing into Uncharted Waters: Flaws in the Application of Canada’s Crimes Against Humanity and War Crimes Act” (2014) 27(2) RQDI 135 at para 5. For an analysis of potential liability of churches for crimes against humanity for physical and sexual abuse of children, see Dermot Groome, “The Church Abuse Scandal: Were Crimes Against Humanity Committed?” (2011) 11 Chi. J Int’l L 439; see also Kona Keast O’Donovan, ‘Convicting the Clergy: Seeking Justice for Residential School Victims Through Crimes Against Humanity Prosecutions’, *Manitoba Law Journal* (2022), Vol.45, No.4, 2022, pp.52-53.
- <sup>212</sup> In 2000, Canada enacted the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24.
- <sup>213</sup> Quoted in Sam Samson, “Île-à-la-Crosse, Sask. boarding school survivors push for recognition in their lifetimes” CBC News, 6 March 2023, <https://www.cbc.ca/news/canada/saskatchewan/%C3%AEIle-%C3%A0-la-crosse-boarding-school-survivors-push-for-recognition-in-lifetime-1.6763946>.
- <sup>214</sup> The IRSSA, which settled one of the largest class action lawsuits in Canadian history, officially recognized 140 former Indian Residential Schools for the purposes of settling claims of abuse but left out many other institutions that took Indigenous children. See Residential Schools Settlement official court notice, “Requests made pursuant to Article 12 to add Institutions to the Settlement Agreement”, Indian Residential Schools Settlement- Official Court Website, updated March 28, 2013, <https://www.residentialschoolsettlement.ca/FULL%20List%20of%20Schools-%20ENGLISH.pdf> [“Requests to Add Institutions”]. In January 2023, the Survivors of Île-à-la-Crosse Residential Boarding School filed a class action lawsuit, Sam Samson, “Île-à-la-Crosse, Sask. boarding school survivors push for recognition in their lifetimes”.
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- <sup>217</sup> TRC, *Final Report*, Vol. 3, 3-4.
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- <sup>219</sup> “Residential schools missing children - community support funding”, Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, <https://rcaanc-cirnac.gc.ca/eng/1622742779529/1628608766235>.

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- 222 Some of these stories and challenges are collated in the E-book Shuana Niessen, *Shattering the Silence: The Hidden History of Indian Residential Schools in Saskatchewan* (Regina: Faculty of Education, University of Regina, 2017), <https://www2.uregina.ca/education/saskindianresidentialschools/>. Information regarding the Île-à-la-Crosse School is available online: “Île-à-la-Crosse Residential School | Métis School”, University of Regina, Faculty of Education, <https://www2.uregina.ca/education/saskindianresidentialschools/ile-a-la-crosse-residential-school-Métis-school/>. See also TRC, *Final Report*, Vol. 3, 31-34.
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- 226 Île-à-la-Crosse Residential School Injustice website: <https://www.united4survivors.ca/>.
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- 228 “Île-à-la-Crosse Statement of Claim”, 2.
- 229 “Île-à-la-Crosse Residential School Injustice”, United4Survivors, <https://www.united4survivors.ca/>.
- 230 “Residential schools missing children – community support funding”, Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, <https://rcaanc-cirnac.gc.ca/eng/1622742779529/1628608766235>.
- 231 “Beauval (Ile a la Crosse)”, National Centre for Truth and Reconciliation, <https://nctr.ca/residential-schools/saskatchewan/beauval-ile-a-la-crosse/>.
- 232 “Open Letter from Chief Wahmeesh (Ken Watts), Tseshaht First Nation”, Tseshaht First Nation, 2 March 2023, <https://tseshaht.com/tseshaht-first-nation-calls-for-truth-and-justice-from-airs/>. On May 10, 2023, I met with Survivors and Chief and Council in Tseshaht in response to Call for Truth and Justice #12. Chief Ken Watts noted that this Sacred work is a “Sacred responsibility”, which has been adopted as the title of this Interim Report.
- 233 These include various policies of assimilation legally implemented in Canada. These assimilative policies include: compulsory enfranchisement provisions under the Indian Act, some of which were discriminatory against Indigenous women (see e.g. Val Napoleon, “Extinction by Number: Colonialism Made Easy.” *Canadian Journal of Law and Society / La Revue Canadienne Droit Et Société* 16, no. 1 (2001): 116-117. doi:10.1017/S0829320100006608. [Napoleon, “Extinction by Number”]); prohibitions on raising money for Aboriginal legal claims from 1927 to 1951; criminalization of cultural ceremonies such as the Potlatch and the Tamanawas from 1884 to 1951 (see Napoleon, “Extinction by Number”, 117); the imposition of the Indian Residential School System, which continues to have destructive intergenerational consequences for Survivors, Indigenous families, and communities (see generally TRC *Final Reports*). Government law and policy has historically and continues to have destructive consequences within Indigenous communities in the disproportionate rates of child apprehensions; these high rates of apprehension are commonly known as the Sixties Scoop and Millennium Scoop, where Indigenous children were and are apprehended from their homes and placed in non-Indigenous homes or group homes, with sometimes fatal consequences. Finally, the sterilization of Indigenous women and the crisis of missing and murdered Indigenous women and girls continues to impact Indigenous families and communities (see generally National Inquiry into MMIWG Final Report).
- 234 See TRC, *Final Report*, Executive Summary, 1; see the National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report*, 1a, 54.
- 235 Quoted in David MacDonald, *The Sleeping Giant Awakens: Genocide, Indian Residential Schools, and the Challenge of Conciliation*, (Toronto: University of Toronto Press, 2019), 125.

