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## A Bridge to Reconciliation: A Critique of the Indian Residential School Truth Commission

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# A Bridge to Reconciliation: A Critique of the Indian Residential School Truth Commission

## **Abstract**

In the past year, the Government of Canada has established the Indian Residential Schools (IRS) Truth and Reconciliation Commission (TRC) to address the deleterious effect that the IRS system has had on Aboriginal communities. This paper argues that the TRC as an alternative dispute resolution mechanism is flawed since it focuses too much on truth at the expense of reconciliation. While the proliferation of historical truths is of great importance, without mapping a path to reconciliation, the Canadian public will simply learn about the mistakes of the past without addressing the residual, communal impacts of the IRS system that continue to linger. The Truth and Reconciliation Commission must therefore approach its mandate broadly and in a manner reminiscent of the Royal Commission on Aboriginal Peoples of 1996.

## **Keywords**

Alternative Dispute Resolution, Indian Residential School, Truth and Reconciliation Commission

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## Introduction

Truth and reconciliation are separate and important elements in overcoming mass wrongs. While truth can be attached to fact finding, bridging the path to reconciliation can be far more difficult. In the Ojibway creation epic, Sky Woman cast a curse upon the earth and Odeina was one of the many who died. When Odeina arrived at the spirit world, there was a chasm separating it from the earth, denying spirits their final resting place. Odeina showed strength and wisdom by using the branches of trees to build a bridge to traverse the rift. For his selflessness, Odeina was allowed to return to life and was given the added responsibility of sharing his wisdom (Borrows 2006). A successful truth and reconciliation commission must be like Odeina: it must have the wisdom to build a bridge over the chasm that separates truth and reconciliation, but it must also take on the responsibility of sharing this wisdom widely and with future generations.

In the past year, the Government of Canada has established the Indian Residential Schools (IRS) Truth and Reconciliation Commission (TRC) to address the deleterious effect that the IRS system has had on Aboriginal communities. A TRC is a commission tasked with investigating and revealing past wrongdoing by a government, or by non-state actors, in the hope of resolving conflict left over from the past. Sadly, I do not believe the TRC has been set up in such a way that will enable it to demonstrate Odeina-like qualities, since the mandate of the Commission focuses too much on truth and not enough on reconciliation. When addressing the problems faced by these communities, the experience of residential schools is only one piece of the puzzle. Other variables must be specifically defined and addressed or, else, they will linger on in the background. The problem is that the TRC is approaching the residential school problem as an isolated issue, rather than taking a holistic approach. This is contrary to traditional

Aboriginal teachings that *everything is related*; wisdom is often represented visually by locating individuals at the centre of a set of concentric circles that ripple outward to include family, community, nation and the natural world (Castellano 2008). While the commission may help define the “truth” of the residential school system, it fails to build a bridge to “reconciliation,” because it does not address the many ripples that have flowed from the IRS system. Without a holistic form of reconciliation, the TRC cannot be successful.

In explaining my concern for the Commission, I will begin by sketching a history of the TRC and how it came about. The purpose of this sketch is to place the current state of the TRC into context. I will then explain how the TRC differs from a typical courtroom adjudicative model and why the TRC has the potential to be an effective form of alternative dispute resolution in addressing the mass wrongs of the IRS system. The term “alternative dispute resolution” is used here in the sense that the TRC is a method of resolving disputes that is alternative to a courtroom adjudicative model. However, since the TRC is the result of a court-approved civil settlement of a class action lawsuit, the approach that I take in this analysis is legal rather than sociological. It will be noted that traditional legal models have failed to bring justice to IRS Survivors. Nevertheless, a public inquiry such as the TRC (particularly one headed up by a judge) will inevitably be treated in a quasi-judicial manner by some of the actors involved. This paper is not meant to displace the value of a social discussion of the TRC but hopefully can serve as a companion to such work.

