



## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

*TWAILR: Reflections #36/2021*

### **The Children have Awakened Canada.**

*Valarie Waboose*

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*Residential schools are a tragic part of Canada's history. But they cannot simply be consigned to history.<sup>1</sup>*

On May 27, 2021, the dark chapter in Canadian history regarding Indian Residential Schools (IRS) sent waves of sadness across the country. News of 215 children found in a mass grave at Kamloops IRS was flashed across the headlines of every major newspaper in Canada. The Toronto Star on Monday May 31<sup>st</sup> read, "[Everyone is feeling pain...and we need to act.](#)" The CBC's headline read, "[Remains of 215 children found buried at former B.C. residential school, First Nations Says.](#)" And another stated, "[Canada mourns as remains of 215 children found at Indigenous school.](#)" A few days later the [Muskowekwan First Nation laid out 35 pairs of children's moccasins and shoes to honour the unmarked graves at the site of its former residential school.](#) On June 11, 2021, the [Regina Indian Industrial School became a gathering space](#) where 35 Indigenous children that attended this school were buried. [Another 104 graves sites of Indigenous children were found on three sites on or around the former Brandon Residential School.](#) Then a month later, [Chief Cadmus Delorme announced another 751 unmarked graves were found at the Cowessess First Nation in Saskatchewan.](#)

As I sat thinking about the mass grave and unmarked graves filled with 215 Indigenous<sup>2</sup> children that died at the Kamloops IRS, 104 in Brandon IRS, 35 in unmarked graves in Regina Industrial School, 35 in Muskowekwan IRS and then [751 at Cowessess IRS](#), I was astounded. These feelings then turned to anger and now I am overwhelmed with sadness. My mind begins to wander and questions surface: Why would anyone do this? Why were these children placed in a mass grave? Why were the graves of these children not marked? Further, why were the headstones of the marked graves removed in the 1960s? Was this done by people of Catholic faith? These and many more questions flooded my mind as I sat in total disillusion.

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<sup>1</sup> Truth and Reconciliation Commission of Canada, *Honoring the Truth; Reconciling for the Future*, Final Report, Volume 1: Summary (Lorimer Publishers, 2015) 135.

<sup>2</sup> I use Indigenous and Aboriginal interchangeably. I choose to use Indigenous while some authors quoted use Aboriginal in their work.

Children missing and buried at IRS was no secret. In fact, children, now adults, told stories of children dying in these schools and buried at night, sometimes in secrecy. The Federal government and the Churches were even aware of the number of children dying in IRS. Why did they remain silent? In the early 1900s a review of a residential school conducted by a lawyer reported the following to Minister, Frank Oliver:

The appalling number of deaths among the younger children appeals loudly to the guardians of our Indians. In doing nothing to obviate the preventable causes of death, brings the Department within unpleasant nearness to the charge of manslaughter.<sup>3</sup>

Even though reports regarding the poor administration of IRS were made to the Federal government they were ignored.

In this reflection I will address the IRS legacy with the intent to educate those who know little or nothing about the treatment Indigenous children received in IRS. By educating more people, I hope that this dark chapter in Canadian history will produce more awareness and understanding of the quandary of Indigenous peoples in Canada. This type of education and information sharing will explain why this era is labelled as Canada's policy of cultural genocide against the Indigenous people. According to Article 7 (2) of the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP):<sup>4</sup>

Indigenous peoples have the collective right to live in freedom, peace and security as distinct people and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.<sup>5</sup>

After years of indecision, Canada signed the UNDRIP on May 10, 2016, and it became law on June 16, 2021. Although this is now law in Canada, it does not erase the horrors of the Indian Residential School legacy that began in the 1800s.

I start with a brief chronological synopsis of the IRS legacy, from early contact up to discovery of the mass and unmarked graves at Kamloops IRS, Brandon IRS, Muskowekwan IRS, Regina Indian Industrial School and Cowessess IRS.

### **Indian Residential Schools**

In [1763 the Royal Proclamation](#) unilaterally declared that Indians were wards of the government.

Thereafter, the Federal government implemented policies to regulate the lives of Indigenous peoples of Canada under the guise of protecting them from settlers. However, the truth was that the Federal government wanted to “civilize” the Indigenous people and assimilate them into mainstream white society

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<sup>3</sup> John Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986* (University of Manitoba Press, 1999) 77.

<sup>4</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA Res. 61/295, 13 September 2007.

