

Indian Residential Schools Truth and Reconciliation Commission of Canada: Accountability, Transparency and Access to Information

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This paper will provide some background to the Indian Residential Schools (IRS) Truth and Reconciliation Commission of Canada and will analyze initiatives in accountability, transparency and access to information, developed by archivists. The presentation will also summarize evidence resulting from transparency. My presentation is based on my experience with religious archives as well as my working contacts with the Commission.

Indian Residential Schools Truth and Reconciliation Commission of Canada, Background

The Indian Residential Schools were federal Canadian government boarding schools built near missions and Native reserves throughout Canada. They were run with a variable degree of religious involvement under the Department of Indian Affairs which was responsible for educating Native children and caring for Native people in Canada.

Religious men and women from various denominations were asked to serve in these institutions. Most of these missionaries were Roman Catholic or Anglican. They lived on missions far from their culture and their families, often in challenging conditions such as the Canadian Arctic. A large number of them came from France, England and Quebec to work in these schools.

The schools date back to the 1870s. Over 130 residential schools were located across the country. The first school closed in 1970 and the last one in 1996.

School attendance was compulsory for Native children (ages 6 to 16). The main goal of the Canadian government was assimilation of Native band children into White culture. Taking them away from parents seemed to be a way to prepare them for life in mainstream society. The government wanted to force them to adopt Canadian White customs and Christianity and, later, pass this adopted lifestyle to future Native generations. There are currently 614 Native bands in Canada and about 710,000 Status Natives; the members live on reserves which are lands set apart for them by the Canadian government which also manages their revenues.

The Canada Indian Act sets out the government actions. This legislation identifies Native persons who are eligible for services and benefits that are specifically designed for them. These services include education and health care.

The Canadian government agreed, as a treaty obligation, to provide education when treaties were signed between the government and Natives in order to transfer Native land ownership to the Canadian government. During the treaties negotiations, several Native chiefs asked the government to give their children access to the skills necessary to adapt to a new way of living.

The Department of Indian Affairs also made regulations for educational standards and appointed Inspectors to enforce them in IRS. The government was responsible for school policies and procedures, funding, supervision of missionaries serving in the IRS, admission of children, building construction and maintenance, curriculum and health care.

Indian Residential Schools Truth and Reconciliation Commission of Canada, Litigation

Allegations of physical and sexual abuses in the IRS started to circulate in the late 1980s and the 1990s. The allegations included numerous accusations such as:

- Children were punished if they spoke their own Native language
- Students lived in substandard conditions, endured physical, emotional and sexual abuses, beatings, injuries, starvation, rapes, unlawful confinement
- There was no opportunity for family life
- Children were disconnected from their culture and received substandard education.

Lawyers started to visit Native authorities on reserves and prepared claims against the Canadian government. Claims started by being fairly general and their content developed according to what was considered actionable by the Canadian courts throughout the last 30 years.

Cultural abuse appeared on claims until the Canadian government ruled that this form of abuse was not actionable. This decision seemed normal in a country such as Canada which was developed by immigrants from various backgrounds and cultures.

The number of claims multiplied according to what was allowed by the Canadian Department of Justice. Often the entire membership of a Native band was listed on the claims.

These claims were sent to the Canadian government which forwarded them to about 60 religious denominations and entities having served in the schools. These were third party claims indicating that Canada was maybe responsible for abuses but the missionaries might be also responsible. Because research had not yet been conducted, a number of religious communities received these claims even if they had never served in an IRS.

The IRS litigation became the largest class-action litigation and consequently settlement in Canadian history. There was no legal precedent in Canadian history which could have provided guidelines to follow.

The Canadian government looked for solutions to verify alleged abuses and developed the following processes :

- **Common Experience Agreement:** Under this agreement, the government agreed to compensate financially IRS former students alive on May 30, 2005. Regardless of abuse or not, they were eligible for \$ 10,000 for the first year or part of a year they spent in residence, plus \$ 3,000 for each subsequent school year in residence. Acceptance of this payment released the government and religious organizations from all further liability relating to school experience, except in cases of sexual abuse and serious incidents of physical abuse. Consequently sexual abuse claims increased in the following months.