Following the section on how the TRC differs from traditional courtroom adjudication, I will discuss the pieces that must fall into place to ensure that the TRC will indeed be successful, including elements of a restorative justice model. For reconciliation to occur, the TRC process must engage all levels of government as well as Aboriginal and non-Aboriginal peoples. Finally,

I will close with an explanation of why those pieces have not in fact fallen into place by comparing the mandate of the TRC with the Royal Commission on Aboriginal Peoples of 1996 (RCAP), which undertook to review a multitude of problems faced by the Aboriginal peoples of Canada, including Indian residential schools, and that has been successful in many ways.

### **History of the TRC: HOW and WHY it was Created**

In order to understand the context in which the TRC will take place, it is important to begin with an understanding of how the Indian residential school system progressed over time (Castellano, Archibald and DeGagne 2008; Milloy 1999). The physical and sexual abuses as well as the mass cultural appropriation suffered by IRS Survivors did not occur overnight. These atrocities are deeply set in the bowels of Canadian history, since the IRS system had a significant impact on the destruction of language, culture and identity of Aboriginal communities. Children were forcibly taken away from their families and punished for speaking their native tongue or observing traditional practices. Traditional systems were regularly belittled and denigrated by the operators of the schools.

The first missionary-operated school in Canada was established near Quebec City between 1620 and 1629, more than 200 years before the first Indian residential school was opened in Brantford, Ontario in 1831. The Brantford school would remain one of the longest lasting Indian Residential Schools, closing its doors in 1969 (Castellano et al. 2008; Milloy 1999). However, back in 1892 the federal government entered into a formal operation partnership with various church entities that ran the schools in question. In 1907, red flags came up for the first time when Indian Affairs' Chief Medical Inspector P.H. Bryce reported numerous deficiencies at the schools with respect to the health of students. Notwithstanding this fact, in 1920 Deputy Superintendent General of Indian Affairs Duncan Campbell Scott made residential

school attendance compulsory. In 1958, almost four decades later, Indian Affairs Regional Inspectors recommended the abolition of residential schools. Rather than closing residential schools, the government ended its partnership with churches and began transferring control to Indian bands starting in 1970 (Castellano et al. 2008; Milloy 1999).

The first public reports of abuse came in 1989 from the Mount Cashel Orphanage. Two years later, Grand Chief Phil Fontaine of the Assembly of First Nations publicly disclosed tales of the abuse he personally suffered in the residential schools. Around this time, churches started to issue apologies for their role in residential schools, including the United Church (1986), the Oblates of Mary Immaculate (1991), the Anglican Church (1993), and the Presbyterian Church (1994). In 2006, 99 years after the first warning signs were reported by Inspector Bryce and after it had become clear that the cost of litigation was erecting barriers to justice, the federal government signed the Indian Residential Schools Settlement Agreement with legal representatives for the Survivors, the Assembly of First Nations, the Inuit representatives, and the church entities (Castellano et al. 2008; Milloy 1999). The Truth and Reconciliation Commission was launched in 2008 as a part of the Settlement Agreement and, in the same year, the federal government formally apologized to the Survivors of the Indian Residential Schools.

Prior to the TRC, RCAP was established in August 1991 with broad terms of reference. These terms called for an examination into the problems that have plagued the relationship between Aboriginals and Canadian society throughout history and for recommendations to improve this relationship. The Commission was composed of seven members and included four Aboriginals with one, Georges Erasmus, being named co-chairperson. It was clear from the outset that RCAP's inquiry was to contain a significant Aboriginal point of view. The Commission released its final report in 1996, consisting of approximately 3,500 pages bound

within five volumes. Several other interim or special reports were released during RCAP's discovery period. True to its mandate, RCAP's investigation into the present and past associations between Canadian society and Aboriginals was encyclopaedic and its recommendations were detailed and numerous. Many of these recommendations can be seen as an attempt to redirect the evolution of the relationship between Aboriginal and non-Aboriginal society in positive directions (Stack 1999). Although RCAP was not expressly set out as a truth and reconciliation commission, it was restorative justice and clearly an attempt at reconciliation.

