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# Between Acknowledgement and Inertia: Reflections on the Legacy of Canada's Residential School System

Indira Boutier\*. Conor Hill\*\*

#### Abstract

This article explores Canada's legal and institutional responses to the residential school system, arguing that symbolic recognition has often come at the expense of substantive structural reform. While the Indian Residential Schools Settlement Agreement and the Truth and Reconciliation Commission have offered a framework for redress, they remain embedded within the same legal architecture that facilitated historical injustices. A decade after the Truth and Reconciliation Commission's 94 Calls to Action, progress on implementation remains uneven, revealing persistent gaps in resource allocation, institutional accountability, and public trust. The analysis adopts an interdisciplinary approach, combining legal doctrine, historical inquiry, and human rights analysis. It further examines how digital activism and mediated forms of memory operate as counterpoints to state-led reconciliation. These digital interventions expose the inertia of legal institutions by reframing the temporality of justice: while legal mechanisms proceed within procedural and bureaucratic logics, digital platforms demand immediacy, visibility, and affective engagement. This tension underlines a deeper paradox - namely, that visibility may increase disillusionment when not accompanied by institution transformation. The article situates reconciliation within the broader continuity of settler colonialism, contending that legal responses often reify the state's dual role as both perpetrator and redeemer. Consequently, the article questions whether such frameworks can meaningfully deliver justice.

Keywords: Social movements, Indigenous rights, residential schools, Canada's Truth and Reconciliation Commission

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#### Introduction

'My mother, a boarding school survivor, once told me that children would disappear all the time, "Back to the reservation?" I asked her. "No, they would simply vanish, and we would never see them ever again". (Lakota Man [@LakotaMan1] 2021)

The 2021 discovery in British Columbia of 215 suspected unmarked graves at the former Kamloops Indian Residential School brought visibility through public attention to Canada's legacy of residential schooling. While Indigenous communities had long testified to the existence of such burial sites, the visibility of this violence – particularly through social media – triggered a broader reckoning around institutional responsibility and historical injustice. In the months that followed, national and international calls for justice intensified, culminating in the Canadian Parliament's formal recognition of the residential school system as a form of genocide (Raycraft 2022). Yet, despite this apparent moment of national awakening, the systemic roots of these harms remain largely intact.

Established with the explicit aim of cultural eradication, the residential school system in Canada operated across the country under church management, primarily the Catholic Church, and with state sponsorship. These institutions were designed to dismantle Indigenous identity through the removal of children's ties to their familial, cultural, and linguistic roots. While the last schools closed in 1997, their impacts are still evident in the persistent socio-economic challenges faced by Indigenous populations, including elevated rates of substance abuse, suicide, and inadequate access to fundamental services such as clean water, healthcare, and education. Efforts to reveal the full extent of the schools' impacts continue, with ground-penetrating radar and other technologies uncovering unmarked graves and corroborating survivors' testimonies of abuse, neglect, and maltreatment within these institutions.

The intersections between church complicity and governmental accountability raise further questions about trust and reconciliation. Indigenous leaders express scepticism about Canada's commitment to actionable change, given the limited progress on the Truth and Reconciliation Commission's Calls to Action (Truth and Reconciliation Commission of Canada 2015a) and the slow pace of reforms addressing systemic inequalities. While apologies and commitments were made, substantial challenges remain in fostering genuine reconciliation. Indigenous voices continue to call for greater resource allocation, transparency, and legislative action to redress

historical wrongs and to establish a pathway toward restoring dignity and justice for Indigenous communities.

In this context, this paper examines the legal and institutional responses to the legacy of residential schools in Canada, particularly through the lens of the Indian Residential Schools Settlement Agreement and the Truth and Reconciliation Commission. It argues that while these mechanisms have achieved symbolic recognition and raised awareness, they often fall short of delivering substantive structural change. A decade after the Truth and Reconciliation Commission's 94 Calls to Action, the pace of implementation remains slow, and Indigenous communities continue to face profound socioeconomic disparities.