- **Independent Assessment Process:** The Canadian government decided to create this process to investigate and assess for financial compensation cases of sexual abuse and serious incidents of physical abuse.

IRS Settlement Agreement: The amount and complexity of claims led to this Agreement in 2005. The goal of the Agreement was to seek truth and do research on what happened. The Agreement was signed by religious organizations and the Canadian government. However the Canadian federal government has no jurisdiction over the provinces for this type of legal matter. Consequently Provincial and Territorial archives as well as private archives did not sign the Agreement even if they possibly held relevant evidence. Access to Native records in these institutions has not yet been discussed. The Agreement was written by lawyers, without consultation with archivists, and it held no definition of what would be relevant. The extent of the records to be identified, reviewed, copied and described, according to rules developed for the Agreement, was largely underestimated; the definition of relevance was greatly expanded later by the Commission.

Truth and Reconciliation Commission

This Commission was founded by the Canadian government in 2008 as another solution to deal with litigation and to seek the truth about the policies and operations of the IRS. The Commission received a budget of \$60 million from the Canadian government with a mandate to finish its work within five years. Members of the Commission were nominated in 2008 but resigned a few months later; new Commissioners were selected and started their mandate in 2009. The Commission has until June 2014 to review all documents and write a report. The Commission's mandate will almost certainly be increased for a few additional years. The Commission does not include any archivists or historians with experience on IRS archives. A large amount of IRS documents in Library and Archives Canada and other government departments have not yet been provided but an Ontario Superior Court judge ruled in January 2013 the government was obligated to make them available to the Commission.

The Commission is expected to create a National Research Centre holding copies of records collected from the government and the religious denominations. Legal proceedings are being conducted as a parallel to the Commission and did not facilitate a process of reconciliation and renewed relationships. The Commission hired its own experts in archival and historical work but these experts who worked on contract understood little or no French. This became quickly an issue because Roman Catholic missionary archives are mainly in French. Lawyers became the research and archival leaders for the

Commission's work; to a very large extent, they defined records to be made available without taking suggestions from archivists who are responsible for submitting records to the Commission on behalf of each organization involved in the operation of IRS. No financial help was offered to religious organizations to make available their records or pay their legal fees, even though this was stipulated in the Settlement Agreement.

Indian Residential Schools Truth and Reconciliation Commission of Canada, Figures (April 2013)

Estimated total amount to be paid by Canadian government to Natives for alleged harm in IRS: over \$4 billion

Under the Common Experience Payments, amount already provided as compensation to 80,000 former students regardless of abuse or not: \$1,62 billion

Planned contribution of religious organizations: healing services and up to \$100 million in cash

Commission initiatives consisting of national and community events and memorials : \$20 million over 5 years

Number of government documents from the Department of Indian affairs already provided to the Commission: about 3 million

23 other government Departments have to make additional records available. Total amount of government archives to be made available: about 20 kilometres of shelf space

Cost of staff to make them available to the Commission : \$100 million

Cost to digitize these records for the National Research Centre: \$40 million

Number of convicted religious men: 2

Number of convicted religious women : 0

Number of convicted lay men: 2 (Numbers of convictions from the 1870s to 1996 covering the entire country)

Indian Residential Schools Truth and Reconciliation Commission of Canada, Evidence made available by archivists to the Commission

It is now a known fact that many Canadian Natives suffered from bad social policies of the past. Native traditions and lifestyle were different from White culture; children suffered from being separated from families. However access to the records by archivists has not proven the wrongdoings listed on legal claims and submitted verbally by former students to the Commission. Oral Native allegations do not match evidence from textual and visual archives submitted to the Commission. The nature of alleged physical abuse on legal claims was mainly corporal punishment, unknown in Native culture but fairly common in White culture. Written evidence of sexual abuse has so far been impossible to locate; this does not mean of course that sexual abuse did not exist in IRS.

Documents provided by archivists also show that:

- Missionaries wanted to help Natives, save them from starvation caused by a decreasing number of bison and teach them how to live in a farming world managed by Whites.