Fast forward ten years to the TRC, which forms part of the 2006 court approved agreement between the parties that settled the class action law suit launched by Survivors. Its mandate, purpose, system design and mode of operation are specifically set out in Schedule "N" of the agreement (*Truth and Reconciliation Commission Mandate*). The preamble to Schedule "N" states that the purpose of the Commission is to promote "continued healing," through an ongoing, individual and collective process. These objectives are more fully defined in section 1 of the Agreement, which states *inter alia*:

The goals of the Commission shall be to . . . [p]roduce and submit to the Parties to the Agreement a report including recommendations to the Government of Canada concerning the IRS system and experience including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of IRS (including systemic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools (*Truth and Reconciliation Commission Mandate*: s. 1(f)).

The goals are far reaching and suggest a desire to ameliorate some of the ills that have plagued Aboriginal communities beyond the direct consequences of the IRS system.

It is submitted that in order to fully address the deeply rooted history of the IRS system and the related effects on Aboriginal communities in Canada, the TRC ought to act with the intent of succeeding the Royal Commission on Aboriginal Peoples of 1996. Since the releases of its final report as well as its interim reports, RCAP has helped to frame the discourse of judges, lawyers and policy makers on a wide array of topics relating to the amelioration of social conditions faced by Aboriginal peoples (Stack 1999). Indeed, the mandate of the TRC expressly states that it “will build upon the work of past and existing processes, archival records, resources and documentation, including the work and records of the *Royal Commission on Aboriginal Peoples of 1996*” (*Truth and Reconciliation Commission Mandate: s. 4(3)*). The RCAP Final Report included an entire chapter on the concerns raised by the IRS system and its findings have been lauded for bringing Aboriginal perspectives into Canadian courtrooms (Stack 1999). A successful TRC must comprehensively identify historical truths and make recommendations that can be applied to wide ranging situations in order to truly realize its potential benefits. The successes of RCAP and its role in producing restorative justice for Aboriginal communities will be more fully addressed in the penultimate section of this paper.

**The Deficiencies of The Common Law in Dealing with Aboriginal Issues and the Potential of the TRC to be an Effective Form of Alternative Dispute Resolution**

Generally speaking, there are five aims to the Canadian TRC: 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; and 5) to promote reconciliation and reduce conflict over the past (Rice and Snyder 2008).

Overarching these objectives is the fact that the TRC must promote reconciliation within society as a whole, not just within Aboriginal communities. A typical court room procedure could not



address sufficiently the many vagaries of the TRC, nor would the formalistic approach of courtroom procedure necessarily be desirable. Indeed, Schedule “N” of the settlement agreement expressly states that the Commissioners “shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process” (*Truth and Reconciliation Commission Mandate: s. 2(b)*).

When violence is perpetrated on a mass scale, courts are often unable to process the huge number of claims, either in criminal court or in civil suits (Rice and Snyder 2008). Moreover, the courts are not designed to heal broken relationships within society. The deficiencies of litigation in the IRS system context first became apparent following the federal government’s *Statement of Reconciliation* (1988). After the statement had been made, a tide of litigation swelled to include thirteen thousand IRS Survivors alleging emotional as well as physical and sexual abuse (Castellano, et. al. 2008). These court procedures took a tremendous financial toll on Survivors, churches and government. Eventually, it became clear that the costs were insupportable and were ultimately erecting barriers to justice. Similarly, RCAP favoured negotiated political solutions, because of the uncertainty involved in litigation (Stack 1999). Litigation in disputes between Aboriginal communities and the Crown is usually met with judicial restraint. It is therefore submitted that settlements involving Aboriginal communities require some type of alternative dispute resolution (ADR) process to take place outside of the typical courtroom setting.

When litigation involving IRS Survivors sprung up, courts were not equipped with the tools needed to address all of the wrongs that had been claimed to that point. This may be because the legal structure and process were established by Europeans without any consideration of Aboriginal issues. Little merit was attributed to causes of action based on cultural appropriation and courts were only concerned with claims of sexual and physical abuse. As loss

of culture is not a recognized cause of action, the complainants did not have the closure that would be granted from recognition of all the wrongs committed against them; indeed, the very purpose behind the IRS system was cultural appropriation. Most cases were addressed under the torts of sexual assault and battery, and any mention of cultural loss was just another factor to consider in the overall assessment of compensation. Some academics assert that the law of torts is an inappropriate tool to tackle the subject of residential school cultural abuse, since cultural loss is a loss for the community, not just the individual, and, therefore, is inadequately dealt with by tort law's narrow, individualistic paradigm (Hutchinson 2007). The fact that courts refuse to recognize cultural appropriation as a cause of action is an indicator of why an alternative dispute mechanism is needed.

