
FOUNDING A NEW PATH IN CANADA: THE CONCLUSIONS OF THE COMMISSION ON TRUTH AND RECONCILIATION

by Sandy Lamalle

INTRODUCTION

In a most solemn moment on the morning of 2 June 2015, Justice Murray Sinclair presented the conclusions of the Commission on Truth and Reconciliation in Canada ('the Commission').¹ At the issue of a demanding process, after six years of work, many people across Canada and the world were awaiting the important event. The closing session of the Commission took place in Ottawa,² where over 75 000 participants³ have walked in solidarity at the Walk for Reconciliation. Meeting rooms and halls of the Delta hotel were crowded, as many survivors and their families had made the journey to the capital for that last national event.⁴

The mandate of the Commission, under the terms of the Indian Residential Schools Settlement Agreement ('the settlement agreement'), was 'to reveal the history and legacy of the church-run residential schools'; to 'document the individual and collective harms perpetrated against Aboriginal peoples'; 'to honour the resilience and courage of former students, their families, and communities'; and 'to guide and inspire a process of truth and healing, leading toward reconciliation.'⁵

In that light, and in order to undertake its task, the Commission visited more than 300 communities, took part in nearly 900 separate events, and welcomed 155 000 visitors to seven national events, including over 9000 residential school survivors and more than 15 000 students who attended educational activities.

One hundred and forty-three projects recommended as commemoration initiatives by the Commission received funding.⁶ In its search for truth, the Commission received over 6750 statements from survivors, members of their families and other individuals, and organised 238 days of local hearings in 77 communities across the country. The Commission also sponsored 'town halls', inviting people to town halls to share their stories and act on reconciliation. Throughout the process, the help of health support and cultural support workers was crucial.⁷

The process set in motion by the Commission worked 'to renew relationships on a basis of inclusion, mutual understanding, and respect'.⁸ Justice and reconciliation were both the principles *and* objectives of that process, in order to foster a new foundation for Canada. In the words of the Commissioner: 'To become this society, we need to bear witness to the past and join in a vision for the future.'⁹

THE REPORTS OF THE COMMISSION

The Commission issued four reports: an interim report in 2012, titled *They Came for the Children*, which included the history of residential schools, and three final reports in 2015: *Survivors Speak*, presenting the testimonies of survivors; *What We Have Learned, Principles of Truth and Reconciliation*; and *Honouring the Truth, Reconciling for the Future* ('the report'), synthesising the work of the Commission and formulating recommendations.¹⁰

The conclusions are comprehensive and address historical, political, ideological, cultural, economic, legal and spiritual concerns. Here are the major points emphasised by Justice Murray Sinclair in his speech in Ottawa and in the report:

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as 'cultural genocide'.¹¹

Reconciliation must become a way of life ... [It] not only requires apologies, reparations, the relearning of Canada's national history, and public commemoration, but also needs real social, political, and economic change.¹²

With reflexivity upon the reconciliation process as it unfolded in Canada, the conclusions state concrete and effective measures to that end. In the report *What We Have Learned, Principles of Truth*

and Reconciliation, they are summarised in a list of 10 'Principles of Reconciliation':¹³

1. Adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation;¹⁴
2. Recognition and respect of treaty, constitutional and human rights of Aboriginal peoples;
3. Reconciliation is a process of healing of relationships that requires public truth-sharing, apology, and commemoration that acknowledge and redress past harms;
4. Addressing the ongoing legacies of colonialism;
5. Closing the gaps in social, health, and economic outcomes that exist between Aboriginal and non-Aboriginal Canadians;
6. All Canadians, as treaty peoples, share responsibility for establishing and maintaining mutually respectful relationships;
7. Keeping and using the knowledge of Aboriginal Elders and Traditional Knowledge Keepers for the reconciliation process;
8. Supporting Aboriginal peoples' cultural revitalisation and integrating Indigenous knowledge systems;
9. Reconciliation requires political will, joint leadership, trust building, accountability, and transparency, as well as a substantial investment of resources; and
10. Reconciliation requires sustained public education and dialogue, including youth engagement, about the history and legacy of residential schools, treaties, and Aboriginal rights, as well as the historical and contemporary contributions of Aboriginal peoples to Canadian society.

