

# Working Paper

# Resistance to the Canadian Truth and Reconciliation Commission

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## List of Acronyms

CEP	Common Experience Payments
CMHR	Canadian Museum for Human Rights
DND	Department of National Defence
IAP	Independent Assessment Program
IRS	Indian Residential School
NRC	National Research Center
RCMP	Royal Canadian Mountain Police
TRC	Truth and Reconciliation Commission

# Abstract

Between 1867 and 1996, approximately 150,000 Aboriginal students went through one of 135 residential schools located across Canada. These schools were created and supported by both the Canadian government and churches. Though the outward goal of the Indian Residential School system had been to educate Aboriginal children, in reality the system was fraught with problems including systemic abuse, neglect, and poor quality of the education. The effects have been long lasting and profound, and continue to be felt today. In 2008, a truth and reconciliation commission (TRC) was launched with the goals of gathering the testimony of former students, determining the complete history of the residential school system, and offer recommendations to aid in the road to reconciliation. In June 2015, the Canadian TRC published a summary of its final report on the Indian Residential School system. The report includes 94 recommendations and describes the Indian Residential School system as cultural genocide. This paper examines the resistance to the TRC by both the Canadian government and by Aboriginal Peoples. It argues that the government resisted in order to maintain its narrative of its relationship Aboriginal Peoples, and did so by making it difficult for the TRC to acquire the required documents and archival files. It will also argue that Aboriginal resistance can be explained by a lack of trust in the Canadian government, a sense of re-victimization, and the conception of the TRC.

# Introduction

*“It was almost like we were, you know, captured, or taken to another form of home. Like I said, nobody really explained to us, as if we were just being taken away from our home, and our parents. We were detached I guess from our home and our parents, and it’s scary when you, when you first think, think about it as a child, because you never had that separation in your lifetime before that. So that was the, I think that’s when the trauma started for me, being separated from my sister, from my parents, and from our, our home. We were no longer free.” – Archie Hyacinthe (TRC 2015)*

In 2008, the Canadian Truth and Reconciliation Commission (TRC) was launched with the aim of investigating the history of the Indian Residential School (IRS) system in Canada and to offer recommendations to the Canadian government for ways to move forward with reconciliation efforts. The IRS system was a system of residential schools for Aboriginal children across Canada, which were officially operational from 1883 to 1996. Though the outward goal of the IRS system appeared to be to educate Aboriginal children, it is now evident that the IRS system was intended to assimilate Aboriginals into European ways of life. Cases of systemic abuse and neglect surfaced, which began the process that led to the creation of the TRC. The process of the TRC was not without its hurdles as there was resistance from both the Canadian government and Aboriginal Peoples. At first glance, the resistance of Aboriginal Peoples may seem surprising; however, this paper will examine this puzzling resistance.

This paper will examine the Canadian TRC and will argue that resistance came from both the Canadian government and Aboriginal Peoples. The resistance from the government can be seen through the reluctance in handing over documents and the censorship of some documents; the cuts and control of the Library and Archives Canada; and the destruction of files. This resistance is due to a desire to keep the government’s narrative of its history with Aboriginal Peoples in Canada. Meanwhile, the Aboriginal resistance is seen in a refusal to participate in the TRC by some individuals. Their resistance is explained by a lack of trust in the Canadian government, the re-victimization brought on by the TRC, and the concept of the TRC.

In order to make this argument, this paper will begin by examining the history of residential schools in Canada and the experiences of the students. Second, it will explore the relationship between Aboriginal Peoples and non-Aboriginal Canadians. Third, it will examine the relationship between the Canadian government and Aboriginal Peoples, which feeds into the resistance by both parties. Fourth, it will give an overview of the purpose of the TRC and details about the Canadian TRC. This section will also include a brief comparison to other TRCs that have taken place in Chile from 1990 to 1991, Timor-Leste from 2002 to 2005, and South Africa from 1995 to 2002. Lastly, it will delve into the resistance to the Canadian TRC by both the Canadian government and Aboriginal Peoples.

# 1

## The Indian Residential School System

The history of the IRS system can be traced to early colonial exploits in the territory that became Canada. French missionaries in eastern Canada created the first schools for Aboriginal children in 1620. Unlike later residential schools, these were voluntary. The system failed because parents were hesitant to send their children with the Catholic missionaries. In the 1830s the system resumed when a British missionary company opened the Mohawk Institute in present-day Brampton, Ontario, and the Methodists opened a school in Munceytown, Ontario. When Canada officially became a state in 1867, the government financially supported these two residential schools. In 1883, Prime Minister Sir John A. Macdonald approved the creation of three residential schools in Canada West. The government's motivation for creating these schools can be summed up by Public Works Minister Hector Langevin's words "in order to educate the children properly we must separate them from their families. Some people may say that this is hard but if we want to civilize them we must do that" (TRC 2012: 5-6).

From the creation of Canada in 1867 until the closure of the last residential school in 1996, approximately 150,000 Aboriginal students went through one of 135 residential schools.<sup>1</sup> These schools were located across Canada – spanning far into the eastern, western, and northern parts of the country. The government worked with the Catholic Church and the protestant churches to set up and to run the residential schools. Both believed the goal of the residential schools was to "civilize and Christianize" the Aboriginal children. In their goal of civilizing Aboriginal children, they wanted to impart European cultural, social, moral, and religious norms. They separated the children from their communities to break their cultural bonds. In addition to the goal of civilizing the Aboriginal population, the government and churches believed the residential schools would reduce the crime rate and rebellions. The government gained more control over the Aboriginal population in 1920 when an amendment to the *Indian Act* made it mandatory for Aboriginal children between the ages of 7 to 15 to attend either a residential school or a day school. Unlike the day schools where students returned to their families every night, students at the residential schools were now forced to remain for lengthy periods. At the same time, there were increasing difficulties in recruiting children for the residential schools. Thus, government agents began forcibly gathering children from their communities and taking them to the schools, which were often very far away. The churches would sometimes go to the local courts to get injunctions, threatening the parents with arrest if they did not allow their children to go to a residential school (TRC 2012: 9-18; Milloy 2013: 10).

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<sup>1</sup> From its inception to the 1930s, the IRS system grew in both the number of schools and pupils. During the 1930s, the IRS system was at its peak with 80 schools and 17,000 pupils. Starting in the 1940s, residential schools slowly began closing in most regions of Canada; however, in the North, there were still residential schools being built. During this period, more Aboriginal students began attending regular day schools with non-Aboriginal children. This trend continued until the closing of the last school. During the 1970s, the Federal Government began giving Aboriginal communities control over education, which eventually led to the closure of the last residential school in 1996 (<http://www.legacyofhope.ca/downloads/100-years-print.pdf>).

Many of the students reported negative experiences at the schools as they faced harsh conditions and the erasure of their Aboriginal identities. Upon arrival, their traditional clothing and belongings were taken away and their braided hair, which held special significance, was cut. They were often given new names in the hope of Christianizing them, and in many schools speaking an Aboriginal language was strictly prohibited. The quality of their education was poor as it was difficult to hire qualified teachers who were

willing to work for low wages. This was made worse by the fact that the schools depended on the work of the students to function. Older students spent half of their days doing labour like farming, repair work, and cleaning. Furthermore, the health conditions in the schools were appalling. From the 1880s until well into the twentieth century, diseases like smallpox, the measles, influenza, dysentery, and tuberculosis left trails of death in the residential schools. Chief medical officer of Indian Affairs, Dr. Peter Bryce, conducted medical reviews of fifteen schools in 1907 and 1909. In 1907, he found that 25 per cent of students died in the schools, and in 1909 some schools reported a 50 per cent death rate. It is estimated that at least 6,000 students died at school or shortly after returning home (TRC 2012: 21-37; APTN 2015). The poor health conditions were exacerbated by the poor conditions of the food. One student stated “hunger is both the first and last thing I can remember about that school” (TRC 2012: 31). Students resorted to scavenging and stealing to have enough to eat, and many had trouble adjusting to the new diet. Thus, many students faced neglect at these schools due to the poor conditions and the erasure of their heritage (ibid.: 31-35).

Many students also reported grave abuse at the residential schools. This is first evident in the harsh discipline that existed. Corporal punishment was often used, including beatings, floggings, solitary confinement, and withholding food. Some children tried to run away due to the harsh punishment, but if they were caught, the abuse escalated. Some students even died in their attempts to escape. Despite the fact that some inspectors reported that the discipline was too harsh, the government never implemented cohesive guidelines to end the practices. Furthermore, it is evident that outright physical and sexual abuse was a rampant problem within the residential school system from the beginning; as early as 1868, a staff member was charged with the sexual abuse of two students. This type of abuse continued until the end of the IRS system. In October 1990, Phil Fontaine, former residential school student and the Grand Chief of the Assembly of Manitoba chiefs, called for a national inquiry into the IRS system, and talked about the sexual abuse he and other students had faced. Before this, no one had taken the claims of abuse from Aboriginals seriously. Former students have recounted how it was nearly impossible to have their voices heard and that they had no recourse to deal with the abuse. As the Canadian TRC states in its 2012 report on the history of the IRS system, *They Came for the Children*, “the impacts were devastating and continue to be felt today” (ibid.: 41-45).