However, the problems surrounding claims for loss of language and culture were also fuelled by the federal government's initial ADR program for residential school claims that was established following the original *Statement of Reconciliation* in 1998 (before the Settlement Agreement that created the TRC). This out-of-court compensation scheme, launched in 2003, covered sexual and physical abuse but did not include payment for loss of culture and language. In fact, claimants who adhered to the ADR process were required to sign a waiver which prohibited them from launching future claims on the basis of losses to culture and language. This had the effect of bringing the individualistic paradigm of tort law into the ADR process. There were many calls for cultural loss compensation to be brought into the ADR scheme, including calls from both the Canadian Bar Association and the Assembly of First Nations (Oxaal 2005).

Over time, it became clear that traditional legal proceedings as well as the first ADR scheme proposed by the federal government were insufficient to adequately address the restitution sought by IRS Survivors. In the face of wrongs, people often turn to the courts as the

arbiters of truth. When courts are called upon to make determinations with respect to guilt, culpability or liability, however, they “must often strip away the complexity of the truth and make a judgement about what part of the truth matters to resolve a conflict or controversy” (Llewellyn 2008: 191). The TRC is not charged with the same task as the court. Its concern and focus is reconciliation and, to this end, it cannot afford to strip away or ignore the messiness or complexity of truth.<sup>1</sup> As such, the TRC has the potential to resolve matters that have handcuffed traditional legal proceedings.

### **Achieving Success: Overcoming Communal Post-Traumatic Stress Disorder**

The Aboriginal Healing Foundation, a publicly funded advocacy body, has framed the resolution of issues surrounding the IRS system in the quartered circle of a medicine wheel, a figure widely used in First Nations teachings (Castellano 2008). The steps proposed for resolution are as follows: 1) acknowledgement – naming the harmful acts and admitting that they were wrong; 2) redress – taking action to compensate for harms inflicted, 3) healing – restoring physical, mental, social/emotional and spiritual balance in individuals, families, communities, and nations; and 4) reconciliation – accepting one another following injurious acts or periods of conflict and developing mutual trust. The process is circular since the forging of better relationships is ongoing. The goal of reconciliation raises the issue of relationships between peoples as well as dignity and mutual respect.

However, the mandate of the IRS TRC does not clearly define what is meant by “reconciliation”. Neither “the meaning nor means of reconciliation receive much attention in the mandate despite the hope reflected by its name that this body would be about both truth *and* reconciliation” (Llewellyn 2008:186). The closest that the TRC’s mandate comes to defining reconciliation appears to be the statement in the preamble that “[t]he truth of our common

experience will help us set our spirits free and pave the way to reconciliation.” This sentiment seems to be borrowed from the South African Truth and Reconciliation Commission’s slogan: “Truth. The Road to Reconciliation” (Llewellyn 2008). The slogan seems to make clear that while truth is needed to establish reconciliation, truth alone is not enough. There must be a true map to reconciliation for the IRS TRC to be successful. Moreover, there must be a clear definition of what is meant by “reconciliation” so that the destination is known before charting the map and building the bridge that traverses the chasm. A coherent process, therefore, requires a paradigm shift.