<sup>5</sup> *Ibid.*

so they could continue land grabbing and exploiting the richness they found here. The Federal government's plan was enacted within the amended Indian Act, 1894, known as the Education policy:

All Indian children between the ages of seven and sixteen shall attend a day school on the reserve on which they reside for the full term during which the school is open each year.<sup>6</sup>

IRS were funded by the Federal government and administered by the Churches. This policy permitted Indigenous children to be removed from their homes and placed in IRS. It was believed by removing children from their home and placing them far away from the influence of their parents and grandparents, the Education policy would change the heathen ways of the Indigenous children. Chief Justice Beverley McLachlin is quoted in the *Globe and Mail* as noting: "[The objective – I quote from Sir John A. Macdonald, our revered forefather – was to 'take the Indian out of the child.' And thus solve what was referred to as the Indian problem.](#)" This attitude of superiority and dominance over Indigenous people and the push to assimilate the children, continued throughout the IRS era (1800's to 1996)<sup>7</sup> and this attitude still exists today. Throughout the history of IRS many reports were made about the health of children and conditions of the schools, but the complaints were not taken seriously.

During this period, it is uncertain how many Aboriginal children attended IRS, but records from the 1940s show an "estimated 8,000 children – half the Indian student population" at the time – were enrolled in residential schools across Canada.<sup>8</sup> Another Federal government document states there was an estimated 10,000 students in residential schools in any one year during the 1960s.<sup>9</sup> There were 139 IRS across Canada. Children from my home community of Walpole Island First Nation/Bkejwanong Territory were sent to IRS both in the United States and Canada. Some were sent to Mount Elgin, Shingwauk, Mohawk Institute, Chapleau in Canada and while others were sent to Mount Pleasant, Carlisle in the United States.

To fully comprehend the impact that IRS had upon Indigenous children one must compare the life they were accustomed to before entering these institutions against life after they arrived. I begin this comparative analysis here, with life before entering an IRS. Within Indigenous society, children are considered gifts from the Creator lent to the parents for a short time. The role of the Anishinabe parent was to guide and teach their children by example, but never by interference.<sup>10</sup> Children were free to wander and learn from the surroundings of their homelands.<sup>11</sup> The education of children was conducted by Elders and spiritual leaders based upon principles of respect, humility, sharing, caring, healing, generosity, cooperation, patience, humour and a willingness to help others.<sup>12</sup> Children were taught this proper behaviour by role modelling and

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<sup>6</sup> Truth and Reconciliation of Commission of Canada, *Missing Children and Unmarked Graves*, Volume 4, (McGill-Queen's University Press, 2015) 37.

<sup>7</sup> The last federally funded IRS to close its doors was the Gordon IRS in Saskatchewan in 1996.

<sup>8</sup> Valarie Waboose, *Re-Living the Residential School Experience: An Anishinabe Kwe's Examination of the Compensation Processes for Residential School Survivors* (PhD Dissertation, Trent University, 2016) 2 [unpublished]

<sup>9</sup> Ibid, 3.

<sup>10</sup> Ibid, 48.

<sup>11</sup> Ibid, 48.

<sup>12</sup> Ibid, 48.

by direct non-coercive means such as ridicule and warning.<sup>13</sup> Similar to warning, children were also taught by storytelling. Through stories children were taught where they came from, and what their role and responsibility was within their respective society. To regulate disobedient behaviour, children were taught that they would be punished by supernatural beings and forces.<sup>14</sup> The freedom and teachings provided to children gave them adequate space to create their individuality while also ensuring they understood their communal responsibilities and connection to all living things within the Universe.<sup>15</sup>

The childrearing practices Indigenous children were accustomed to changed drastically when they were forcibly taken to an IRS. Instead of being free to wander and explore, they were expected to attend mass, work, and attend class from daybreak to sunset.<sup>16</sup> The stories shared by most Survivors<sup>17</sup> depicted a gloomy and horrendous existence while attending IRS. Most details included, but were not limited to, the trauma of removal from their family and community, unusual and harsh treatment upon arrival at the school, loneliness, isolation from siblings, cruel and unusual punishment, sexual abuse, spiritual abuse, and death.<sup>18</sup>

For decades children that attended IRS never spoke about the time they spent there. But this “learned silence”<sup>19</sup> by Survivors changed in the 1980s. On February 13, 1989, a call was made to VOXM’s<sup>20</sup> radio call-in program stating that the government of Newfoundland and Labrador were involved in a cover up of sexual and physical abuse of orphans at Mount Cashel orphanage.<sup>21</sup> Little did they know this call would open the floodgates for lawsuits by IRS Survivors against the Federal government and the Churches for the treatment they suffered while attending IRS.