As Justice Murray Sinclair underlined in his speech: 'Part of this healing process will involve putting an end to the legacy of discrimination that still informs attitudes in our education system and curricula today.'¹⁵

'Reconciliation not only requires apologies, reparations, the relearning of history, public commemoration, but also real social, political and economic change.'

According to the report: 'Children and youth need to know how notions of European superiority and Aboriginal inferiority have tainted mainstream society's ideas about, and attitudes towards, Aboriginal peoples in ways that have been profoundly disrespectful and damaging.'¹⁶ The report advocates the repudiation of concepts used to justify European sovereignty over Indigenous lands and peoples, such as the doctrine of discovery and *terra nullius*.¹⁷ The legal system must be transformed to that end,¹⁸ on the basis of treaties between Indigenous nations and the Crown, and court

decisions referring to s 35 of the *Constitution Act 1982*,¹⁹ which recognises and affirms the existing Aboriginal and treaty rights of Aboriginal peoples in Canada, and the recognition of Indigenous peoples' own traditions of truth determination, dispute resolution, and reconciliation.²⁰ As Chief Doug S White III (Kwulasultun) put it: 'Indigenous law is the great project of Canada and it is the essential work of our time.'²¹

KEEPING MEMORY

The report stresses the importance of gathering new knowledge and conducting research on reconciliation.²² The National Centre for Truth and Reconciliation ('NCTR'), which has just opened, is an emerging model for keeping memory and archiving documents, images and videos from the Commission, the government of Canada and Canadian church entities.²³

The creation of the NCTR is a major achievement of the Commission. Many obstacles had to be overcome in order to gather all the documents and material on the legacy of residential schools. Despite its obligation to hand over all relevant documents, as stipulated in the settlement agreement, the federal government at first declined to do so. It was only after a court-ordered mediation between Canada and the Commission (judgment on 30 January 2013)²⁴ that the documents were handed over. There were other judicial procedures regarding document-collection issues with residential schools, and over the confidentiality and destruction of records from the Independent Assessment Process, the mechanism for compensation ('IAP'). In the IAP's procedure, survivors were not informed of their right to allow the Commission to archive their statements. According to a court direction of 6 August 2014, and against the destruction of records by the IAP, the 'documents would be subject to a 15-year retention period, during which a notice program to survivors would be administered by the Commission or the National Centre for Truth and Reconciliation.'²⁵

CALLS TO ACTION

The conclusions also include 'Calls to Action' with 94 policy recommendations.²⁶ As Justice Murray Sinclair introduced them in his allocution: 'Our recommendations should not be seen as an itemization of national penance, but as an opportunity to embrace a second chance at establishing a relationship of equals.'²⁷

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AS A FRAMEWORK FOR RECONCILIATION

The Commission calls upon the government of Canada to develop a national action plan, strategies, and other concrete measures to that end (recommendations 43–44, 48–49); to reconcile Aboriginal and Crown constitutional and legal orders;

to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown (recommendation 45); to fund the establishment of Indigenous law institutes for the development, use and understanding of Indigenous laws and access to justice (recommendation 50); to shift the burden of proving limitation to land rights to the party asserting such a limitation (recommendation 52); and to create a National Council for Reconciliation to monitor and report on reconciliation progress (recommendation 53).

EDUCATION

Nearly half of children in foster care are First Nations children.²⁸ The Commission recommended that provinces provide resources to help families, and called upon the Canadian government to repeal s 43 of the *Criminal Code of Canada* (correction of child by force).²⁹ According to the Canadian Bar Association: 'Section 43 is contrary to the *Canadian Charter of Rights and Freedoms* and the *United Nations Convention on the Rights of the Child*.³⁰ More generally, the Commission calls for the creation and funding of new Aboriginal education legislation, protecting languages and cultures and closing the education gap for Aboriginal people (recommendations 6–12). Several provinces have already added the legacy of residential schools to the curricula,³¹ notably using educational resources provided by the Commission.³² The Canadian government is also asked to implement an *Aboriginal Languages Act* and appoint a language commissioner in order to preserve and promote it (recommendations 14 and 15).