The effects of the IRS system on Aboriginal communities were both immediate and long lasting. When a child left for a residential school, their parents not only lost their child, but their community lost a valuable member. From a young age, children had a lot of autonomy and many responsibilities in their community. This helped them gain the skills they needed in adulthood. When children went to the residential schools, it created a gap in Aboriginal communities. These children did not learn the skills they needed and they did not have a strong grasp on their culture and beliefs. For the first few generations that entered the IRS system, it was not a big problem, because the



elders could teach them what they had missed when they returned. However, as the generations went on, these elders passed away. Entire communities had gone through the IRS system, began identifying less with their Aboriginal identities, and began losing their cultural practices, and traditional skills. Many of the students who had suffered abuse became parents, leading to dysfunction at an individual and familial level. The TRC sums up these inter-generational effects: “the legacy of the schools became joblessness, poverty, family violence, drug and alcohol abuse, family breakdown, sexual abuse, prostitution, homelessness, high rates of imprisonment, and early deaths” (ibid.: 77-78). In the end, the IRS system was a colossal failure as it led to detrimental and long lasting effects on the Aboriginal Peoples. Though the last residential school closed in 1996, the legacy has continued into the twenty-first century.

## 2

# Relationship between Aboriginal and non-Aboriginal Canadians

The detrimental effects of the IRS system on the Aboriginal Peoples have had lasting and profoundly negative effects in their relationships with non-Aboriginals in Canadian society. Once stigmatized as poor, criminal, lazy, and dependant, the Aboriginal population has yet to evade such stigmatization, which demonstrates the racism that they continue to face in society today.

Although Canada prides itself as being a nation of immigrants and multiculturalism, racism towards the Aboriginal population is endemic across the country. As of 2013, the Aboriginal population in Canada exceeds one million, with over half living in urban centers. Historically, government policies were implemented to keep the Aboriginal population separated from the non-Aboriginal Canadian population, including the use of reserves and a system in the Prairie Provinces in which Aboriginals needed to get a special pass to leave the reserves. This made urban centers seem like areas for immigrants and non-Aboriginal Canadians; thus, when the Aboriginal populations became increasingly urbanized, they were often seen as “out of place” (Currie et al. 2012: 395) in Canadian cities. This has led to increased racism in the relationship between Aboriginal and non-Aboriginal Canadians.

Many studies demonstrate that racism towards Aboriginals is a problem in Canada. A 2013 study from the Association of Canadian Studies and the Canadian Race Relations Foundation concluded that there has been an increase in the negative perceptions of Aboriginal Peoples among the English Canadian population. Interestingly, immigrants to Canada had a much more positive view of Aboriginals. The study also found that people who had the most contact with Aboriginal Peoples generally had more positive views and less racism. However, this was not the case in Manitoba and Saskatchewan as both provinces had the most contact with Aboriginals and the most negative views about them. The reason for this deviation is unclear. This is problematic as these provinces hold some of the largest populations of Aboriginal Peoples in the country (Canadian Race Relation Foundations 2013). Another 2013 study found that in urban centres, the most common and shared experience among Aboriginals is that of being negatively stereotyped. They found that in a 2009 study of eleven Canadian cities, seventy per cent of Aboriginals polled had been discriminated or insulted due to their Aboriginal identities, and that a third felt they were not accepted by non-Aboriginal Canadians. Most problematic from the 2013 study is that Edmonton, which has the second largest Aboriginal population in Canada, had the most negative view of Aboriginals. Sixty-two per cent of the respondents stated they viewed their relationship with Aboriginals as negative and 79 per cent as not improving (Curie et al. 2012: 395). The issue has also become part of a larger public debate when *Maclean's* magazine published an article in 2014 declaring that Canada had a worse problem with racism than the United States. The debate was further fuelled by former Aboriginal Affairs minister Robert Nault's 2015 comment that racism was not an institutional issue despite it being an issue on an individual level. Current Aboriginal Affairs Minister, Bernard Valcourt,

has not engaged in the debate about racism. Thus, even though studies show that racism against the Aboriginal populations is rampant, the government has not seriously addressed the issue (Barrera 2015).

The problem of racism is perhaps most prevalent and problematic in Winnipeg, Manitoba – the city with the largest Aboriginal population. According to *Maclean's*, Winnipeg “is quickly becoming known for the subhuman treatment of its First Nations citizens, who suffer daily indignities and appalling violence. Winnipeg is arguably becoming Canada’s most racist city” (Macdonald 2015). Manitoba and Saskatchewan are not only the provinces with the highest levels of racism, but also the highest numbers of racist incidents. In Manitoba, this is becoming a worsening problem. A study showed that in 2007, 32 per cent of Manitobans had a “very favourable” opinion of Aboriginals, which declined to 13 per cent by 2014. The reason for this drop is unclear, but it coincides with an increase in the Aboriginal population in the province. This has created a racial divide in the city. The problems are exacerbated by the city’s physical divide. A Canadian Pacific railyard divides the city in two as it essentially cuts off the North End, which is an area of the city primarily inhabited by Aboriginals. The socioeconomic conditions are poor in the North End. While the median income of the city is almost \$50,000, it is only at \$22,200 in the North End. Furthermore, one third of children drop out of school before grade nine and one out of six children are taken by social services. Alcoholism and solvent abuse is rampant, while the suicide rate among the youth is rising. According to *Maclean's* “an Aboriginal boy in Manitoba is more likely to end up in prison than graduate” (ibid.). A survey by the Canadian Mortgage and Housing Corporation found that a third of Aboriginals were declined a house or a rental property once they showed up for a viewing, and many stated that they felt forced into the poorer sections of the city based on their race, where violence is higher and well-paying jobs are harder to come by. The problem is not limited to the average population – mayoral candidate Robert Falcon-Ouellette encountered racist comments on the campaign trail; for instance, one woman said “[...] you’re an Indian. I don’t want to shake your hand. You Indians are the problem with the city. You’re all lazy. You’re drunks. The social problems we have in the city are all related to you” (ibid.). Though Winnipeg provides but a snapshot of the problem, it demonstrates that racism against Aboriginals is alive in Canada.

Finally, the continued existence of myths about Aboriginal Peoples contributes to the problem of racism in Canada. Canadian history often depicts the North American territory as empty when the Europeans arrived in the late fifteenth century and early sixteenth century. The Canadian history narrative often includes the phrase “two founding nations” as a reference to the English and the French who first colonized what would become Canada. Though Aboriginals are mentioned in the narrative, it often excludes the fact that the interactions between the newly arrived Europeans and the Aboriginal communities were instrumental in Canadian history. Without such interactions, Canada’s history would have been vastly different. This myth supported the myth that North America was “an empty, untamed land in need of

civilization” (Rice and Snyder 2008: 55). During the nineteenth and twentieth centuries, there was a strong belief that Europeans were superior to the Aboriginal Peoples. Lewis Henry Morgan, the founder of modern ethnology, used Charles Darwin’s theories of evolution to create a hierarchy of ethnic groups. At the top of the hierarchy were the “civilized” Europeans, while the Cree were at the lowest as “savages” and the Iroquois were classified as “barbarians.” This led to the myth of the “incompetent Indian” – that the Aboriginals were unable to be civilized and to fit into modern society; thus, the Canadian government needed to manage their affairs (ibid.: 55-56). This was used to justify acts like the *Indian Act* and the IRS system. Although the belief that Europeans and Christians are superior to other ethnic groups has largely disappeared in the twenty-first century, the stereotypes that supported the belief remain. The belief that Aboriginals need the help of Canadians due to their supposed weakness is used to justify the oppression that occurred in Canadian history and to ease the guilt of having oppressed the Aboriginal population. The continuation of the myth of the weak Aboriginal perpetuates negative stereotypes and the poor relationship between Aboriginal and non-Aboriginals (ibid.: 55-56).

# 3

## The Canadian Government and Aboriginal Peoples

The relationship between the Canadian Government and the Aboriginal Peoples has been rocky since Canada's creation and it continues to be tumultuous today. One of the most contentious issues, both historically and contemporarily, is the control of land. During the eighteenth century, the British saw the Aboriginals as powerful military allies in their wars against the French and the Americans. The 1763 *Royal Proclamation* began the practice of making treaties to protect Aboriginal harvesting rights and to protect the reserve lands from being settled by Europeans. However, the relationship began to sour after 1812, when Aboriginals were no longer seen as important military allies. As more settlers arrived in Upper Canada, now Ontario, there was increased pressure to ease some of these restrictions, leading to tension. In 1860, the *Indian Lands Act* was enacted, which gave the authority over Aboriginal Peoples and their lands to the chief superintendent of Aboriginal Affairs. Initiatives to assimilate Aboriginal communities and appropriate their land began in earnest during this period through measures such as convincing them to adopt the British tenure land system and by restricting band membership, meaning that it became more difficult for Aboriginals to be officially recognized as a member of an Aboriginal band; for instance, Aboriginal women who married non-Aboriginal men lost their Aboriginal band status (Rice and Snyder 2008: 52-53).