Reconciliation requires a number of systemic remedies to cure the mass wrong: it must present an opportunity for healing in Aboriginal communities and involve non-Aboriginal communities and the private sector. “Reconciliation is about healing relationships, building trust, and working out differences” (Rice and Snyder 2008:45). True reconciliation is not “forgive and forget”; true reconciliation is “to remember and change” (Lederach 1998:245). Reconciliation must address concerns about both the past and the future. “Acknowledgement of the past through truth-telling, recognition of interdependence, and desire or necessity for peaceful co-existence in the future are key elements of reconciliation” (Rice and Snyder 2008:46). Admittedly, however, the term “reconciliation” carries varied meanings (McNeil 2003). The TRC may wish to begin the process of reconciliation by determining what precisely it means for Survivors and the wider public. Since the IRS system is so closely tied to aspects of colonialism, reconciliation in the Canadian context must provide a holistic approach to ameliorate both the direct and residual social and psychological effects that the IRS system has had on Aboriginal communities. It must account for the many ripples that have flowed from the IRS epicentre and continue to marginalize Aboriginal people in Canada.

As previously mentioned in the discussion on regular court proceedings, the IRS system had a significant impact on the destruction of language, culture and identity for Aboriginal communities. Children were plucked away from their homes and forbidden from speaking their native tongue or observing traditional practices. Traditional systems were belittled or denigrated by church entities, the education system, and the laws that existed under the IRS system, which has led to an internalized sense of inferiority in Aboriginal communities. This sentiment has been described as a communal post-traumatic stress disorder (Rice and Snyder 2008). When children returned from residential schools lacking language, relationships and practical skills to reintegrate into the community, the capacity of extended families to help reintegrate was far beyond what could be accomplished through one-on-one therapies delivered by mental health professionals (Castellano 2008).

A study of the Aboriginal Healing Foundation revealed that:

Images of traumatic events and adaptive or maladaptive responses become imbedded in shared memories of the community and are passed on to successive generations by storytelling, community interaction and communication, patterns of parenting, emotionally laden memories, and inherited predisposition to [post-traumatic stress disorder]. Even if events are not fully remembered, behavioural patterns rooted in collective memory persist in community life, becoming the backdrop for interpreting and responding to current reality (Castellano 2008:390).

Many young people in Aboriginal communities, who were not direct victims of the IRS system, have inherited this sense of inferiority and have started to doubt the viability of their own traditional healing processes. The effect of which has been a lack of self-worth and endemic

suicides among the young who question the place of their traditions in contemporary society (Hallett, Chandler and Lalonde 2007; Chandler and Lalonde 2008).

The communal post-traumatic stress disorder felt by Aboriginal communities is similar to the sentiments expressed during other truth commissions around the world. Most often these commissions are set up by states recovering from civil war, dictatorships or internal unrest. However, the IRS TRC differs from other truth and reconciliation commissions since it has not come about in the face of political transition. As a settler society, the path to reconciliation has unique challenges. In this context, three major factors require attention in considering the path to reconciliation: 1) the legacy of colonialism that impacts the political, social, and economic life of Aboriginal people; 2) the historical and contemporary myths prevalent in Canadian society that rationalize Canada's policies toward Aboriginal people; and 3) the impact of colonization/residential schools on Aboriginal identities that adds an additional layer of healing to the reconciliation process (Rice and Snyder 2008). Each of these factors requires deeper understanding of the social and psychological issues faced by Aboriginal communities beyond a superficial discussion of facts of the IRS system. In other words, the consequences of the IRS system extend far beyond the wrongs felt by the Survivors themselves and a holistic process is needed to bring forth healing and reconciliation.

In achieving this end, there are lessons that can be learned from the experience in Australia. In 1991 the Australian parliament enacted the *Council for Aboriginal Reconciliation Act*, which was meant to begin a process of reconciliation between the Indigenous peoples and wider society. However, the resulting process was framed in a nation building discourse that placed a "ceiling" on Indigenous aspirations and demonstrated a subtle and perhaps even unconscious assimilationist agenda (Short 2003). It is hoped that the Canadian TRC can learn

from the troubled Australian approach to develop a system that is truly responsive to Aboriginal aspirations. For reconciliation to occur, the wider society must adapt in response to the revelations of the TRC.