From this point onward the Federal government and Churches were inundated with legal claims from IRS Survivors across Canada. To solve the onslaught of cases the Federal government introduced an Alternative Dispute Resolution (ADR) pilot project. During this time Survivor groups also filed Class Action lawsuits, such as the Cloud class action. The number of lawsuits against the Federal government had grown to unmanageable proportions. So, the Federal government had no alternative but to negotiate a settlement agreement with IRS Survivors.

### **Indian Residential School Settlement Agreement**

The Indian Residential School Settlement Agreement (IRSSA) was negotiated by a team of IRS Survivors. The IRSSA was signed on November 20, 2005, by [then] National Chief Phil Fontaine (on behalf of Assembly of First Nations) and former Supreme Court judge Honourable Frank Iacobucci (on behalf of Canada).<sup>22</sup> The signing of the IRSSA was a huge victory for Survivors which included a Common

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<sup>13</sup> Ibid, 48.

<sup>14</sup> Ibid, 49.

<sup>15</sup> Ibid, 49.

<sup>16</sup> Ibid, 49.

<sup>17</sup> Survivors is capitalized here to illustrate the respect that the Anishinabe have for those that attended Indian Residential Schools.

<sup>18</sup>Waboose (2016) 50-57.

<sup>19</sup> Ibid, 4.

<sup>20</sup> Ibid, 4; the “Voice of the Common Man” is an AM radio station located in St. John’s, Newfoundland (590 AM).

<sup>21</sup> Ibid, 4.

<sup>22</sup> Ibid, 106.

Experience Payment,<sup>23</sup> a renewed Independent Assessment Process<sup>24</sup> and a Truth and Reconciliation Commission (TRC).

*Truth and Reconciliation Commission of Canada*

The IRSSA included Schedule “N” which outlined the development of a TRC. The TRC was included to provide Survivors and other interested parties the opportunity to tell their stories about the IRS system. The TRC Commissioners travelled across Canada collecting data and information for 6 years.

The Final Report of the TRC was released on June 3, 2015. The report included 94 Calls to Action with subsections addressing areas such as, child welfare, education, museums, language and culture, health care, law schools and justice. Its noteworthy to add that during his delivery of the report, Lead Commissioner Murray Sinclair proclaimed that Canada perpetuated cultural genocide on Aboriginal people beginning in the 1800s and lasting well into the past century.<sup>25</sup> Another important aspect to reiterate is the [statement released by then-Madame Chief Justice Beverley McLachlin](#) of the Supreme Court of Canada, a few days before the Final Report’s release, that the Federal government committed cultural genocide against Indigenous people as a result of the IRS system. Those words describing Canada’s treatment of Indigenous people being spoken by notable Judges was reaffirming. At last, the truth of the treatment of Indigenous people was being uncovered.

The TRC identified 94 Calls to Action that must be acted upon in 2015 as part of its Final Report. The Government of Canada under Prime Minister Justin Trudeau vowed to fulfill all 94 Calls to Action, but only 13 of them have been completely enacted. [The federal government has started working towards implementing 60 Calls to Action](#), but no real steps have been taken towards the enactment of other Calls to Action. The Indigenous people of Canada are saying enough is enough. We are tired of the colonial powers in this country.

The TRC Final Report included 6 volumes containing their findings. Specific to this reflection is volume 4 which addresses the missing children and burials entitled: Missing Children and Unmarked Burials. This volume provides data regarding the number of reported deaths of Indigenous children at IRS. The numbers quoted in this volume were astoundingly high. The data states:

...until the 1950s, Aboriginal children in residential schools died at a far higher rate than school-aged children in the general population.<sup>26</sup>

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<sup>23</sup> Common Experience Payment is a compensation for a Survivor’s time spent in an IRS.

<sup>24</sup> Independent Assessment Process is a compensation process that uses a matrix to determine the amount of compensation a Survivor is entitled to.

<sup>25</sup> Waboose (2016) 110.

<sup>26</sup> Truth and Reconciliation Commission of Canada, Volume 4 (2015) 18.