In the 1867 *British North America Act*, which created Canada, the newly formed federal government gained the authority to regulate the Aboriginal Peoples and their lands. As the federal government also controlled the electoral system, it began to eliminate the Aboriginal positions of leadership; for instance, the 1869 *An act for the gradual enfranchisement of Indians* made it so the Superintendent-General of Indian Affairs would have the final say in community elections. He could even depose elected chiefs. The provinces were given the authority to legislate the crown lands. In some provinces, treaties were not upheld, and Aboriginal communities lost their access to land and resources, and their harvesting rights. This increased the pressure on Aboriginal communities and their economies (ibid.: 52-54).

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2 The Nisga'a Nation, located in British Columbia, sued the provincial government of British Columbia in 1967 for the title of the lands. They stated that the Nisga'a Nation still held the lands' title because the title had not been revoked by a treaty. Both the Supreme Court of British Columbia and the Court of Appeals rejected this claim. Undeterred, the Nisga'a Nation brought the case to the Supreme Court of Canada. Though they lost their case in 1973, the Supreme Court declared that title had existed when the 1763 Royal Proclamation was established. This was the first case where the Canadian judicial system recognized an Aboriginal title over land in Canada (Tanisha Salomons, <http://indigenousfoundations.arts.ubc.ca/home/land-rights/calder-case.html>).

This situation continued well into the twentieth century. In 1973, the *Calder*<sup>2</sup> case had the potential to significantly redefine the relationship and improve the conditions of Aboriginal communities throughout Canada. The *Calder* case is significant because it was the first time that the Canadian judicial system acknowledged the existence of Aboriginal land titles. The government could have responded by treating the Aboriginal communities as equals and upholding their traditional land titles, but instead continued to negotiate with them as a colonial power. The federal government enacted a policy in which Aboriginals had to submit a "land claim" to deal with the violations. In many cases, the government refused to negotiate and made the process needlessly difficult, while often taking the needs of other groups ahead of those of the Aboriginals. The 1990s brought a series of court decisions that further cut Aboriginal rights; for instance, the *Van der Peet* decision

declared that Aboriginal rights were not universal or general rights. Thus, every band had to prove their rights for their territory (Lawrence and Dua 2011: 240-241).

The situation has not greatly improved in the early twenty-first century. As of 2012, there are more than 800 land and treaty disputes with the federal government that have yet to be resolved. Despite having been significantly amended since 1867, the *Indian Act* continues to govern Aboriginal Peoples in Canada and the federal government continues to hold the authority over the peoples and their lands. Furthermore, provincial governments continue to keep a firm grip on natural resources, which has led to limited economic growth in Aboriginal communities. Thus, many current government policies have the effect of restricting the “economic, social, and political developments of Aboriginal communities” (Rice and Snyder 2008: 54). Many Aboriginal communities lack land and basic resources. This is compounded by poor quality of education, substandard housing, and difficulty accessing quality healthcare. According to the United Nations Rapporteur General, Aboriginal communities in Canada do not have the required land and resources that they need for their growing communities (ibid.: 52-55).

Furthermore, Canada has continually criticized the United Nations Declaration on the Rights of Indigenous Peoples. The declaration is not a legally binding document, but it establishes international objectives in the treatment of Indigenous peoples. According to article (1) “Indigenous people have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights (4) and international human rights law” (Hanson Undated). Furthermore, the Declaration states in article three that they have a right to the self-determination “to freely determine their political status and freely pursue their economic, social and cultural development” (ibid.). The declaration was adopted in September 2007 after 144 nations voted in favour of the declaration. Canada was among the four nations that voted against the declaration. The government of Canada stated that they did not support the declaration, as it was not compatible with the Canadian constitution and the Canadian Charter of Rights and Freedoms because they believed the rights in the declaration are not balanced with the rights of all Canadians. Canada’s dissention led to strong opposition; thus, in 2010 the government announced it would support the declaration. The government stated that their endorsement of the declaration “does not reflect customary international law nor change Canadian laws, our endorsement gives us the opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada” (ibid.). This shows that the government is still not fully onboard with the declaration, but is moving towards a new direction in the relationship with Aboriginal Peoples in Canada (United Nations Permanent Forum on Indigenous Issues 2007; Hanson).

Tensions between Aboriginal communities and the government continue to mount and it is exacerbated by a nation-wide crisis of murdered and missing Aboriginal women. In the summer of 2014, the city of Winnipeg was rocked by the rape and murder of Tina Fontaine, a fifteen year old girl from the Sagkeeng First Nation. Fontaine was not the first Aboriginal woman to face such a terrible fate. According to a 2014 Royal Canadian Mounted Police (RCMP) report, between 1980 and 2012, 1,181 Aboriginal women have either gone missing or have been murdered. As of April 2015, 174 Aboriginal women remain missing. The response of the current government has created more tension with the Aboriginal Peoples. In 2014, Prime Minister Stephen Harper stated that a national inquiry into the crisis was “not really high on our radar” (Kappo 2014) and that the problem was solely on reserves, which statistics show is not the case. Shortly after the murder of Tina Fontaine, Harper stated that the issue should not be viewed “as a sociological problem,” (Maher 2013) angering many who are fighting for a national inquiry. Even the UN Rapporteur General is calling for an inquiry. In February 2015, the Prime Minister did not attend the national roundtable on missing and murdered Aboriginal women even though it was attended by other Canadian politicians including the premiers of Ontario and Manitoba, the Minister of Aboriginal Affairs, and the Minister of the Status of Women. Many speculate that if the Canadian government called an inquiry into the issue, it would bring national attention to the problem, which would put pressure on the government to find solutions and implement policies – all of which would cost money. The government currently spends 11 million dollars on Aboriginal Affairs, as it is mandated in treaties, while it spends 65 million dollars a year on political advertising. The continued lack of response from the Canadian government to the plight of Aboriginal women is one of many examples of how the government has not responded to Aboriginal needs, increasing tension and animosity between the two groups (CBC 2015; Kappo 2014; Maher 2013; APTN 2014; Macdonald 2015).

The 2013 genocide controversy at the Canadian Museum for Human Rights (CMHR) gives a glimpse into the Canadian government’s narrative of the history of Canada’s Aboriginal Peoples. The federal government directs the museum, which means that its curators cannot oppose the government’s historical narrative of Canadian history and the role of the government in the treatment of Aboriginals. Tricia Logan wrote a chapter in *Remembering Genocide* (2014), discussing her experiences as a former curator of the CMHR. She states that from the beginning, she was told to restrict the reportage of the treatment of Aboriginal children in the welfare state and the history of the missing and murdered Aboriginal women. She was also asked to remove the word “genocide” from an exhibition on Canada’s colonial history and the treatment of the Aboriginal Peoples. This made headlines in the summer of 2013, causing major debates across the country. She states: “as curator at the CMHR, I was consistently reminded that every mention of state-perpetrated atrocity against indigenous peoples in Canada must be matched with a ‘balanced’ statement that indicates reconciliation, apology or compensation provided by the government. In cases where those issues are not reconciled,

*or where accusations of abuse against the government continue to this day, the stories are reduced in scope or are removed from the museum (Welch 2015).*

Thus, the genocide controversy and the treatment of Canadian history demonstrate the Canadian government's narrative of Canadian history in relation to Aboriginal Peoples, which increases the tensions between the two groups.

Amongst the tension between the government and the Aboriginal communities, Prime Minister Stephen Harper apologized for the residential school system on behalf of the government and Canadians on June 11, 2008. In the apology, which he delivered in the House of Commons, he acknowledged the role of the federal government in the IRS system and that the goals of the residential school system was to assimilate Aboriginal children because it was believed that their culture was inferior to European culture. He admits that in many cases, children were forcibly taken from their communities, neglected and abused. He also acknowledges that the residential school system has had intergenerational effects, and that it has negatively impacted Aboriginal cultures and traditions. In his statement, he declared that the burden of the residential school system should no longer be on the shoulders of Aboriginal communities, but that "the burden is properly ours as a government, and as a country" (Harper 2008). He states that it is now time for reconciliation and that the TRC is a "positive step in forging a new relationship between Aboriginal Peoples and other Canadians, a relationship based on knowledge of our shared history, a respect for each other and a desire to move forward together with renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us" (ibid.). Despite the apology, the government continues to be reluctant to change its relationship with the Aboriginal Peoples in Canada and its historical narrative. This broader context shapes the forms of resistance to the TRC, which are discussed in Section 5.