This paper thus examines how the legal and institutional mechanisms put in place to address the legacy of residential schools – such as the Indian Residential Schools Settlement Agreement and the Truth and Reconciliation Commission – oscillate between symbolic recognition and structural inertia. It further explores how digital memory practices and Indigenous-led online activism have challenged the temporal and procedural logic of institutional redress. While not the central focus of this paper, these interventions expose a broader paradox: legal mechanisms may produce visibility, but without structural change, they risk reinforcing disillusionment. In situating reconciliation within the continuity of settler colonialism, the article questions the extent to which legal frameworks can meaningfully deliver justice in post-colonial democracies.

# 1. 'You are no longer an Indian'

## 1.1. Step 1. A Legal Assimilation Through the Indian Act

Indigenous populations in Canada, including the First Nations, Métis, and Inuit populations, have strong cultural, social, and spiritual ties to their land, which are intertwined with distinct governance and cultural systems. Each of these communities has unique languages, traditions and histories that predate European settlement. However, colonial policies aimed at land dispossession or cultural assimilation have significantly disrupted these groups (MacDonald and Hudson 2012). The 1990 Oka Crisis, spanning 78 days, symbolised these tensions and brought Indigenous issues to national attention. This standoff, which saw Mohawk protesters defending ancestral lands and burial sites from a proposed golf course expansion, underlined the deep-seated conflict between Indigenous communities and Canadian government policies. From a media perspective, although the government was the primary source of information – leading to anti-Indigenous biases and

a strong tendency to frame the issue in a one-sided manner (Harding 2005) – the crisis ultimately exposed the persistent inequalities faced by Indigenous communities. It also sparked national reflection on Indigenous land rights and highlighted the need to challenge media-perpetuated stereotypes (Conradi 2009; Skea 1993, 17). As Winter argues, 'to the federal government Oka represented an exercise in public relations, or more precisely, in crisis or public opinion management' (Winter 1992, 248).

However, the media's portrayal of the Oka Crisis was only one aspect of a broader systemic issue. Beyond public perception, the legal framework governing Indigenous affairs – particularly the Indian Act of 1876 – played a fundamental role in shaping the conditions that led to the standoff. The Indian Act was a central mechanism of control, granting the Canadian government invasive authority over the lives of people within its jurisdiction. This legislation dictated Indian status, the structure of governance within affected communities, and even the definition of who qualified as 'Indian'. The Indian Register (Article 5(1) of the Indian Act) - a government-maintained list of individuals legally recognised as 'Indian' under the Act - became central to defining 'Indian' identity within Canada. The registration process itself was exclusionary. It stripped 'Indian' status from women who married men who did not also have 'Indian' status, cutting them and their descendants from their cultural ties and leading to intergenerational identity struggles. These laws reflected a broader agenda of assimilation and disrupted countless family structures, placing their identities under state jurisdiction. The Act, along with subsequent laws, imposed restrictions that systematically weakened Indigenous rights and culture. For instance, the Potlatch Law of 1884, outlawed crucial cultural ceremonies, and Section 141 of the Indian Act (introduced in 1927) barred affected communities from hiring legal counsel to pursue land claims or defend their rights. These restrictions were part of a broader effort to dismantle Indigenous governance structures and practices, substituting them with systems that reflected European norms, such as the band council system. The paternalistic approach of this legislation effectively treated Indigenous peoples as wards of the state, undermining their autonomy and self-determination.

Despite the profound limitations imposed by the Indian Act and subsequent laws, Indigenous leaders and communities continually resisted, organising politically and petitioning for recognition of their rights. Resistance movements emerged, challenging the government's policies and advocating for the preservation of cultural practices and political autonomy. For instance, Indigenous leaders clandestinely held potlatch ceremonies as a form of resilience against the Potlatch Law (Indigenous Corporate Training 2012). Towards the mid-20<sup>th</sup> Century, human rights perspectives had influenced

amendments to the Indian Acts, lifting some of the restrictions on cultural practices and legal representation.

Nonetheless, the government imposed significant legal restriction on indigenous individuals and established a policy of assimilation through education. In 1920, the legal foundation for the expansion of the residential school system took shape, making school attendance compulsory for all school-aged Indigenous children. Legal texts thus served as instruments to enforce a broader policy towards Indigenous populations in Canada. Residential schools functioned as a means to 'civilise' Indigenous children, reshaping their identity to conform to settler norms and consequently erasing Indigenous culture in favour of Western values and practices.