### **How to Achieve Success: Restorative Justice**

It has been argued that historic injustice, such as the IRS system, should be used as a justification to expand and shape the protection of Aboriginal cultural rights under section 35 of the *Constitution Act, 1982* (Hutchinson 2007). In this sense, the expansion of rights would be used as a form of compensation (Hutchinson 2007). For the TRC, however, reconciliation must go beyond mere judicial recognition of rights and should mean discovering ways to repair mental trauma of a collective community. This requires a view to the future and not simply a review of the truth of the past.

Reconciliation in this lens means restorative justice; restorative in the sense that Aboriginal communities ought to be restored, as much as possible, to the condition they could have been, absent the mass wrongs committed in the IRS system. This is essentially the philosophy underlying remedies in tort law: when an individual suffers physical trauma as a result of a tort committed by their neighbour, then it is expected that a court would award damages for loss of potential future income stemming from the inability to work while recovering from the injury. A judge in this case must assess “what could have been,” absent the wrongful act. Reconciliation of wrongs committed in IRS must also attempt to determine “what could have been,” if not for the atrocities committed to Aboriginal communities. While admittedly some individuals who attended residential schools have argued that the experience was positive and promoted their quality of life as they grew older, most would state otherwise.

Unlike the tort victim however, Survivors cannot simply be “restored” through financial compensation.

Reconciliation through the restoration of potential focuses on the prospects of the victim. In the South African TRC, many critics argued that the Commission failed to prosecute and punish offenders, offering amnesty instead. These critics cried foul at the lack of “justice” that caused the gap between truth and reconciliation. Justice in this sense was retributive and was thought to necessitate punishment, not acknowledgement and dialogue (Llewellyn and Howse 1999). What the critics failed to see was that a different form of justice was being used to build that bridge: restorative justice. “Any bridge must pay close attention to the ground upon which it is anchored. . . Restorative justice offers a clear picture of the nature of the ground on both sides of the bridge” (Llewellyn 2008:188).

The restorative potential of truth commissions has been viewed by some with scepticism. It has been argued that truth commissions tend to confuse aspiration with prediction, questioning whether anyone really knows that truth commissions secure the benefits of healing, catharsis, disclosure of the truth and so forth (Allen 1999). While critics admit that in some instances, participation in the hearings of truth commissions does result in individual ‘catharsis,’ a feeling of settled business, they argue that in other instances rage and frustration may increase rather than abate (Allen 1999). Therefore, these critics argue that it is doubtful whether any general claims whatsoever can be made about the capacity of truth commissions to secure the claimed benefits and that the prospects for ‘collective healing,’ whatever that is, do not seem particularly promising in many cases (Allen 1999). It is my view, however, that these critics focus on the challenges of a truth commission, rather than on their potential. While it is certainly difficult to



achieve successful reconciliation, I believe it is possible through clearly defined goals and objectives, or through understanding “the nature of the ground on both sides of the bridge.”

First, restorative justice must engage the non-Aboriginal public and communities. The view that the residential school experience was injurious in itself, and not just in instances of physical and sexual abuse, is shared by only a small proportion of Canadian citizens, in contrast to the view of most First Nations, Inuit and Métis people (Castellano 2008). In other words, these divergent historiographies create a barrier to reconciliation, and non-Aboriginal Canadians would benefit from a greater appreciation of how Aboriginal people and communities view the IRS system. The TRC is clearly designed to present the truth to the public through events, education campaigns, media, reports and public archives. This will allow the public to be witness to the atrocities of the IRS system. However, it will be important to engage non-Aboriginal Canadians at a deeper level in order to work toward reconciliation. This can include efforts to reverse negative stereotypes that linger regarding Aboriginal people and present a challenge to policy-makers wishing to narrow the gap in living conditions between Aboriginal and non-Aboriginal people. Quite frankly, it is unlikely that most non-Aboriginal Canadians are even aware that there is a Truth and Reconciliation Commission taking place, while others might not even care (Wente 2007). Providing non-Aboriginal Canadians with greater knowledge and understanding might encourage them to *want* to reconcile. Engaging the non-Aboriginal public in the process as parties and not simply witnesses will present a great challenge. Nevertheless, it is an important one to address, since it is through their engagement and involvement that the reconciliatory process might begin (Llewellyn 2008).