# 4

## The Canadian Truth and Reconciliation Commission

The majority of TRCs have been used by states in Africa, Asia, and South America. The Canadian TRC differs from the majority of TRCs due to the fact that it does not come after a violent conflict or after the end of an authoritarian regime. For instance, the National Commission for Truth and Reconciliation in Chile, conducted in 1990 and 1991, examines the human rights abuses that occurred during the military dictatorship from 1973 to 1990 (United States Institute of Peace: Chile). Similarly, the Commission for Reception, Truth and Reconciliation in Timor-Leste, conducted from 2002 to 2005, aimed to uncover the human rights violations that occurred between 1974 and 1999 during the violent occupation of Timor-Leste by Indonesia. This TRC concluded that over 100,000 deaths were due to the occupation. It provided some recommendations to avoid future human rights violations, which differs from the recommendations of the Canadian TRC that offers recommendations for reconciliation (United States Institute of Peace: Timor-Leste). On the other hand, Canada's TRC followed a decade of litigations and court battles.

The Commission of Truth and Reconciliation of South Africa was conducted from 1995 to 2002, and it has some similarities to the Canadian TRC. Its aim was to investigate the human rights violations that occurred during the Apartheid regime from 1960 to 1994. These violations include acts of killings, torture, and abduction committed by both the state government and liberation movements. Similarly to the Canadian TRC, the South African TRC was tasked with gathering the historical record of the events surrounding the human rights abuses and with providing recommendations to the government. The two TRCs faced similar challenges, including using the testimony of victims and the destruction of documents by the government before the beginning of the TRC. One difference is that the TRC in Canada followed compensations, while the South African TRC recommended the use of reparations in the process of reconciliation. Although Nelson Mandela's government endorsed the TRC in 1998, there has still been some resistance from the government, including not providing enough reparations to the victims. This demonstrates that TRCs have common elements and similarities even though the human rights violations may differ greatly, and that resistance has occurred in other cases (United States Institute of Peace: South Africa).

TRCs are typically used as a means to help adversaries deescalate conflicts about past events, to give a voice to the victims, and to address institutional problems. According to Brian Rice and Anna Snyder, TRCs first need to counter the denial that atrocities have occurred. Then TRCs generally have five aims: "1) to discover, clarify, and formally acknowledge past abuses; 2) to respond to specific needs of victims; 3) to contribute to justice and accountability 4) to outline institutional responsibility and recommend reforms; 5) to promote reconciliation and reduce conflict over the past" (Rice and Snyder 2008: 48). Canada's TRC has factors that make it unique. First, the TRC needs to deal with the legacy of colonialism that continues to affect Aboriginals throughout Canada economically, politically, and socially. Second, the TRC needs to address the myths that continue to exist that help justify the

discriminatory policies enacted by the government on Aboriginals. Finally, the TRC needs to recognize that the residential schools have had long lasting effects on Aboriginal identity and mental health (ibid.: 47-48). The Canadian TRC would not be an easy process.

The road to the Canadian TRC began in the 1990s when former residential school students started working together to support each other and to pursue justice from the Canadian government. In 1991, the First National Conference on Residential Schools was organized by the Caribou Tribal Council of Williams Lake in British Columbia. At the conference, former residential school student Bev Sellars stated “we cannot allow another generation to suffer from the past programming we received at the schools” (TRC 2012: 80). The path to the TRC had begun. Over the course of the 1990s and early 2000s, various Aboriginal groups advocated for justice. During the 1990s, class-action lawsuits against the federal government led to the Indian Residential Schools Settlement Agreement, the largest class-action lawsuit in Canadian history (ibid.). The Settlement Agreement represents approximately 80, 000 former residential school students and involved the federal government, the Anglican Church, the United Church, the Catholic Church, and the Presbyterian Church (Milloy 2013: 11). The Settlement Agreement went into force in September 2007.

The Settlement Agreement is comprised of five components and a formal apology from the federal government. Two of the Settlement Agreement’s components are forms of compensation. The first is the Common Experience Payments (CEP), which provides financial compensation for any former residential school student. Former students could receive \$10, 000 for their first year at a residential school and \$3, 000 for every subsequent year. In total, the government provided \$1,621,788,106 in compensation (Aboriginal Affairs and Northern Development 2015). The second is the Independent Assessment Process (IAP), which provides financial compensation for former students who experienced sexual abuse or serious physical abuse while at a residential school. The claimants have to have a hearing in front of adjudicators and prove their case in order to receive compensation. This is not a court proceeding. The third is the creation of measures to promote healing, such as the Resolution Health Support Program by Health Canada that provides emotional and mental health services for the former students. The fourth is the creation of commemorative activities throughout the country. The government of Canada budgeted \$20 million to fund 144 commemoration initiatives. Finally, the Settlement Agreement called for the creation of the TRC (ibid.).

The Canadian TRC has its own mandate, separate from the Settlement Agreement mandate, known as Schedule “N.” The goals of the TRC include: acknowledging the experiences, the impacts and the consequences of the IRS system; creating a safe environment for the former students and their communities to come to the commission; supporting, launching, and witnessing reconciliation events both nationally and locally; promoting the education and

awareness of the IRS system to the general Canadian population; creating a complete historical record of the IRS system and its legacy by identifying all the relevant sources; preserving and making the historical record accessible to the public; and creating and submitting a report to the Canadian government that includes recommendations about the IRS system, the students' experiences, and the continuing legacy. The TRC is responsible for gathering testimony from the survivors, their families, and their communities about the experiences of the IRS system and its legacy. Though the TRC decided to work on a five-year time frame, any survivor can submit their testimony after the five-year period if they wish. It is important to note that the TRC is not a legal process; thus, it cannot conduct criminal investigations (Indian Residential Schools Settlement Agreement 2006). The TRC's original mandate stated that the commission had five years to complete its work; thus, it was to end in the summer of 2014. However, the TRC was plagued by delays. In November 2013, the federal government agreed to extend the TRC's mandate until June 30, 2015 (Valcourt 2013).

The TRC's mandate includes detailed instruction for the search, use, and archiving of sources. The mandate states in article 2(a) that the TRC has the authority to receive statements from "former students, their families, community, and all other interested parties" (Indian Residential School Settlement Agreement 2006: Article 2(a)). Article 11 states that for the efficacy of the process, the government of Canada "and the churches will provide all relevant documents in their possession or control to and for the use of the TRC [...]" (Indian Residential School Settlement Agreement 2006: Article 11) ensuring that privacy legislation will be kept. The government and the churches did not have to give original documents as they had the option of providing the TRC with copies of the documents. They also have to give the TRC access to their archives. Additionally, information from the IAP hearings can be used by the TRC for their research and archives. The TRC has the duty to "archive all such documents, materials, and transcripts or recordings of statements it receives, in a manner that will ensure their preservation and accessibility to the public and in accordance with access and privacy legislation, and any other applicable legislation" (Indian Residential School Settlement Agreement 2006). All of the materials that it creates or receives shall be held in a National Research Center (NRC), which is to be created by the TRC. The NRC will be accessible to former students, the communities, historians, and the general public (Indian Residential School Settlement Agreement 2006). Access to the residential school documents and the gathering of testimony later led to great debates, conflicts, and resistance.

# 5

## Resistance to the TRC

On June 2, 2015, the TRC published the summary of its final report. At over 360 pages, it includes 94 recommendations and describes the policies of the residential school system as a “cultural genocide” (CBC 2015). Despite its success at publishing a report, the TRC faced many hurdles over the course of its mandate. Resistance came from the federal government through lengthy fights for access to archival sources, which demonstrates its desire to keep the narrative of its history with Aboriginal Peoples unchanged. Resistance also came from the Aboriginal population due to a lack of trust and a sense of re-victimization, and as some people saw the TRC as a western conception and another means of government control.

### 5.1 Government Resistance and the Fight for the Archives

One of the greatest challenges that the TRC faced was gaining access to the files on the residential school system. Not only have some files been destroyed, but the Canadian government has also greatly resisted handing over their files to the TRC and to IAP claimants. Furthermore, there have been some major issues with the Library and Archives Canada (LAC), causing more hurdles in the TRC’s fight for the archives.

#### 5.1.1 Case Studies: St. Anne’s and Bishop Horden

The fight for residential school files began with the IAP and was later picked up by the TRC as the commission also needed access to the documents for its research and reports. These files were used to create a summary of the information about the particular school in question, the files that discuss the sexual abuse that occurred, and information about the alleged perpetrators. When the former students went to their hearings, the adjudicators would have the information and documentation about the particular case and incidents. However, the government lagged behind in releasing relevant files, did not search all of the government departments that it should have, and even refused to hand over the documents, leading to a fight for the archives (Gignac 2015). The TRC joined the fight for the archival sources as well. Two highly publicized cases highlight the government’s resistance to the reconciliation process.