# 1.2. Step 2. From the Church to the Government: a Practical Assimilation

The residential school system in Canada was established by Roman Catholic missionaries in 17<sup>th</sup> Century colonial New France (Parks, Canada 2020) and developed in the first half of the 19<sup>th</sup> Century with the explicit goal of assimilating Indigenous children with the erasure of their cultural identities. From 1831 to 1996, these government-funded, church-run institutions forcibly removed Indigenous children from their families and communities, disrupting their cultural and family ties and violating their rights to family life and cultural identity protected later under Article 8 of the Convention on the Rights of the Child (Wilk, Maltby, and Cooke 2017). Known for its mission to 'kill the Indian in the child,' this system severed Indigenous children from their heritage, with laws eventually mandating school attendance for Indigenous youth.

The legal foundation for Canada's residential school system was heavily influenced by a series of colonial policies that treated Indigenous cultural practices and beliefs as inferior. The 1879 Davin Report – formally known as the Report on Industrial Schools for Indians and Half-Breeds – advocated for a government-supported residential school system modelled on U.S. institutions, reinforcing this approach. Davin argued that a partnership between the government and Christian churches would be most effective in 'civilising' Indigenous children, as missionaries were more willing to work for minimal remuneration. The report's recommendations were underpinned by two core assumptions: (i) a moral imperative to replace Indigenous spirituality with Christianity; and (ii) a financial strategy to achieve assimilation with limited state resources (Truth and Reconciliation Commission of Canada 2012, 10). Consequently, in the 19<sup>th</sup> Century, two missionary organisations played a key role in this process: the Roman

Catholic Church, through the Oblates of Mary Immaculate, and the Church Missionary Society of the Church of England. These organisations became central operators of the residential schools, with the former overseeing nearly 60 percent of the institutions, and the latter up to 15 percent (Truth and Reconciliation Commission of Canada 2012, 15). The involvement of these Churches in these institutions underlines a general practice. In fact, the Roman Catholic Church contributed to the legal and ideological foundations of colonialism through the issuance of papal bulls, such as dum diversas (1452) and inter caetera (1493), which provided religious justification for European territorial expansion. These decrees established what became later known as the doctrine of discovery - a legal principle that denied Indigenous sovereignty and legitimised the dispossession of Indigenous lands. In response to demands from Indigenous communities to formally rescind these doctrines, the Vatican issued a statement on 30 March 2023, declaring that the Catholic Church 'repudiates those concepts that fail to recognize the inherent human rights of indigenous peoples, including what has become known as the legal and political "doctrine of discovery" (Holy See Press Office 2023).

Under the paternalistic and assimilationist ideologies of the time, Indigenous children were subjected to an isolation process that prohibited expressions of their heritage, such as language and customs – starting with new names,¹ and practices (Truth and Reconciliation Commission of Canada 2012, 3) –, often under threat of severe punishment (Bombay, Matheson, and Anisman 2014, 322). As the Davin Report articulated, removing Indigenous children from the influence of family and community was seen as essential to 'civilisation' efforts, with residential schools considered more effective than day schools for this purpose ('The Archbishop of St. Boniface to Sir Richard Rogers, Quoted in Milloy 1999, 27). Educational offerings in residential schools were therefore inadequate and seemed to underline a colonial intent to maintain Indigenous peoples in subordinate roles within Canadian society. Instead of comprehensive academic education, the schools emphasised manual labour and menial tasks.

Indigenous cultural and language rights are fundamental for individual identity and the collective survival of Indigenous communities (Hatzikidi, Lennox, and Xanthaki 2021, 743–44). Although many of the key declarations and conventions safeguarding Indigenous cultural and language rights – such as the United Nations Declaration on the Rights of Indigenous Peoples and the

<sup>&</sup>lt;sup>1</sup> The modification of names was not limited to residential schools. Between the 1940s and 1970s, the Canadian government modified Inuit names, replacing them with a numerical identification system, commonly known as disc numbers.