HEALTH

The Commission calls upon the Canadian government to acknowledge that the current state of Aboriginal health is a direct result of previous government policies (notably assimilation policy), and recommends the implementation of health-care rights for Aboriginal people, including support for Aboriginal Healing Centres (recommendations 18–24).

JUSTICE AND EQUITY FOR ABORIGINAL PEOPLE IN THE LEGAL SYSTEM

The Commission calls on all levels of government for a commitment to eliminate the overrepresentation of Aboriginal people in custody, along with the collection and publication of data on criminal victimisation of Aboriginal people (recommendations 50–52). The Commission underlined the urgency of appointing a public inquiry into missing and murdered Aboriginal women and girls.³³ Furthermore, as the report raised:

The criminal prosecution of abusers in residential schools and the subsequent civil lawsuits were a difficult experience for Survivors. The courtroom experience was made worse by the fact that many lawyers did not have adequate cultural, historical, or psychological

knowledge to deal with the painful memories that the Survivors were forced to reveal.³⁴

Therefore, the report recommends the training of lawyers and public servants (recommendations 27, 57) in intercultural competency, conflict resolution, human rights, and anti-racism. It also calls upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations (recommendation 28).

'Our recommendations are an opportunity to embrace a second chance at establishing a relationship of equals.'

KEEPING MEMORY AND COMMEMORATION

The Commission calls for \$10 million over seven years from the federal government for the NCTR, and for funding for memorials, community events and museums (recommendations 79–80). It also calls for the creation of a statutory holiday to honour survivors, their families and communities (recommendation 80).

RECEPTION OF THE COMMISSION'S CONCLUSIONS

The conclusions of the Commission were praised generally across Canadian society. The churches released a joint statement on 3 June 2015.³⁵ Here are a few extracts:

We know our apologies are not enough ... Those harmed were children, vulnerable, far from their families and communities. The sexual, physical, and emotional abuse they suffered is well-documented ... We are grateful to the survivors, whose courageous witness has touched the heart of the life of our churches ... We are humbled in the knowledge that we continue to share a responsibility to ensure that the task of reconciliation does not end today ... Above all, we welcome the Commissioners' Calls to Action as providing the basis for a wide and transformative conversation among Canadians about the better future we intend to foster, not just for Indigenous peoples, but for all of us who long to live in a society grounded in right relationships and equity.

The then Prime Minister, Stephen Harper, attended the closing ceremony of the Commission, and announced to the House of Commons that his government would address First Nations issues, citing training programs and money provided for education reform, post-secondary scholarships, and health investments.³⁶ There were debates in the Canadian media, notably about the endorsement

of the Commission's conclusions by the then Prime Minister³⁷ and about the notion of 'cultural genocide' used in the conclusions and in a speech by Supreme Court Chief Justice McLachlin.³⁸ With regard to discriminations, Perry Bellegarde, the national chief of the Assembly of First Nations, issued a formal response to the report, saying to all Canadians: 'Rid yourself of those racial stereotypes of Indians and Indigenous people ... Rid yourself of those things, so new things can come in.'³⁹

Canada's provincial and territorial leaders vowed to implement all the Commission's recommendations to help First Nations people, including a national roundtable for missing and murdered Aboriginal women and girls.⁴⁰ The Commission's conclusions also mobilised the opposition leaders in the campaigns for the federal election in the lead up to October 2015, who promised to promote reconciliation in line with the Commission's recommendations.⁴¹ The new Prime Minister, Justin Trudeau, promised he would open an inquiry on missing and murdered Aboriginal women, and build a 'renewed relationship' with every First Nation in Canada.⁴²

FOUNDATIONS FOR 'A NEW AND DIFFERENT PATH'⁴³

The Commission created a space for redefining social and institutional relationships in Canada. Its final reports constitute the first step to institutionalise new relationships based on respect. As Chief Dr Robert Joseph of Reconciliation Canada stated: 'Our future, and the well-being of all our children rests with the kind of relationships we build today.'⁴⁴ In 1996, the Report of the Royal Commission on Aboriginal Peoples opened the path to a national process of reconciliation. Almost two decades later, the work of the Commission has laid foundations to pave a new way for Canada's relationships with Aboriginal peoples.