The first case deals with the St. Anne’s residential school in Fort Albany, Ontario, which was open from the early 1900s until 1976. Stories of abuse are rampant among former St. Anne’s students. Many students have reported being the victims of physical and sexual abuse. Some remember being placed in an electric chair as a form of punishment or entertainment for the staff. There is also testimony of children having to eat their own vomit as a form of punishment. Former student Edmund Matatawabin stated “I was given porridge I got sick on and I had to eat that. And if you didn’t eat, then you’re going to get beat up some more, and you’re going to get punished – and if you

throw up again you're going to have to eat that too, so what choice do you have?" (CBC 2014). Hundreds of former St. Anne's students have applied for IAP compensation for the abuse they suffered. However, they faced some hurdles as the government has hidden and refused to hand over documents that corroborate their claims of abuse (ibid.).

In the 1990s, the Ontario Provincial Police led a five-year investigation on the abuse that occurred at St. Anne's, which led to several trials and convictions. In the end, seven former teachers were charged, five of which were later convicted of charges of indecent assault and assault causing bodily harm. A notorious case is the 1999 conviction of Anna Wesley for giving noxious substances to some of the students at the school. There have been some major stumbling blocks in the claimants' attempts at gaining access to these records. According to Fay Brunning, a lawyer representing sixty former St. Anne's students, the federal government gained access to many of the police files and trial transcripts in 2003. In the information given to the adjudicators of the St. Anne's claims, the government stated that there were no records that corroborate the claims of sexual abuse; however, these records exist as there had been convictions of indecent assaults. The government stated that the files it retained would not be useful for the claimants and that it was concerned it would breach privacy laws. However, in its application to access the files in 2003, the government stated that it should have the documents due to the Freedom of Information and Privacy Act, despite any privacy concerns. The claimants and those fighting for access to the documents argued that privacy can be assured; Brunning stated that the files would be kept private during the hearings, which are also private. They argue that the government used the excuse of privacy as a means to keep the files hidden. Timmins-St. James Bay MP Charlie Angus stated "I can't for the life of me in 2013 understand why a government would choose to cover up the horrific abuse that happened at St. Anne's and why they would side with the perpetrators rather than the victims" (Jovanovski 2014). Thus, the Canadian government had been retaining and hiding relevant police files, which is contrary to its legal obligations in the Settlement Agreement (CBC 2014; Jovanovski 2014; Roman 2013).

There has been some progress in the claimants' fight for access to the files. In December 2013, some of the former students went to the Ontario Superior Court to get the government to release the records related to the investigations and the trials. In January 2014, an Ontario judge ordered the Canadian government to release these documents. In June, the federal government agreed to send copies of the transcripts of Anna Wesley's trial to the Department of Aboriginal Affairs and Northern Development. Claimants can now request the documents for their claims. In June 2014, the government followed the court orders and released a disk containing 12, 300 documents, which include the Ontario Provincial Police reports from their investigation into St. Anne's residential school and witness statements. However, the files were heavily censored and redacted by the government before their release.

In most cases, the names of the perpetrators and the witnesses had been blacked out. The redaction means that the files do not state what kind of abuse occurred. Brunnings stated “even when they had to disclose the documents they’ve made them useless” (Gignac 2015). In June 2015, Brunnings and her clients returned to court to try to gain access to the uncensored versions of the files. The hearing was adjourned without a ruling as of the end of June 2015. Thus, the government continued resisting the TRC even when it complied with court orders. The release of these files is significant not only for the survivors’ IAP claims, but also for the TRC, as it fought for access to these documents in its investigations. The government has since amended the narrative told to adjudicators to include the history of abuse that occurred at St. Anne’s (Gignac 2015; MacCharles 2014).

The second case deals with the Bishop Hornden residential school in Moose Factory, Ontario. Nine former students who had studied at Bishop Hornden in the 1960s claim that the government has continually refused to hand over documents that would corroborate their claims of abuse in their IAP claims. The abuse includes allegations from one claimant of sexual abuse, and an incident where a student was beaten by a supervisor in her dorm, requiring 32 stitches. The other claimants recounted similar stories. The former students report that school supervisors were fired and even arrested as a result of these incidents. According to the Indian Residential Schools Settlement Agreement, the government had to provide information and files pertaining to the residential schools, the employees, and any police charges or convictions related to these employees. However, the government claimed that their search for records at the Library and Archives Canada and within the Department of Aboriginal Affairs and Northern Development has come up empty of records that corroborates their allegations. In May 2015, Fay Brunning and these nine students went to the Ontario Superior Court to ask a judge to force the Canadian government to search for the required documents. The documents they filed with the court state that the government needs to search other relevant departments for historical records, including the Department of Justice, Health Canada, and the Royal Canadian Mounted Police. Despite the fact that the government stated “there is no modicum of evidence before this honourable court that would suggest that the alleged documents exist,” (Vincent 2015) in the spring of 2015, government officials admitted in court that there was no real effort put into searching for these documents (Vincent 2015; Roman 2015).

The lack of documents and evidence is a major issue for claimants because the Department of Justice and the adjudicator might believe that the claimants are lying or that they have made mistakes in their claims. The government has stated that the claimants are mistaken in believing that they will not be taken seriously without these documents; however, some claimants believe that this fits into the adversarial nature of the hearings. Furthermore, due to the incident with the files of the St. Anne’s school, there is a lack of trust in the government. MP Charlie Angus stated “if there were police investigations, if there were people who were removed because of their abuse of

children, those records should exist. Are we to trust a government that was willing to suppress court evidence from the 1990s on the St. Anne's abuse and trust them that they're actually going to look out for evidence from the '50s or '60s from Bishop Horden? There is no trust here" (Roman 2015). As of May 2015, there has been no ruling on this case (Roman 2015; Vincent 2015; Galloway 2015). These two cases demonstrate the government's resistance through not handing over files and through censorship. These cases are extremely important not only in analysing the resistance of the federal government in the TRC process, but also in explaining the Aboriginal resistance to the commission, which will be explored in greater detail below.

#### 5.1.2 Resistance from government agencies

Government departments also played a role in the resistance to the TRC. John Milloy<sup>3</sup>, the original TRC Director of Research and Report Writing who then became the Special Advisor in history to the commission, stated that access to federal archival sources was significantly limited during the TRC research process. Milloy had been studying Aboriginal affairs long before the Settlement Agreement and the TRC; thus, he had experience in accessing federal and church files about Aboriginal Peoples. He stated that during his tenure as the lead researcher on the residential school system for the Royal Commission on Aboriginal Peoples his "access to federal and church documents was more fulsome than anything we have had at the TRC in my days there" (Milloy 2013: 14). An example of limited accessibility was gaining access to the child welfare files. After the Second World War, residential schools were often used as group homes for Aboriginal children in the welfare state. From that period onward, Aboriginal children have consistently been the largest percentage of children in the care of the state. Thus, the TRC believed that the child welfare files held by the department of Indian Affairs would be useful in determining the role of the schools in the system and in discussing the effects of the residential schools in terms of "family breakdowns" (ibid.: 17). The TRC believed this was instrumental in creating a full history of the residential school system. However, the TRC was so used to being denied access to federal government department files that the commissioners knew their request for these files would be denied. According to Malloy, this was but one of many such examples (ibid.: 16-17).

There were also major roadblocks to overcome when government agencies and departments agreed to cooperate. During both world wars and other international conflicts, Aboriginal Peoples fought alongside non-Aboriginal Canadian troops, and are "extremely proud of their Canadian military record" (ibid.: 17). Many of these soldiers had been former students of the residential school system. Thus, Milloy was happy when the Department of National Defense (DND) told the TRC that it was interested in helping the commission with its research. The commission began a dialogue with the DND, asking preliminary questions such as "had the DND provided some sort of training curriculum to the cadets at the residential schools?" and "had it, through the cadet corps, actively recruited for volunteers for the forces during

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<sup>3</sup> John Milloy worked for the TRC between 2010 and 2012.

the various wars?” Milloy stated that he tried to convey that it was not a “witch hunt,” rather the commission simply wanted some information (ibid.: 17). The TRC also suggested various means of reconciliation, including the memorialization of the Aboriginal soldiers who had died at war. Despite showing interest, the DND abruptly ended its contact with the TRC and did not fulfil its interests in helping the commission’s research (ibid.: 17). The reason remains unclear. Lack of transparency in the DND’s ultimate refusal to work with the TRC further demonstrates the government’s resistance to the TRC. Furthermore, this can lead to resistance from Aboriginal communities as it increases the lack of trust with the Canadian government.