- <sup>236</sup> Quoted in *Colonial Genocide in Indigenous North America*, Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton, eds., (Durham: Duke University Press, 2014), 1.
- <sup>237</sup> Quoted in *Colonial Genocide in Indigenous North America*, Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton, eds., (Durham: Duke University Press, 2014), 3.
- <sup>238</sup> National Inquiry into MMIWG, *A Legal Analysis of Genocide: Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Canada: 2019), 9. [National Inquiry into MMIWG, *A Legal Analysis of Genocide*]
- <sup>239</sup> National Inquiry into MMIWG, *A Legal Analysis of Genocide*, 1.
- <sup>240</sup> For an in-depth analysis of colonial genocide, see for example, in *Colonial Genocide in Indigenous North America*, Andrew Woolford, Jeff Benvenuto, and Alexander Laban Hinton, eds., (Durham: Duke University Press, 2014).
- <sup>241</sup> Dean Neu and Richard Therrien, *Accounting for Genocide: Canada's Bureaucratic Assault on Aboriginal People* (Black Point, NS: Fernwood, 2003), 25.
- <sup>242</sup> John Lehman, "Chief Justice says Canada attempted 'cultural genocide' on aboriginals," *Globe and Mail*, 28 May 2015, <https://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>.
- <sup>243</sup> Alex Ballingall, "'We accept the finding that this was genocide': Justin Trudeau acknowledges outcome of MMIWG inquiry", *Toronto Star*, 4 June 2019, <https://www.thestar.com/politics/federal/2019/06/04/we-accept-the-finding-that-this-was-genocide.html>.
- <sup>244</sup> Ka'nhehshí:io Deer, "Pope says genocide took place at Canada's residential schools", *CBC News*, 30 July 2022, <https://www.cbc.ca/news/indigenous/pope-francis-residential-schools-genocide-1.6537203>.
- <sup>245</sup> TRC Call to Action 43: "We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation." TRC Call to Action 44: "We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*."
- <sup>246</sup> Sheryl Lightfoot, "Truth and Reconciliation Commission of Canada: An invitation to boldness", in *Trading Justice for Peace? Reframing Reconciliation in TRC Processes in South Africa, Canada, and Nordic Countries*, eds. Sigríður Guðmarsdóttir, Paulette Regan and Demaine Solomons, (AOISIS Publishing, Cape Town, South Africa, 2021: 141-153), 142.
- <sup>247</sup> TRC, *Final Report*, Vol. 6, 82.
- <sup>248</sup> Lisa Magarrell, *Reparations in Theory and Practice* (New York: International Center for Transitional Justice, 2007), 2, <https://www.ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf>.
- <sup>249</sup> Lisa Magarrell, *Reparations in Theory and Practice* (New York: International Center for Transitional Justice, 2007), 2-4, 9, <https://www.ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf>.
- <sup>250</sup> TRC, *Final Report*, Vol. 6, 48.
- <sup>251</sup> Cassidy Bronson, "Search for burial sites to expand in Yukon Territory" *The Skagway News*, 14 April 2023, <https://skagwaynews.com/2023/04/14/search-for-burial-sites-to-expand-in-yukon-territory/>.
- <sup>252</sup> Ethan Lang, "Search for graves at Yukon residential school site planned for this summer", *CBC News*, 25 March 2023, <https://www.cbc.ca/news/canada/north/carcross-chooutla-residential-school-grave-search-2023-1.6790963>.
- <sup>253</sup> Lang, "Search for graves at Yukon residential school site planned for this summer".
- <sup>254</sup> Lawrie Crawford, "Ground scanning to begin on Chooutla residential school site as soon as snow melts", *Yukon News*, 29 March 2023, <https://www.yukon-news.com/news/ground-scanning-to-begin-on-chooutla-residential-school-site-as-soon-as-snow-melts/>.
- <sup>255</sup> The federal government has committed \$495,000 to the Yukon Residential Schools Missing Children Working Group, with the Yukon Territorial government contributing an additional \$595,000 to complete their work. "Details of upcoming work to find graves at residential school site presented in Carcross, Yukon", *CBC News*, 5 May 2023, <https://www.cbc.ca/news/canada/north/chooutla-site-radar-work-details-carcross-1.6571539>.