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage - were only adopted in the early 2000s, examining the policies of residential schools through the lens of these human rights frameworks underlines the severity of the cultural violations inflicted upon Indigenous communities in Canada. These international conventions highlight the fundamental rights of Indigenous peoples to preserve and practice their languages, traditions, and identities – rights that were systematically suppressed in residential schools. In fact, the United Nations Declaration on the Rights of Indigenous Peoples specifically promotes the rights of Indigenous peoples to revitalise and transmit their languages, traditions, and customs to future generations, free from state interference (Articles 12 and 14). Additionally, the Universal Declaration of Human Rights protects the rights to freedom, equality, and dignity - principles fundamentally undermined with the Canadian state's forced assimilation policies. Furthermore, the Convention on the Rights of the Child, ratified by Canada in 1991, further protects children's rights to education, cultural identity, and family life, all of which were systematically denied to Indigenous children through the residential school system.

In addition, attendance at the residential schools was associated with severe health risks. Many residential schools were chronically underfunded, inadequately staffed, and mismanaged, with children enduring overcrowded dormitories, poor ventilation, and insufficient heating. This resulted in inadequate access to basic needs such as food, clean water, and healthcare. Malnutrition was widespread - some schools conducted experiments on Indigenous children to observe the effects of starvation, treating them as test subjects rather than as human beings (Hanson 2009). These practices violated their fundamental right to health, as defined in international human rights frameworks. According to the International Covenant on Economic, Social and Cultural Rights, every individual holds the right to an adequate standard of living, which includes access to food that is sufficient, safe, and nutritionally adequate (Article 11 of the International Covenant on Economic, Social and Cultural Rights). This framework recalls state obligations to ensure the availability and quality of food necessary for health and well-being, ensuring that populations under state jurisdiction do not suffer from hunger or malnutrition, particularly vulnerable groups such as children (Ayala and Meier 2017, 9). In addition, General Comment 14 on the right to health of the United Nations Committee on Economic, Social, and Cultural Rights clarifies that the right to health encompasses the socioeconomic factors that promote a healthy life, including access to adequate nutrition and proper sanitation, integral to the full realisation of children's rights (Committee on Economic, Social and Cultural Rights 2000, para. 4).

Unsanitary conditions were also common, contributing to high rates of disease, including tuberculosis, which spread rapidly among children due to cramped living quarters and lack of medical care (Nagy and Sehdev 2012). In fact, during the Spanish flu epidemic (1918 -1920), approximately 50 000 Canadians were killed, of which around 4000 were indigenous persons, mainly residing in residential schools (Titley 1986, 57). Although the absolute number of Indigenous deaths during the Spanish flu epidemic may appear 'relatively small' in comparison to the overall national toll, the mortality rate among Indigenous populations reached 34.85 per 1000 cases: a figure five times higher than that of non-Indigenous populations. This significant disparity emphasises the disproportionate impact of the pandemic on Indigenous communities - a consequence of inadequate healthcare infrastructure, and poor living conditions. Moreover, this pattern was not unique to the Spanish flu epidemic; Indigenous populations have historically suffered greater losses from introduced diseases such as smallpox, underlining once more the long-term consequences of colonialism on Indigenous health. The vulnerability of Indigenous communities has persisted into the contemporary era, as evidenced by the disproportionate impact of the COVID-19 pandemic (Boutier 2022).

In addition to these poor conditions, survivors' testimonies reveal widespread physical, emotional, and sexual abuse by staff members (Bombay, Matheson, and Anisman 2014). Punished for speaking their native languages and displaying any connection to Indigenous identity, children were systematically taught to view their culture as inferior. These practices caused psychological trauma and physical harm, resulting in intergenerational impacts that continue to affect Indigenous communities today (Indigenous Peoples and Development Branch, 2002, 6).