There were also problems with the report provided by the RCMP. Though the RCMP told the commission that it wanted to submit a report on the role of the police force in the residential school system as a means of reconciliation, there were issues with the report as it did not fully represent the role and the actions of the RCMP in the residential school system. It is well known that the RCMP acted as truant officers and recruitment officers to convince Aboriginal communities to allow their children to go to the schools or to forcibly bring these children to the schools. They were also involved in finding and returning children who had run away from the schools. The RCMP admitted to these actions in their report. Although there is evidence that the RCMP had ignored cases of abuse at the residential schools, the report states that the agency did not know that there were cases of physical and sexual abuse in the schools (ibid.: 17). The fact that the report denies any contemporaneous knowledge of abuse despite evidence, such as the arrest of staff members for abuse throughout the residential school period that proves otherwise, demonstrates the government’s resistance to reconciliation. The report states that the agency did not have any knowledge of the abuse because there was a lack of trust between the police force and Aboriginals; however, the report never addresses the reasons behind this lack of trust. The report also fails to mention that the RCMP were avid advocates of the residential school program, especially in the prairies in the late nineteenth century, as they saw the program as a means to curtail criminal activity. Finally, the fact that the report states that rounding up children and bringing them to the schools was a “minimal” role in the residential school system is just another way that the government agency is not taking full accountability for its actions (ibid.: 17-18). Though the RCMP provided the TRC with a report, the omissions demonstrate its resistance to the commission and to the commission’s goal of reconciliation.

### 5.1.3 Court Battle for Archival Files

In April 2013, Auditor General Michael Ferguson released a report on the progress of the TRC. He concluded that there was not enough cooperation between the TRC and the Department of Aboriginal Affairs and Northern Development, the department responsible for the coordination of the documents. One of the big issues was that the two parties had never agreed upon what constituted a relevant document for the TRC; there is no precise



definition of “relevant.” There were also issues within the government in determining who was responsible for searching for documents for the TRC. The LAC is a central national archive that also coordinates governmental department archives. The LAC told government departments that it was not responsible for searching through department archives. Though the LAC had previously done a search of its archives for documents on the residential schools for litigation purposes, it believed that it had found all of the relevant documents; thus, there was no need to search for more documents. In the fall of 2011, the Department of Aboriginal Affairs and Northern Development stated that it was the TRC’s responsibility to look through the archives at the LAC for departmental files. The TRC disagreed because its mandate states that the government is responsible for finding and handing over the documents. This conflict led to major delays in the TRC’s work. Commissioner Sinclair stated that the delay would make it impossible for the TRC to fulfill its mandate by June 2014, when the TRC was supposed to end. Consequently, the TRC took the federal government to court to force the government to search for and to hand over the documents. Though the government argued that the TRC did not have any legal grounds to take the matter to court, the case went to Justice Stephen Gouge. The government argued that the only responsibility it had was to open the doors of the LAC to commission researchers. On January 30, 2013, Gouge ruled in favour of the TRC, stating “the plain meaning of the language is straightforward. It is to provide all relevant documents to the TRC. While Canada is not obliged to turn over its originals, it is required to compile all relevant documents in an organized manner for review by the TRC” (Office of the Auditor General of Canada 2013 and Stone 2013). Thus, though the definition of “relevant” had not been resolved, the government had been court-ordered to provide the TRC with the documents. This court battle is another example of government resistance to handing over the documents.

#### 5.1.4 Library and Archives Canada

As its title suggests, the LAC is a federal archive and library with the goal to “preserve and make accessible the documentary heritage of Canada” (Library and Archives Canada 2015). The LAC’s holdings include twenty million books, 241 kilometres of government and private records, thirty million photographs, over 550,000 audio and video recordings, and 425,000 pieces of art (Library and Archives Canada 2014, 2015). Despite the fact that the LAC aims to make the Canadian historical record accessible to the Canadian public, federal government policies and budget cuts have made this job exceedingly difficult and have impeded the work of the TRC. When people began asking for “politically sensitive” materials, the Prime Minister’s office and the Heritage Ministry, which manage the LAC, began restricting access. This started in 2005 when Jim Bronskill, a Canadian Press reporter, asked for the RCMP files on Tommy Douglas, a former federal New Democratic Party leader and premier of Saskatchewan. Though the file contains 1,149 pages, Bronskill only received 400 heavily redacted pages. This was the beginning of the censorship and restricting of access at the LAC by the federal government and this came to affect the TRC (Bourrie 2015).

The federal government did not only restrict full access to politically sensitive archival sources, but it also cut the LAC's budget. From 2012 to 2015, the LAC's budget lost 9.6 million dollars in funding. The budget cuts made it increasingly difficult for historians and other researchers to access files and to write about Canadian history. In May 2012, two hundred LAC employees lost their jobs due to the cuts. Many of these employees were highly skilled experts in a range of fields including reference librarians, specialists who preserve microfilms, and digital experts. Furthermore, due to the loss of funding, there was less training so the staff was less qualified. Half of the LAC staff that worked with books and other paper documents lost their jobs in the cuts, making research more difficult. LAC staff was extremely unhappy due to the cuts, leading to a decline in morale. The former head of the LAC, Daniel Caron, who worked for the Harper government, placed a gag order on the staff. In 2013, Caron and other senior LAC officials enacted the *Library and Archives Canada's Code of Conduct: Values and Ethics*, which forbade any LAC librarian or archivist from speaking to the public, attending conferences, or speaking in classrooms. They were not allowed to speak of their work to other archivists, librarians, historians, students or any other researcher. It is evident that the federal government had a tight grip on the archival sources of Canadian history (Bourrie 2015; MacLeod 2014). As Canadian journalist and historian Mark Bourrie stated "history is often hidden by governments that want to write their own narrative of what a country's about" (Bourrie 2015) and this is clearly evident in the TRC's fight for the archives. Thus, the issues that came out of the LAC further demonstrate the federal government's resistance to the TRC. By severely cutting the center's funding, cutting the staff down, and preventing LAC staff from discussing these issues, the government made the TRC's task exceedingly difficult.

The budget cuts at the LAC have had an impact on the TRC. In November 2014, Auditor General Ferguson stated that the LAC had a backlog of 98, 000 boxes filled with government documents. These include 24, 000 boxes of military documents, 7, 200 boxes from Industry Canada, 6, 400 from Public Works and Government Services Canada, 9, 800 boxes from Transport Canada, and 5, 200 from Justice Canada. Though not all of those records are likely to be relevant for the TRC, the backlog caused significant issues because records from offices like Justice Canada could hold important documents about the IRS. Furthermore, these boxes have often been plagued with problems with the finding aids, which include information about the description and locations of the archival sources. In 2013, the LAC did a pilot project to find as many records on the health care of residential school students as possible; however, they found that 77 per cent of the records either did not have finding aids or they were incomplete. In some cases, the finding aids did not match up to the correct box or not all of the materials in the box were listed on the finding aid. This caused significant headaches for the TRC as it made it extremely difficult for LAC staff to find the relevant documents (MacLeod 2014).

Even when the TRC finally gained access to the documents, the commission still had herculean challenges to overcome. In early 2014, the TRC gained access to the unsorted documents, a year after an Ontario court ruled that the federal government had to hand over the documents to the commission. Even with the extended mandate, sorting through the documents and finding the relevant documents would prove to be a major challenge. Though TRC researchers began personally looking through the boxes of documents at the LAC after gaining access, this changed in the summer of 2014 when privately hired researchers took over from TRC researchers to look for documents for the TRC. This was problematic because according to the procurement notice these researchers were only required to look at half of the contents of a box before going on to another box to save time due to the large volume of documents. Even though the TRC thought the hired researchers were given too much work and not enough time, only searching through half of the contents of the boxes is problematic because important documents could be left behind and the TRC has little control over which documents are left. Another challenge is that in the TRC mandate, there is a requirement that all documents submitted to the TRC have to be digitized and thus searchable. It would take until July 2015 to digitize all of the unsorted documents (Rennie 2014). Thus, the cuts and restraints at the LAC demonstrate the government's resistance to the TRC. It also demonstrates that the government seeks to keep its narrative of its history of its relationship with Aboriginal Peoples. By resisting the TRC, it also resists changing the narrative.

#### 5.1.5 The Destruction of Files

In some cases, the TRC and IAP claimants could not gain access to the residential school files as some files have been destroyed. Beginning in the Second World War, the government began cycles of file destruction throughout a variety of departments, including the former Department of Indian Affairs. In many cases, quarterly reports were destroyed, which often contained residential school enrolment information. This is problematic not only for the TRC as it attempts to recount a full history of the IRS system, but also for IAP claimants who are unable to prove their attendance at some residential schools due to these destroyed files (Milloy 2013: 12).

The TRC was also threatened by the potential destruction of files containing the testimony of 40,000 residential school survivors. The testimony was collected by the Indian Residential Schools Adjudication Secretariat when survivors recounted their stories for IAP claims. In July 2014, the case for the destruction of the documents went before an Ontario court. The head of the Adjudication Secretariat, Dan Shaprio, argued that the files contain very personal information about the "horrific physical, sexual, and emotional abuse" (Perkel 2014) many students suffered, and that if this information was disclosed, it would be a form of victimization. Similarly, Janice Knighton from the Indian Residential School Survivor Society in British Columbia stated that it is "very traumatizing" (ibid.) for many survivors to imagine their testimony

becoming public and being saved in the future. Knighton stated that many survivors who shared their testimony did so while under the impression that the files would later be destroyed (ibid.).