- Missionaries did not support assimilation but they were responsible for implementing Canadian government policies and procedures in the IRS.

At the same time they received instructions and advice from their Superiors. The Oblate Superior General, Théodore Labouré, often sent from France instructions contradicting government policies. He believed that Native children « ne se font pas toujours à la discipline de nos collègues et il n'est pas nécessaire de les y contraindre », source: 93.281/26, Sister of Assumption archives, Provincial Archives of Alberta, Edmonton. This means that he did not want his missionaries to submit children to harsh discipline.

- The missionaries saw the IRS as a work of charity which integrated education into other works such as care for orphans and care for the sick, the disabled and the elderly. The school building was used also as a place offering health care and social services.

The government gave financial assistance to the IRS but missionaries often lobbied the government for better funding. The schools provided not only general elementary education, but also knowledge of agriculture, animal husbandry, mechanical trades, sewing and cooking.

- Missionaries were handling a huge amount of work. They did not focus only on religion. They worked and lived with the children, in addition to managing their parish, local community and convents.

The nuns taught in the schools and were in charge of supervising and feeding children, farming, cleaning, making clothes, looking after the children's physical care, from nursing to braiding, removing lice and cutting hair, organizing cultural events and looking after parents visiting the school. They provided medical care in the schools and on the reserves.

- Missionaries maintained Native traditions, such as costumes, art, food, hunting practices, despite allegations to the contrary. They actively encouraged visits and parental involvement, community recreation and the practice of Native languages in the IRS.

Indian Residential Schools Truth and Reconciliation Commission of Canada, Initiatives from archivists in accountability, transparency and access to information

Archivists made records available to the Commission. Access to information became the main focus for archivists even if this access had a large impact on other archival responsibilities as well as the archival profession: Archival standards and practices suddenly changed. The need to provide access to information to the Commission became by far more important than other archival responsibilities, including protection of privacy and intellectual property rights. This is even more obvious in religious communities where in the last 10-15 years, little or no preservation, arrangement and description were

conducted. These communities are struggling to cover the cost of making records available in addition to legal fees.

Archivists protected ownership of the records. Archivists for religious communities wanted their organizations to maintain ownership and control on their records, especially when no abuse had been proven by their records; however at the same time they agreed that transparency was essential to collaborate with the Commission. Standards to make records available to the Commission and later to the National Research Centre raised issues: The Commission would have liked to get original records and have physical as well as intellectual control but the Settlement Agreement made possible to provide copies of original records. Archivists decided to follow this Agreement and provided watermarked photocopies of original documents.

Archivists protected integrity of the records. They photocopied records to protect their integrity and to prevent theft and tampering. All researchers, including the Commission contractors, wishing to access IRS records in person consulted photocopies because possible addition of names to school lists was a concern when the Canadian government announced compensations based on number of years in a IRS.

Archivists learned how to deal with unfamiliar legal instructions when following principles of accountability and transparency. The 1993 Ontario court decision instructed archivists “to provide the documents in its possession or control that are reasonably required to assist the TRC to tell the story of the legacy of IRS”. No definition of what is reasonable and relevant was given by the court or the Commission. Archivists are put in an unprecedented situation requiring them to give access to records without clear instructions. Details on “perpetrators” were given by Native claimants but most often these details did not include specific names or dates. Quite often dates of alleged abuses did not match dates of existence of schools. An entire generation of archivists is spending time on searching records relevant to abuses which can’t be proven.

Archivists learned to face ethical issues and anger from other parties. Many records come from private religious archives and are covered by legislation, including Copyright and Privacy legislation as well as Canon Law. Archivists face ethical issues when requirements from Canon law conflicts with transparency. Archivists had to look for evidence to back up allegations of crimes. When no evidence was found, the unproven guilt remained. When records do not proved wrongdoing, archivists are accused of having destroyed relevant records. When records give a positive image of the schools, archivists are accused of presenting fake records.

This is the positive side of work undertaken by archivists:

Archivists succeeded in developing means to support accountability, transparency and access to information; they made information available and remained impartial in a climate of hostility, conflicting interests, insecurity and cuts in institutional funding.