The Truth and Reconciliation Commission documented that over 3200 children died in these institutions, though the true number may be higher due to unreported deaths and unmarked graves (Truth and Reconciliation Commission of Canada, 2015c, 1). Investigations continue, and Indigenous communities are leading efforts to uncover the full extent of the loss, with calls for the Catholic Church and healthcare facilities to release records to provide closure and healing for families of missing children. In response to the trauma faced by children in these institutions, the 2006 Indian Residential Schools Settlement Agreement (IRSSA) led to compensation for survivors and established the Truth and Reconciliation Commission to inform the public about these atrocities and offer pathways for healing and reconciliation. However, the United Nations Special Rapporteur on the rights of Indigenous Peoples in 2023 noted ongoing challenges, including slow implementation and inadequate funding of investigations and culturally relevant mental

health resources for affected communities (Special Rapporteur on the rights of Indigenous Peoples, 2023a). The Truth and Reconciliation Commission's 94 Calls to Action were designed to address this legacy, while public initiatives – such as the creation of virtual reality representations of residential schools – have sought to increase awareness among non-Indigenous Canadians (Raffoul et al. 2022).

### 2. From Litigation to Reconciliation

# 2.1. The Road to the Truth and Reconciliation Commission: Investigation and Litigation

On 11 June 2008, Prime Minister Stephen Harper issued a formal apology for the residential school system from the House of Commons. In his apology, he addressed Canada's Indigenous communities directly, stating that the 'burden of this experience has been on your shoulders for far too long. The burden is properly ours as a government, and as a country' (Government of Canada 2008). In doing so, he acknowledged the lack of awareness of the Indian residential school system in Canada, and the historical failure of the state to take responsibility for the abuses endured by those who attended these institutions. Indeed, despite the undeniable impact of the residential schools on survivors and their communities, their true history had remained largely unknown outside of Canada's Indigenous populations. A pivotal moment in shifting public awareness occurred in 1990, when First Nations leader Phil Fontaine gave an interview that brought national attention to these issues. His testimony, in which he detailed his own experiences of abuse at a residential school, has been described as a catalyst for the recognition of the systematic abuses committed within these schools (Nagy & Sedhev 2012, 67). However, it would take many more years before a comprehensive institutional response emerged in the form of the Canadian Truth and Reconciliation Commission. Prime Minister Harper referenced the Canadian Truth and Reconciliation Commission in his apology, describing it as 'a positive step in forging a new relationship between Aboriginal peoples and other Canadians' (Government of Canada 2008). The road to the establishment of the Commission features the work of an initial investigatory committee, class action lawsuits, and an eventual out-of-court settlement.

The Royal Commission on Aboriginal Peoples (RCAP) was set up in 1991 in the wake of the Oka crisis. Described as a second 'major catalyst' for the journey towards redress for the abuses committed at the residential schools (Nagy & Sedhev 2012, 67), RCAP ran from 1991 to 1996, and brought further attention to these issues. As part of its broader mandate to investigate

'Aboriginal-settler society relations' (Hughes 2012, 101), the Commission examined the residential schools and subsequently called for the establishment of a public inquiry into the residential school system. The Canadian federal government at the time refused to establish such an inquiry. Instead, it issued a 'statement of regret' acknowledging the physical and sexual abuse that had occurred in residential schools and allocated \$350million to support Indigenous healing initiatives through the 'arms-length' Aboriginal Healing Foundation (Nagy & Sedhev 2012). However, by advocating for a public inquiry, RCAP helped lay the groundwork for the eventual establishment of the Canadian Truth and Reconciliation Commission.

Even before RCAP began its work, survivors of the residential schools had sought justice through the courts. In the late 1980s, initial attempts were made to prosecute perpetrators of abuse, but successful convictions were both limited and sporadic, with fewer than 50 convictions resulting from over 38000 claims of sexual and physical abuse (Hanson 2009). Survivors also pursued civil litigation, with the first class action lawsuit initiated in 1995. While its scope of actionable harm was narrow, the Blackwater v Plint<sup>2</sup> case did open the door for the future class actions, including *Cloud*<sup>3</sup> and *Baxter*<sup>4</sup> (see: Thielen-Wilson 2014). These lawsuits encouraged additional claims, leading to a significant case backlog for the Canadian government. In response, the government established an alternative dispute resolution strategy in 2003. However, this mechanism was condemned by the Assembly of First Nations for failing to achieve its stated goal of 'just and fair compensation leading to reconciliation' and for its potential to inflict 'additional harms to the survivors' (Assembly of First Nations 2004, 1). In any case, the backlog of cases continued to grow.