On the other hand, some have argued for the protection of the documents, including the TRC. According to Ry Moran, the Director of the NRC, “the oral history, those voices of survivors – as painful as they may be and as difficult as it may be and as sensitive as they are – those voices are in those records. There are some 40, 000 voices captured in that particular collection” (Puxley 2014). If the documents are destroyed, the TRC will not be able to use that testimony in their investigation, hindering their efforts and their report, and the voices of those 40, 000 survivors will be silenced. Moran argues that many of the survivors who testified in front of the secretariat would not be able to recount the stories again as it would be too emotionally painful. Thus, safeguarding the archival sources is important for the TRC as Moran writes “there is actually unique information there that will provide greater insight into the history and legacy of the residential school system that does not exist anywhere else” (Puxley 2014). Moran also stated that if the records are not destroyed, they would most likely be housed in the NRC, where they would be “managed in a highly restrictive manner” (ibid.). The personal identifying information would be removed to protect the privacy of the survivors. Similarly, the TRC’s executive director Kimberly Murray stated that the optimal outcome would be to save the documents and house them in the NRC. In August 2014, the court ruled that the files have to be kept safe for fifteen years and then destroyed. The court argued that this would both protect the privacy of the survivors and allow for the assessment of their claims to continue and for the TRC to assess the history of the IRS system. During this fifteen year period, survivors who want to have their files saved can get them transferred to an archive, where they will be kept in a redacted manner to protect their privacy. Though in the end the TRC had access to these archival sources, the road was winding and fraught with challenges as resistance to the process abounded (Puxley 2014;Perkel 2014).

Even though the federal government gave the TRC access to many files and to archival sources, its participation with the commission was fraught with resistance. This is evident from its refusal to hand over documents from the notorious St. Anne’s and Bishop Horden residential schools, the necessity of taking the government to court for access to files, the potential destruction of files, and the issues surrounding LAC. The Canadian government’s resistance to the TRC is a continuation of its difficult relationship with the Aboriginal Peoples of Canada. By resisting the TRC and fighting for the archival sources the government was attempting to hold on to its narrative of the history of the government’s relationship with the Aboriginal Peoples.

## 5.2 Aboriginal Resistance

There was also significant resistance from the Aboriginal Peoples of Canada. Transitional justice efforts like TRCs often see the victims as a monolithic group that will be grateful for the commission, and not an active agent in the process. This view leads to resistance because victims are individuals who have differing views and experiences. While some are grateful for the process and offer no resistance, others are not grateful. While some choose not to get involved in the process, others become leaders. Thus, it is important to understand that Aboriginal resistance to the Canadian TRC was not a uniform resistance across all Aboriginal Peoples. While some resisted, as will be discussed, others fully participated and were grateful for the TRC.

This resistance is firstly explained by a lack of trust of the federal government and a feeling of re-victimization due to the government's resistance to the TRC. The history between Aboriginal Peoples and the government weighs heavily on the process of reconciliation, as does the racism that continues to exist with the non-Aboriginal Canadian population, which has been discussed in Sections 2 and 3. Second, the resistance is explained by the concept of TRCs. Some experts argue that TRCs are inherently western in their values and conception, which goes against Aboriginal values, and can lead to resistance.

### 5.2.1 Re-victimization and lack of trust

Many have argued that the federal government's resistance to providing the documents needed for IAP claims and for the TRC is re-victimizing the residential school survivors. The survivors who do not have all of the files that corroborate their claims of abuse have to face the IAP adjudicators without the proof that would verify their stories. This can leave the survivors feeling vulnerable. According to Brunnings, "there's an overall recognition [that] what happened to them is wrong – but then it's happening again. The action knowledge of proven abuse, proven in criminal courts of law, [has] been covered up ... and it's extremely unfair" (Jovanovski 2013). Furthermore, MP Charlie Angus stated in a letter to Justice Minister Peter MacKay in 2013 that the government's resistance was not allowing the victims to attain closure from their experiences at the residential schools. Thus, the former students are re-victimized. Even when the federal government asked Ontario courts in 2013 for assistance in deciding what to do about the documents that corroborate the claims of abuse, the survivors were re-victimized as they were not able to voice their views on the matter or participate in the discussions. Their voices were once again silenced (Jovanovski 2013; Roman 2013; CBC 2013). The re-victimization of the residential school survivors is a factor in explaining the Aboriginal resistance to the TRC.

Aboriginal lack of trust in the TRC and the government is another reason that helps explain the resistance. Researcher Anne-Marie Reynaud attended the TRC event in Montreal in April 2013, and spoke to survivors about their experiences with the TRC. Before the TRC, some had placed IAP claims for

sexual or physical abuse. These survivors stated that recounting their stories to the IAP adjudicators was extremely difficult emotionally, which was exacerbated by the feeling that the adjudicators did not fully believe their stories. Consequently, they reported feeling angry after their IAP hearings. To make matters worse, some had trouble getting the compensation they were promised. For instance, a woman who used the name “Sheila” said that she received a letter stating that she would not be receiving her compensation because she had not disclosed the abuse to her caretakers at the time of the events and has not been able to resolve the dispute. Furthermore, there is still a massive backlog of IAP claimants waiting to have their cases heard by the adjudicators. As of May 2015, there were 6,300 claimants still backlogged. Additionally, many survivors were upset that the IAP compensation given to “fragile individuals” who would potentially not use the money in a healthy manner; thus, the IAP did not help the community as a whole. These communities often called the money “killer money.” Some Aboriginals felt that the Settlement Agreement was a “sell-out deal,” which they could not refuse due to the systemic poverty, which created tension and feelings of anger toward the government and the TRC (Reynaud 2014: 372-373). This led to feelings of apprehension and scepticism about the TRC proceedings. This was exacerbated by the government’s resistance to handing over key documents for IAP claims, most notably related to St. Anne’s and Bishop Hornden residential schools. The problems with the IAP have led to some mistrust among Aboriginal communities in terms of the TRC. Sheila states about the TRC “[...] I said today they’re still doing the same thing. That’s another abuse” (Reynaud 2014: 372-373; Roman 2013; CBC 2014). Furthermore, the racism of non-Aboriginal Canadians can also have a negative impact on the level of Aboriginal trust. As the studies demonstrate, negative opinions of Aboriginal Peoples continue to be an issue in Canada, which could make survivors believe that their testimony will not be trusted by non-Aboriginal Canadians. Thus, the lack of trust explains some of the Aboriginal resistance.

Some of the resistance is also caused by the emotional difficulties involved in testifying at the TRC. Many scholars argue that TRCs do not actually help the victims in their healing process. In fact, researchers found that in past truth commissions and post-conflict testimonials, more harm can come to the victims that testify. For instance, an empirical study of apartheid victims in South Africa concluded that participating in the TRC was “painful, disempowering, and disappointingly filled in unmet expectations” (Reynaud 2014: 376). Research on post-genocide Rwanda demonstrated that women who had testified in local tribunals suffered from psychological trauma and even threats from other community members. The emotional trauma caused by recounting the events of the residential schools led to some resistance. For instance, Reynaud interviewed a woman who went by the name of “Helen.” Helen stated that testifying at an IAP claim hearing had been traumatizing and it led to a breakdown because it brought too much pain. She refused to participate in TRC testimony giving, both publically and privately to avoid another breakdown (Reynaud 2014: 376). Furthermore, approximately 400 IAP claimants failed to complete the process. For many, this is due to a lack of

trust in the government. According to MP Charlie Angus, many people “did not want to go through the trauma of telling their story because they didn’t believe they would be trusted. They didn’t believe it would be a fair process.” Thus, it is not surprising that the emotional toll of testifying led to resistance to the TRC (CBC 2015).

### 5.2.2 Conception of the TRC leading to resistance

Aboriginal resistance to the TRC is also explained by the western ideals embedded in TRCs. TRCs aim to promote reconciliation for a trauma and in the case of the Canadian TRC this trauma is the residential school system. Experts on Aboriginal culture such as Nancy Van Styvendale argue that Aboriginal trauma does not come from a single event like the residential school system; rather, Aboriginal Peoples have faced continual trauma that cannot be grouped together as a single event. Thus, as the TRC focuses solely on the trauma of the residential schools, it does not deal with ongoing trauma. Furthermore, TRCs are often utilize healing techniques that are based on the notion of one-self as individualistic and rationalistic, which is vastly different from the self-conception of Aboriginals in which the self is deeply connected to family, community, and nature. Furthermore, as TRCs are not judicial processes, the naming of names is usually forbidden. The Canadian TRC’s mandate states that the commission “shall not name names in their events, activities, public statements, report or recommendations [...] without the permission of those involved” (Angel 2012: 206). The problem is that Aboriginal experts have shown that in Aboriginal culture and history, the naming of names is very important for healing and reconciliation. Finally, the Canadian TRC focuses mainly on trying to fix the colonial relationship between Aboriginals and the Canadian government. Once again the TRC is focussed on western conceptions and history (ibid.: 205-206).