Further data states the total number of residential school deaths from 1867-2000 were 1,975 in the named register while the total of named and unnamed registers reflected a total of 3125 students.<sup>27</sup> The causes of death for those children who died at IRS were identified as tuberculosis, influenza, pneumonia, lung disease, meningitis, heart disease, whooping cough, typhoid fever, hemorrhage, intestinal disease, kidney disease, appendicitis, brain disease, liver disease, unknown illness or multiple causes and other causes.<sup>28</sup>

The TRC stated:

For approximately half the deaths that the TRC has identified, there is no known cause of death. In the case of the Named Register, the cause of death is unknown for 1,040 (51% of the deaths). For the combined Named and Unnamed registers, the cause of death is unknown for 1,364 (42.6% of the deaths).<sup>29</sup>

The Commission also found that even though there were high rates of death within IRS, the schools lacked policies regarding burials of deceased residential school students. And no plan appears to have existed for the maintenance of cemeteries after school closure either.<sup>30</sup> The lack of policy for proper burials for children that died in IRS allowed the administrators to bury children in a Christian manner rather than a culturally appropriate burial. This also allowed children to be treated in a dehumanizing manner by burying them in mass and unmarked graves.

### **Discovery of Mass Graves in Kamloops**

[Tk'emlups te Secwepemc First Nation](#) hired a specialist in ground-penetrating radar to carry out the work of uncovering the mass graves, and its Language and Cultural Department oversaw the project to ensure it was done in a culturally appropriate and respectful way. Chief [Rosanne Casimir](#) stated that, to their knowledge, these missing children are undocumented deaths. [Tk'emlups te Secwepemc said](#) they are working with the BC Coroners Service, contacting the students' home communities, protecting the remains and working with museums to find records of these deaths.

The same type of technology is being utilized in Cowessess First Nation, Saskatchewan. [Chief Jennifer Bone of Sioux Valley Dakota Nation stated:](#)

Sioux Valley Dakota Nation had been working with university researchers using archeological survey techniques, geophysical technologies, survival recounts and archival document in order to match the graves with burial records.

For many Indigenous people in Canada the announcement of these mass and unmarked graves was shocking but not a surprise. For some Survivors, the discovery was validation of the stories they told others about deaths and burials at IRS. [As stated by Chief Harvey McLeod](#), of Upper Nicola Band, he and former

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<sup>27</sup> Ibid, 20.

<sup>28</sup> Ibid, 22.

<sup>29</sup> Ibid, 22.

<sup>30</sup> Ibid, 130.

students like him would wonder what had happened to friends and classmates. These children never knew if these friends ran away or died, leaving them without closure.

The horrific discovery of 215 children in a mass grave at Kamloops IRS has shaken both Indigenous people and Canadians alike. The impact of this discovery is reflected in the opinions gathered by a public survey conducted in early June. [From June 4 to 7, 1,513 people were surveyed by Maru Public Opinion regarding the discovery of the graves of 215 Indigenous children.](#) In this survey the majority stated that since the unmarked graves were discovered they had changed how they view Indigenous people, 73% said it affected them emotionally, 55% agreed genocide occurred, 90% said all schools should be investigated and 80% supported calling on the International Criminal Court to investigate the Canadian government and the Vatican for crimes against humanity. As Canadians grapple with these discoveries, the work of Indigenous communities across Canada begins. The children buried in mass and unmarked graves must be identified and given a proper burial. This may take years, but Indigenous people across Turtle Island<sup>31</sup> are ready to do the work.

### **Bringing the Children Home**

Calls to Action 71 to 76 of the TRC deal with missing children, unmarked graves and residential school cemeteries. Call to Action 73 of the TRC specifically states:

We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.<sup>32</sup>

Since the Kamloops and Cowessess discoveries, many communities have indicated they want their children to be brought home. Not only for the sake of closure for Indigenous families but also to ensure that these children receive a proper burial according to the customs and traditions of their people. Within Indigenous cultures across Canada there are ceremonies for individuals at birth and at death. The ceremony performed for a deceased person ensures their safe journey to the spirit world. These types of ceremonies allow the spirit of the deceased to rest in peace.

Since finding the mass graves on May 27<sup>th</sup>, communities have called upon the Federal and Provincial governments and the Churches to provide funding for the repatriation of these children. In response to these pleas, [the Province of Ontario has announced CAD \\$10 million to identify and commemorate residential school burial sites in Ontario. While the Federal government has pledged CAD \\$27 million to search burial sites.](#) The Catholic Church has yet to pledge any financial support.

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<sup>31</sup> Indigenous people across North America refer to the Earth as Turtle Island. For more information regarding this name see: <https://www.thecanadianencyclopedia.ca/en/article/turtle-island>

<sup>32</sup> Truth and Reconciliation Commission of Canada, Volume One, (2015) 260.