In 2006, a total of 11 class action lawsuits had been filed, alongside nearly 15000 individual civil claims in court and 5000 claims through the alternative dispute resolution mechanism (Nagy 2014, 206). As the backlog of cases continued to grow, litigation efforts encountered significant practical challenges. Numerous claims against churches implicated in the residential schools pushed several institutions toward bankruptcy, while the litigation process itself posed a risk of retraumatisation for survivors who had limited access to support during legal proceedings. The severity of this issue became evident with the suicide of one of the survivors involved in the *Blackwater* case (ibid, 205). Faced with these realities, and with the potentially exorbitant costs associated with the certification of the *Baxter* class action, the Canadian

<sup>&</sup>lt;sup>2</sup> Blackwater v Plint 2001 BCSC 997 SCBC

<sup>&</sup>lt;sup>3</sup> Cloud v Canada (2004) 192 OAC 239 (CA)

<sup>&</sup>lt;sup>4</sup> Baxter v Canada 2005 OTC 391 (SC)

government ultimately opted for an out-of-court settlement in the form of the IRSSA (ibid, 206).

The IRSSA was approved by the court in 2007 and implemented in 2008. The settlement included a Common Experience Payment, granting \$10000 to all former residential school students for their first year of attendance, with an additional \$3000 for each subsequent year. Survivors of sexual and physical abuse were eligible for further compensation through the Individual Assessment Process. In addition to individual payments, the IRSSA allocated funds for communal healing and memorialisation activities. A key component of the settlement – beyond material reparations – was the establishment of the Truth and Reconciliation Commission, which aimed to address the impacts of the residential school system and promote reconciliation between Indigenous and non-indigenous communities.

#### 2.2. The Canadian Truth and Reconciliation Commission

The Canadian Truth and Reconciliation Commission was established on 1 June 2008. While truth and reconciliation commissions are well-established as a form of transitional justice mechanism, they have primarily been implemented in the Global South following periods of authoritarian rule or conflict (for example in South Africa following the apartheid regime). In this regard, the Canadian Truth and Reconciliation Commission is something of an outlier among similar bodies. Courtney Jung argues that the Canadian Truth and Reconciliation Commission does not fit within the traditional framework of transitional justice, given that it was not linked to a regime change but rather operated within the context of a stable, democratic state (Jung 2011). Instead, she contends that the TRC applied transitional justice methodologies to address a historical justice issue within an ongoing settlercolonial framework. Such commissions, she notes, have the potential to redefine the responsibility of states towards their Indigenous populations; empower Indigenous communities; respond to demands for recognition; and rewrite historical narratives (ibid, 217). However, operating within a nontransitional context also presents challenges. As Hughes warns, the Truth and Reconciliation Commission's construction of historical narratives risks 'finalizing or perfecting the colonial project' rather than fostering meaningful transformation and decolonisation (Hughes 2012, 102). This history and context may shape contemporary attitudes towards the Commission.

The Commission drew its mandate primarily from Schedule N to the IRSSA of 2006. This mandate included a broad range of objectives, including acknowledging the experiences, impacts and consequences of the residential school; providing culturally appropriate spaces for survivors to share their

experiences; compiling an historical record; and organising events focused on testimony, public education, outreach, and memorialisation. Importantly, section 1(f) of the mandate required the Commission to produce a final report containing recommendations to the Canadian government concerning the residential school system and its lasting effects. To this end, the Commission released an interim report in 2011, followed by a summary final report in June 2015, and a comprehensive six volume final report that December (see: Miller 2016). In its final report, the Canadian Truth and Reconciliation Commission formally condemned the abuses perpetrated at the residential schools, classifying them as 'cultural genocide' and estimating that at least 3200 children died while attending these schools (Truth and Reconciliation Commission of Canada 2015b). As part of its final report, the Commission issued 94 Calls to Action, presenting recommendations on various topics including education, healthcare, the identification of missing children and burial site documentation (Truth and Reconciliation Commission of Canada 2015a).