The TRC’s western ideals have led to Aboriginal resistance to the TRC process. This is evident when survivors moulded the TRC process to fit their needs by assuring that the TRC mended more than just the colonial relationship between the Aboriginal communities and the Canadian government. An example of this resistance is the Unity Riders. The Unity Riders are a group of Aboriginal men and women who rode to the 2010 TRC national gathering in Winnipeg on horseback from Virden, Manitoba. The Unity Riders’ goal was to honour the survivors of the residential schools and to bring unity amongst the Aboriginal communities in the Prairie Provinces. They wanted to mend the relationship between Aboriginal communities, not only between Aboriginals and non-Aboriginals in Canada, as the TRC intended. One of the Unity Riders, Gus Higheagle, spoke at the event in the Dakota language and sang a song to commemorate their ride to Winnipeg. The song demonstrates the importance of language to Aboriginals in the reconciliation process and the lyrics spoke of the bonds between Aboriginals that need to be rebuilt after being broken by the residential schools. This is but one of many ways in which survivors “upset the dyadic expectations of the commission, and speak to multiple audiences. Reconciliation, conceptualised as a relationship between Indigenous peoples

and the nation, came second to repairing intimate relationships between family members” (ibid.: 208). They made other Aboriginals the audience, rather than the intended audience of non-Aboriginal Canadians. Their moulding of the TRC was a form of resistance to the process (ibid.: 208-209).

The Canadian TRC differs from other truth commissions because it didn't emerge as a result of a violent conflict. As it resulted from a settlement agreement, it did not get as much attention from the Canadian population. Furthermore, the history of the IRS system is not well known amongst Canadians. Thus, the TRC needed to “convince the general population of the truths it is uncovering” (Reynaud 2014: 371). Some experts, like anthropologist Ronald Niezen, have argued that this led the TRC to create a narrow narrative of the events. This narrative is one of loss and trauma in the residential schools, which continued into adulthood. Survivors are to be grief stricken and broken. The narrative ends with “a positive story of healing and rediscovery of that cultural heritage once slated for destruction through the schools” (ibid.: 371). The narrative thus controls which emotions survivors can express and makes the survivors retell their painful stories in their goal of healing. The narrow narrative and the feeling of being controlled is evident in the Bentwood Box. The TRC commissioned the box and it is present at all national TRC events. With great ritual, objects are placed within the box, which is meant to represent the “strength and resilience” (ibid.: 377) of the survivors. Some, like Sheila, argue that the ritual and the box are another symbol of control over the survivors, while Niezen argues that the box once more frames and controls the narrative. Furthermore, the TRC has been a process that has often been branded as a “survivor initiative” (ibid.: 377) as it was Aboriginal communities that pushed for the Settlement Agreement. However, this makes any feelings of injustice toward the TRC illegitimate, leading to more anger from the Aboriginal population and feelings of being controlled (ibid.: 371-378). Thus, the shaping of the IRS system narrative by the TRC was seen as another means of government control, which could help explain Aboriginal resistance.



# Concluding Remarks

Resistance to the Canadian TRC came primarily from two sources: the Canadian government and the Aboriginal Peoples. Their respective resistances fed into each other to create a cycle of resistance. Furthermore, this resistance was fed by the climate of racism that exists in Canada.

The Canadian government's resistance is rooted in the need for self-preservation. Historically, the Canadian government not only financed and regulated the residential school system, but it also had a role in the poor treatment of Aboriginal communities across Canada by not respecting treaties and land agreements. This led to a strained relationship. As there are 800 land treaty disputes waiting to be resolved, as the government has not called for a national inquiry on the missing and murdered Aboriginal women, and as the government continually refused to agree to the UN Declaration on the Rights of Indigenous Peoples, the relationship between Aboriginal communities and the Canadian government remains strained. The Settlement Agreement and the TRC have shed light on the treatment of Aboriginal Peoples by the government to the general Canadian population, leading to pressure and even backlash. Thus, the resistance of the government is explained by a need for self-preservation. As noted in the CMHR genocide controversy, the government fought to preserve the narrative that there is reconciliation with the Aboriginal Peoples for events that have occurred in the past, but that these abuses were not severe – certainly not severe enough to merit the use of the term cultural genocide. Therefore, the Canadian government's resistance is rooted in the need for the preservation of its own historical narrative in the goal of self-preservation by not taking full accountability of its actions against the Aboriginal Peoples.

Its main method of resistance was to make it difficult for the TRC to gain access to the historical materials that could change this narrative. Its resistance was not to the TRC as a whole; as noted, the government has participated in the process and complied in some aspects. However, it resisted heavily in giving access to archival sources and other historical records because these sources could change the narrative it had worked hard to build. This is evident with the notorious cases of the St. Anne's and the Bishop Horden schools; even when the government conceded to handing over files, they were heavily redacted and censored, which is explained by the need to preserve the narrative. Similarly, the RCMP report left out important historical details such as the fact that the RCMP was actively involved in bringing children to the residential schools and the evidence that the police had ignored signs of abuse at these schools; thus, protecting the narrative. Finally, the problems with the Library and Archives Canada when the government cuts its budget cuts, making it more difficult for the TRC to access the relevant files, once again protects the government and its historical narrative.

The government's attempt at self-preservation and at keeping its historical narrative intact feeds into the Aboriginal resistance to the TRC. Though this resistance was not universal throughout Aboriginal communities, the motivations for resistance appear to be quite uniform and they stem from

a lack of trust for the Canadian government. This began with the government's role in the residential school system and with its historical role as a colonial power. It continued well into the twentieth and twenty-first centuries when the government continually refused to take accountability for its actions and did not resolve treaty and land issues. This was compounded by problems with IAP compensations. Thus, before the TRC began, there was deep mistrust for the government. When the TRC began, the mistrust increased; when the government began resisting the TRC, this demonstrated to Aboriginal communities that the government wanted to keep its historical narrative and avoid accountability. This only increased the lack of trust. For many, the TRC appeared to be a government initiative; thus, there was resistance to the commission. Interestingly, there has been no discernable resistance from the non-Aboriginal Canadian population. However, it is possible that the racism and discrimination of Aboriginal Peoples feeds into the general lack of trust, affecting the TRC. In conclusion, one could argue that Aboriginal resistance stems from a deep lack of trust with the Canadian government, which was exacerbated by the government's own resistance.

Although the Canadian TRC submitted its report in June 2015, the work of reconciliation is far from over. Overall, it appears as though the TRC and its report were widely supported by the general population within Canada. A survey was conducted shortly after the release of the recommendations, which demonstrated that 70 per cent of respondents agreed with the TRC that the IRS system was in fact cultural genocide, while over half of those polled believed the TRC was beneficial to Canadians and even more believed it was beneficial for Aboriginal communities. Furthermore, 80 per cent of respondents fully supported the TRC's recommendation that there be a national inquiry on the missing and murdered Aboriginal women, and the recommendation that Aboriginal history, including the history of the IRS system, be mandatory in all Canadian school curricula. Though the support was not uniform throughout Canada – Manitoba, Saskatchewan, and Alberta had the lowest support for the TRC recommendations – the poll demonstrates that overall, the TRC has support. Moving forward, this could be important, as the government has had a different reaction to the recommendations (CBC 2015).

The same day the TRC submitted its recommendations Prime Minister Stephen Harper stated in the House of Commons that his government would not be following the TRC's recommendation that Canada implement the UN Declaration on the Rights of Indigenous Peoples. The prime minister stated that the government only accepted the document as "an aspirational document" (APTN 2015) because the government has "taken specific actions to enhance the rights of Aboriginal people" (ibid.). Furthermore, Harper did not acknowledge the TRC's statement that the IRS system was cultural genocide. Thomas Mulcair, leader of the New Democratic Party, stated "intentions are not enough. An apology is only meaningful if it is accompanied by real action. [...] a good concrete action would be to recognize that the TRC is right, that this was an attempt at cultural genocide" (ibid.). Meanwhile, Liberal Party leader Justin Trudeau pledged that his party is committed to implementing all 94 of

the recommendations (Watters 2015). The future of reconciliation is uncertain in Canada. As a federal election looms in the fall of 2015, a potential change in government could mean a new road in reconciliation. Nevertheless, it is evident that though the TRC may be over, the road to reconciliation has only begun.

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# About swisspeace

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swisspeace sees itself as a center of excellence and an information platform in the areas of conflict analysis and peacebuilding. We conduct research on the causes of war and violent conflict, develop tools for early recognition of tensions, and formulate conflict mitigation and peacebuilding strategies. swisspeace contributes to information exchange and networking on current issues of peace and security policy through its analyses and reports as well as meetings and conferences.

swisspeace was founded in 1988 as the “Swiss Peace Foundation” with the goal of promoting independent peace research in Switzerland. Today swisspeace engages about 40 staff members. Its most important clients include the Swiss Federal Department of Foreign Affairs (FDFA) and the Swiss National Science Foundation. Its activities are further assisted by contributions from its Support Association. The supreme swisspeace body is the Foundation Council, which is comprised of representatives from politics, science, and the government.

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