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1 Justice Murray Sinclair, 'Remarks by the Honourable Justice Murray Sinclair, Chair, Truth and Reconciliation Commission' (Speech delivered at the Delta Hotel Ballroom, Ottawa, 2 June 2015) <<http://www.macleans.ca/politics/for-the-record-justice-murray-sinclair-on-residential-schools/>>.

2 Ibid.

3 Truth and Reconciliation Commission, 'Inspiring Aboriginal-government reconciliation' (Bulletin, June 2015) <http://www.bcgcu.ca/sites/default/files/postings/attachments/George-TRC_bulletin_June_2015.pdf>.

4 National News, 'TRC report and reaction from across the country in one place,' *APTN* (online), 4 June 2015 <<http://aptn.ca/news/2015/06/04/trc-report-reaction-across-country-one-place/>>.

5 Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015) 23.

6 Ibid 33.

7 Ibid 25, 32.

8 Ibid 23.

9 Justice Murray Sinclair, above n 1.

10 The four reports are available at: Truth and Reconciliation Commission of Canada, 'TRC Findings' (2015) <<http://www.trc.ca/websites/trcinstitution/index.php?p=890>>.

11 Truth and Reconciliation Commission of Canada, above n 5, 1.

12 Ibid 184.

13 Truth and Reconciliation Commission of Canada, *What We Have Learned, Principles of Truth and Reconciliation*, (2015) 3, 4.

14 Truth and Reconciliation Commission of Canada, above n 5, 187–90. At the World Conference on Indigenous Peoples (WCIP) in New York (22 September 2014), the UN General Assembly adopted an action-oriented 'Outcome Document' to guide the implementation of the Declaration. Member states notably committed to: 'cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration ... [and also] encourage the private sector, civil society and academic institutions to take an active role in promoting and protecting the rights of indigenous peoples.'

15 Justice Murray Sinclair, above n 1.

16 Truth and Reconciliation Commission of Canada, above n 5, 185.

17 Ibid 195.

18 Ibid 217.

19 Ibid 202.

20 Ibid 204. See also Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Access to justice in the promotion and protection of the rights of Indigenous peoples*, UN Doc A/HRC/EMRIP/2013/2 (29 April 2013). See also Hadley Friedland, 'IBA Accessing Justice and Reconciliation Project: Final Report' (4 February 2014). The research project was run in 2012 between the Truth and Reconciliation Commission, the University of Victoria Faculty of Law's Indigenous Law Clinic / Indigenous Bar Association, working with seven community partners, and examined six different legal traditions across the country: Coast Salish (Snuneymuxw First Nation, Tsleil-Waututh Nation); Tsilhqot'in (Tsilhqot'in National Government); Northern Secwepemc (T'exelc Williams Lake Indian Band); Cree (Aseniwuche Winewak Nation); Chippewas of Nawash Unceded First Nation); and Mi'kmaq (Mi'kmaq Legal Services Network, Eskasoni).

21 Truth and Reconciliation Commission of Canada, above n 5, 208.

22 Ibid 242.

23 See the very recently opened website of the NCTR: University of Manitoba, *National Centre for Truth and Reconciliation* (2015) <<http://umanitoba.ca/centres/nctr/>>.

24 *Fontaine v Canada (Attorney General)* (2013) ONSC 684 (Ontario Superior Court of Justice).