The reaction to these discoveries by the Catholic Church is inexcusable. The Catholic Church administered both the Kamloops IRS and the Cowessess IRS, yet they are attempting to absolve themselves of any responsibility by not making a formal apology. In the past, the Federal government and Indigenous leaders have called upon the Pope, on behalf of the Catholic Church, to apologize for its role in the Residential School system. In 2018, Prime Minister Justin Trudeau personally appealed for an apology during a visit to the Vatican. Pope Francis replied via an open letter from the president of the Canadian Conference of Catholic Bishops saying, [“he felt that he could not personally respond.”](#) Chief Rosanne Casimir called on the Catholic Church to issue a public apology where she said: [“\[we are\] holding the Catholic Church to account – there has never been an apology from the Roman Catholics”](#). And now [Chief Cadmus Delorme is also asking the Pope to issue an apology](#). Upon these discoveries, Indigenous leaders are adamant that the Catholic Church apologize for their administration of the IRS in Canada. A delegation of Indigenous leaders will visit the Vatican in December 2021. [According to Archbishop Richard Gagnon](#), president of the Canadian Conference of Catholic Bishops: ‘...the Pope is expected to take a path similar to the one that led to his formal apology in Bolivia in 2015’.

Assembly of First Nations recently released a Press Release stating they would travel to the Vatican in December for this same reason.

## **Conclusion**

Colonization has been perpetuated against Indigenous people in Canada for over five hundred years. As a result, generations upon generations of Indigenous people have suffered mental, emotional, physical, and spiritual abuses. Although settlers were successful in killing millions of Indigenous people after contact, Indigenous people have persevered and still exist in Canada today. Their resilience has stood strong against the colonial powers that attempted to destroy them.

The discoveries of the mass and unmarked burials in Kamloops, Brandon and Cowessess have uncovered the truth illustrating how the Federal government treated Indigenous people. Canada can no longer hide this ugly truth. Indigenous people across Canada are calling for the Federal government to be taken to the International Criminal Court for crimes against humanity and acts of genocide. Is this what must happen for change to occur?

Canada is at a crossroads. Will they commit to the completion of the TRCs 94 Calls to Action, or will they brush the findings under the rug once again and carry on as if these children were never found?

The thoughts behind the TRC were not only to allow IRS Survivors to tell their story but it also allowed Canadians to learn the truth. Without the truth being told and the Federal government taking full responsibility, there will be no reconciliation. In the days ahead, the actions of the Federal government will demonstrate whether they are ready to reconcile.

For true reconciliation to begin, the Federal government must take responsibility for the past oppression and cultural genocide committed against Indigenous people. Canada must honour the commitments they

made to Indigenous people since contact. Treaties must be honoured. The land claims in this country must be settled. The Indian Act that binds the hands of Indigenous people in Canada must be abolished. Indigenous people must be treated as sovereign people. The resources of this country must be shared with the original inhabitants of this country. The Indigenous Legal Orders of Indigenous people must be recognized as law in Canada. Indigenous people can no longer be treated as second-class citizens in their own country.

The opportunity for reconciliation is here. Canadians are beginning to learn the truth about the relationship between the Federal government and the Indigenous people. Are there enough Canadians that want to change the course of our collective history? Canadians will have to answer in the days ahead.

In closing, I am reminded of an important Anishinabe<sup>33</sup> prophecy teaching about the future. The Seventh Fire prophecy of the Anishinabe states there will come a time when the Light-skinned race will come to a fork in the road. This prophecy states:

It is at this time that the Light-skinned Race will be given a choice between two roads. If they choose the right road, then the Seventh Fire will light the Eighth and Final Fire – an eternal Fire of peace, love, brotherhood and sisterhood. If the Light-skinned Race makes the wrong choice of roads then the destruction which they brought with them in coming to this country will come back to them and cause much suffering and death to all the Earth's people.<sup>34</sup>

Indigenous people were placed on this land thousand of years ago by the Creator. The prophecies that came to the Anishinabe at the beginning of time have all come true and this one will, too. The spirits of the children hidden in graves in Kamloops IRS have awakened Canada. They are calling upon their ancestors to take them home. While some may see this as coincidence, I am not convinced. We are at a crucial time in our history. If we are at the fork in the road, what choices will be made for the future? All eyes will be on Canada to see what action they take, if any.

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<sup>33</sup> Anishinabe is a Nation of Indigenous people that currently reside in the Great Lakes area, Manitoba, North Dakota, Saskatchewan, and Alberta. I am a member of the Anishinabe Nation.

<sup>34</sup> Eddie Benton-Banai, *The Mishomis Book* (Red School House, 1988) 93.