- <sup>256</sup> Lawrie Crawford, “Ground scanning to begin on Choooutla residential school site as soon as snow melts”, Yukon News, 29 March 2023, <https://www.yukon-news.com/news/ground-scanning-to-begin-on-chooutla-residential-school-site-as-soon-as-snow-melts/>.
- <sup>257</sup> Lang, “Search for graves at Yukon residential school site planned for this summer”.
- <sup>258</sup> Deborah Yashar, “Indigenous Rights and Truth Commissions: Reflections for Discussion,” in *Strengthening Indigenous Rights through Truth Commissions: A Practitioner’s Resource*, (New York: International Center for Transitional Justice, 2012), 12.
- <sup>259</sup> “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation.” Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2019/3/Rev.1, 2 September 2019, paras. 39-40, <https://digitallibrary.un.org/record/3876759?ln=en>.
- <sup>260</sup> Brett Forester, “Feds will manage group providing options on residential school unmarked burials”, CBC News, 17 February 2023, <https://www.cbc.ca/news/indigenous/cirnac-icmp-unmarked-graves-agreement-1.6752871>.
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- <sup>262</sup> TRC, *Final Report*, Vol. 6, 47, citing Val Napoleon, “Thinking about Indigenous Legal Orders”, in *Dialogues and Human Rights and Legal Pluralism*, eds. René Provost & Colleen Sheppard (Dordrecht, Germany: Springer, 2013), 229-245.
- <sup>263</sup> Truth and Reconciliation Commission *Final Report*, Vol. 6, 11-12. This is also consistent with findings of the UN Expert Mechanism on the Rights of Indigenous Peoples “Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples,” UN Expert Mechanism on the Rights of Indigenous Peoples, United Nations General Assembly, Human Rights Council, A/HRC/EMRIP/2013. [https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session6/A-HRC-EMRIP-2013-2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session6/A-HRC-EMRIP-2013-2_en.pdf) Cited in TRC *Final Report*, Vol. 6, 49-50.
- <sup>264</sup> “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation.” Report of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2019/3/Rev.1, 2 September 2019, 4, <https://digitallibrary.un.org/record/3876759?ln=en>.
- <sup>265</sup> National Gathering on Unmarked Burials: Upholding Indigenous Laws, Voices of Survivor Families, Youth Panel, March 29, 2023.



An Every Child Matters Tipi at the National Gathering in Winnipeg



**Independent  
Special Interlocutor**

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

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