Second, restorative justice requires the restoration of relationships harmed. When a wrong is perpetrated, its harm extends throughout the web of interconnectedness that binds the

members of a society. At the South African TRC, for example, an interesting phenomenon was the abundance of apologies that took place despite the fact that apologizing was not connected to amnesty in the mandate of the Commission (Weisman 2006). Remorse in that sense was unexpectedly coupled with the healing process and helped to demonstrate that all parties to the mass wrongs were deeply and personally affected by them. This is demonstrative of just how truth commissions differ from war crimes tribunals as a response to mass wrongs. War crimes tribunals punish the guilty, while truth commissions have a view to the lasting relationship between actors. Mass wrongdoing profoundly affects the victim, the wrongdoer and their immediate families, supporters, and communities; in essence, they affect the very fabric of society. Reconciliation must go beyond truth and mend this web of interconnectedness.

Third, once the TRC has the opportunity to review the truths and make recommendations on how to mend social relationships with a view towards reconciliation, it is important to ensure that these recommendations are indeed enforced. The recommendations of the TRC will only be worthwhile if they are made known, understood and responded to (Llewellyn 2008). If the truth is told and goes without a response, then this might actually further damage the relationships involved. The Commission cannot expect to achieve reconciliation within its five-year mandate. Therefore, it must make recommendations with a view to future generations. While El Salvador's truth commission was one of the few commissions whose recommendations were mandatory in the terms of reference, the recommendations of state-sanctioned commissions tend to be more influential than reports of non-governmental advocacy groups (Rice and Snyder 2008). Therefore, there is hope that the recommendations of the TRC will be enforced, though this remains to be seen.

Engaging non-Aboriginal communities, mending the web of interconnectedness that connects members of society and ensuring that the recommendations of the TRC are enforced are objectives that are easily stated but not easily achieved. While this might involve expanding Aboriginal constitutional rights, it must first ameliorate the conditions in Aboriginal communities in a non-judicial context, including the way that these communities are perceived by the general public. That is how restorative justice can be used as a tool for bridge building from truth to reconciliation and can ensure that the TRC is successful in achieving the goals set out in its mandate.

### **What the TRC Can Do to Ensure Success**

Far from attempting to provide restorative justice, the mandate of the TRC is set up in such a way as to document truth but provides little in the form of reconciliation. By contrast, it is worth considering the hearings, research and *Report of the Royal Commission on Aboriginal Peoples*, which first brought the devastating effects of the IRS system of social engineering into public scrutiny (Castellano et al. 2008). RCAP highlighted the problems facing Aboriginal communities in Canada but also called for remedies through comprehensive recommendations. In calling for a more extensive public inquiry into residential schools, the Commission wrote:

No segment of our research aroused more outrage and shame than the story of the residential schools. Certainly there were hundreds of children who survived and scores who benefited from the education they received. And there were teachers and administrators who gave years of their lives to what they believed was a noble experiment. But the incredible damage – loss of life, denigration of culture, destruction of self-respect and self-esteem, rupture of families, impact of these traumas on succeeding generations, and the enormity of the cultural triumphalism

that lay behind the enterprise – will deeply disturb anyone who allows this story to seep into their consciousness and recognizes that these policies and deeds were perpetrated by Canadians no better or worse intentioned, no better or worse educated than we are today. This episode reveals what has been demonstrated repeatedly in the subsequent events of this century: the capacity of powerful but grievously false premises to take over public institutions and render them powerless to mount effective resistance. It is also evidence of the capacity of democratic populations to tolerate moral enormities in their midst (1996:601-602).

While I concede that there is an interest in fully documenting the past, it would seem from this statement that the overarching wrongs of the IRS system are to an extent already documented, though not well disseminated. Further truth telling will undoubtedly aid this dissemination process. However, rather than expunging their five-year term recording truth, it is once again submitted that the TRC ought to use more time discovering ways of restoring justice to Aboriginal communities. The mandate of the TRC scantily sets out a path to reconciliation and that is why I fear that it will not be successful. The TRC is more likely to build bridges, if it were to be mandated by principles more closely resembling RCAP.