25 Truth and Reconciliation Commission of Canada, above n 5, 28.

26 Ibid 319ff.

27 Justice Murray Sinclair, above n 1.

- 28 Statistics Canada, *Aboriginal Peoples in Canada: First Nations People, Métis and Inuit* (2011).
- 29 *Criminal Code*, RSC 1985, c C-46, s 43, which provides as follows: 'Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances'.
- 30 See Repeal 43 Committee, *Welcome to Repeal 43 Committee* <<http://www.repeal43.org/>>.
- 31 Terry Reith and Briar Stewart, 'Canada's residential school story to be taught in classrooms this fall,' *CBC News* (online), 4 September 2015 <<http://www.cbc.ca/news/canada/edmonton/canada-s-residential-school-story-to-be-taught-in-classrooms-this-fall-1.3216399>>.
- 32 Truth and Reconciliation Commission of Canada, *Canada, Aboriginal Peoples, and Residential Schools: They Came for the Children* (2012). The First Nation Child and Family Caring Society have constructed lesson plans that assist educators that aim to teach about social justice issues: see for example Project of Heart, *Teacher Guides/Lesson Plans* <<http://projectofheart.ca/teacher-guideslesson-plans/>>.
- 33 See for instance Meghan Rhoad, 'It's time for Canada to act on missing and murdered Aboriginal women,' *The Globe and Mail* (online), 13 May 2014 <<http://www.theglobeandmail.com/globe-debate/its-time-for-canada-to-act-on-missing-and-murdered-aboriginal-women/article18638089/>>.
- 34 Truth and Reconciliation Commission of Canada, above n 5, 168; see also Appendix 3 (Persons Found Guilty of Abusing Residential School Students), 365-8.
- 35 Fred Hiltz, Stephen Farris, Gerard Pettipas, Gary Paterson and Peter Bisson, 'Response of the Churches to the Truth and Reconciliation Commission of Canada' (Joint Statement, 2 June 2015) <http://www.united-church.ca/files/communications/news/general/150603_letter-trc.pdf>.
- 36 Bruce Cheadle, 'Harper attends closing ceremony of Truth and Reconciliation Commission,' *Global News* (online), 3 June 2015 <<http://globalnews.ca/news/2033032/harper-to-attend-closing-ceremony-of-truth-and-reconciliation-commission/>>.
- 37 Carl Bronski, 'Canada's media attacks Truth and Reconciliation report,' *World Socialist Web Site* (online), 20 June 2015 <<http://www.wsws.org/en/articles/2015/06/20/ctrc-j20.html>>; see also Bernie Farber, 'Truth, Reconciliation and Genocide Denial,' *Now* (online), 21 June 2015 <<https://nowtoronto.com/news/canada%E2%80%99s-genocide-denial/>>.
- 38 Chief Justice Beverley McLachlin, 'Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance' (Speech delivered at the Aga Khan Museum, Toronto, Ontario, 28 May 2015) <<http://www.theglobeandmail.com/news/national/unity-diversity-and-cultural-genocide-chief-justice-mclachlins-complete-text/article24698710/>>.
- 39 The Canadian Press, 'Some of what was said Tuesday about the Truth and Reconciliation Report,' *City News* (online), 2 June 2015 <<http://www.citynews.ca/2015/06/02/some-of-what-was-said-tuesday-about-the-truth-and-reconciliation-report/>>.
- 40 Robert Benzie, 'Premiers vow to implement Truth and Reconciliation Commission recommendations,' *The Star* (online), 15 July 2015 <<http://www.thestar.com/news/canada/2015/07/15/canadian-premiers-voice-support-for-truth-and-reconciliation-recommendations.html>>.
- 41 CBC, 'AFP General Assembly: Tom Mulcair, Justin Trudeau vow to promote reconciliation,' *The Huffington Post Canada* (online), 7 July 2015 <http://www.huffingtonpost.ca/2015/07/07/afn-general-assembly-tom_n_7748384.html>.
- 42 Anna Mehler Paperny, 'Trudeau wins; here's what he promised and what he'll face as prime minister,' *Global News* (online), 19 October

2015 <<http://globalnews.ca/news/2286815/trudeau-wins-heres-what-hes-promised-and-what-hes-set-to-face/>>.

- 43 This title is drawn from a Remembering the Children prayer, available at Remembering the Children, *Remembering the Children prayer* (2008) <<http://rememberingthechildren.ca/tour/documents/prayer.pdf>>.
- 44 Reconciliation Canada, *Reconciliation Canada* <<http://reconciliationcanada.ca/>>.

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