As mentioned above, RCAP is specifically referred to in the mandate of the TRC. However, it is only referred to in the context of building “upon the work of past and existing processes, archival records, resources and documentation” (*Truth and Reconciliation Commission Mandate*: s. 4(c)). Therefore, it would seem that the focus on RCAP in the mandate is on its truth gathering, rather than on the impact of its recommendations. This is unfortunate considering the tremendous impact that the recommendations of RCAP have had on Canadian

courts and policy makers. The work of the Royal Commission has been used by judges and lawyers as a source of Aboriginal perspective in a number of different ways. It has been used to inform the exercise of judicial discretion in the justice system. As well, it has assisted in the modification of the rules of evidence to make room for oral histories and it has been used to suggest a new approach to the right of self-government. Most importantly, the work of RCAP has been used as authority to justify the crafting of legal remedies that encourage negotiation between Aboriginals and the Canadian state (Stack 1999). Its success can be measured in its legacy. The most disappointing part of the mandate of the TRC is that it apparently stops short of trying to build a similar legacy, or even build upon the work done by RCAP.

The mandate of RCAP in finding ways to improve the relationship between Aboriginal and non-Aboriginal society is very similar to the manner that the courts have interpreted the obligations that section 35(1) of the *Constitution Act, 1982* have bestowed upon them – to reconcile Aboriginal and non-Aboriginal interests (Stack 1999). So it should not come as too much of a surprise that the work of RCAP would be of interest to lawyers and judges, who seek to affect a fair and just reconciliation. Considering such success, this is precisely the approach that the TRC ought to take. RCAP appears to have had the effect of bringing more Aboriginal perspectives to bear in the courtroom and in Canadian jurisprudence. Moreover, the judicial trend appears to be that this is likely to continue into the future. While RCAP may not be a cure-all, it still has the hallmarks of a restorative justice approach.

While the work of the TRC will focus specifically on the context and impacts of residential schools, testimony invited before the Commission and exploration of the history, purpose, and consequences of the schools will inevitably extend into broad systemic issues that ripple throughout society (Castellano et al. 2008). The main problem with the mandate is that it

fails to open up to the reality that the testimony heard in the gathering of truth cannot be neatly summed up as relating to the IRS system. It will be far-reaching and will inevitably touch on many of the ills associated with a colonial society. The Commission ought to be prepared to take on greater issues in a manner similar to the RCAP. Otherwise, it will be gathering truth on one issue, while turning a blind eye to others. Far from building bridges, this approach may very well prove destructive.

### **Conclusion**

There is one statement from the RCAP Report that particularly remains burned in the mind: “these policies and deeds were perpetrated by Canadians no better or worse intentioned, no better or worse educated than we are today.” The statement is troubling because it suggests that the mindset that led to the atrocities of the IRS system continues to be imbedded in the fabric of Canadian society. How can the Commission truly bring forth a path to reconciliation without first curing public consciousness? While the proliferation of truth is of great importance, without mapping a path to reconciliation, the Canadian public will simply learn about the mistakes of the past, while committing entirely new ones. Gathering truth is only the first part of changing perceptions. Just as Odeina returned to the earth to share his wisdom, the TRC must spread the acumen of a reconciliatory approach to Canadian society.

The success of the IRS TRC cannot be measured on any simple scale. There is neither a comparator group nor a unit of measurement to determine if the Canadian TRC has achieved the goals set out in its mandate. Only history will tell if the bridge between truth and reconciliation has truly been built. However, at this early stage in the process, considering the terms set out in the mandate of the TRC, it is difficult to see how the bridge building process can possibly occur. The focal point of the mandate is too closely connected to truth at the expense of reconciliation.

Without charting a course of action that encompasses the principles of a restorative justice approach, the TRC will be an opportunity lost. Odeina is remembered for both bridge-building *and* sharing his wisdom. I hope that the Commission can learn from Odeina and be successful.

**Endnotes**

<sup>i</sup> Although and as I explain in later sections, the TRC has failed to live up to this focus.



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