Throughout its operation, the Commission faced many controversies. Notably, the first set of Commissioners resigned within less than a year, citing 'paralysing philosophical differences' regarding the Commission's mandate (Nagy & Sedhev 2012, 69). The resulting hiatus before new Commissioners could be appointed further delayed the Commission's operations. These philosophical differences – particularly regarding the interpretation of concepts such as truth and reconciliation – may be rooted in the Commission's unique nature and establishment process. Although nonjudicial in its function, the Canadian Truth and Reconciliation Commission can still be understood as a legal process or, at the very least, as one with legal origins. Unlike truth and reconciliation commissions in transitional states, which typically emerge from political agreement – such as a ceasefire or peace agreement - the Canadian Truth and Reconciliation Commission was created through a legal agreement: the IRSSA. As such, its mandate emerges from a dominant procedural framework that is 'legal rather than political' (Hughes 2012, 109). This distinction had significant implications for the Commission's scope, structure and approach to reconciliation.

The legal nature of the Commission has significantly influenced its engagement with affected Indigenous populations. The Canadian legal system has been described as 'deeply implicated in the story of oppression of indigenous peoples in Canada' (Hughes 2012, 119), reinforcing long-standing mistrust among Indigenous communities. As the United Nations Special Rapporteur on the rights of Indigenous Peoples has noted, 'structural racial discrimination' exists at 'every level' of Canada's justice system, from policing to courts. This systematic bias has resulted in the gross

overrepresentation of Indigenous peoples in prisons and jails. Indigenous women and gender-diverse people are particularly affected by this, making up 50% of Canada's female prison population, but only 4% of the population of the country (Special Rapporteur on the rights of Indigenous Peoples 2023b, 6). Given these realities, the justice system's credibility remains a significant barrier to meaningful reconciliation. According to the Special Rapporteur, addressing this widespread discrimination and ensuring the full implementation of the Commission's Calls to Action are essential steps toward restoring trust between Indigenous communities and the Canadian legal system (ibid).

Against this background, the role of law and legal professionals in addressing the legacy of the residential school system has been critically examined. Stanton argues that the success of a comparable previous inquiry was largely due to the chair's decision to keep legal counsel in the background (Stanton 2010, 89). Similarly, Hughes has criticised the RCAP for its 'heavy reliance on lawyers' (Hughes 2012, 126) and has questioned the appropriateness of appointing lawyers as TRC commissioners in the first place (ibid, 118). She further contends that members of the legal profession:

'have no professional subject-matter expertise in childhood trauma, retraumatization, Aboriginal cultures and knowledges, the education system, historiographical methodologies, archive building, media communication, public knowledge building, political implementation processes, public administration, or interdisciplinary research—to name but a few important areas of subject-matter expertise that might be relevant' (ibid, 119).

Furthermore, the Commission played a pivotal role in delivering an element of 'public justice' within the framework of an out-of-court settlement. Such settlements are typically characterised, at least to some extent, by secrecy (ibid, 110). The degree to which the Commission successfully fulfilled this function remains a central question.

## 3. Media, Memory, and Mobilisation

# 3.1. Continuing Recognition of Harms in the Post-TRC Period

Until the late 20<sup>th</sup> century, Canadian media coverage on residential schools remained largely absent from mainstream discourse, contributing to a lack of public awareness regarding the systemic abuses experienced by Indigenous children. This silence reinforced the marginalisation of Indigenous voices and hid the broader nature of Canada's assimilation policies. However, in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries, survivor testimonies began to receive increasing attention, challenging the historical neglect of this issue.

Documentaries such as *Sleeping Children Awake* (1992) and *We Were Children* (2012) offered platforms for these testimonies, amplifying personal narratives and increasing public awareness of the long-term social, psychological, and cultural consequences of the residential school system.

The establishment of the Truth and Reconciliation Commission in 2008 marked a significant turning point in public discourse on residential schools. The Commission's public events and its final report, released in 2015, received media coverage, drawing attention to the cultural genocide in residential schools and underlining the importance of reconciliation efforts. In response to the Commission's findings, the Government of Canada implemented measures to formally acknowledge and address the lasting consequences of these institutions. In 2021, Canada enacted legislation designating 30 September as the National Day for Truth and Reconciliation, providing an annual occasion to honour survivors and reflect on the ongoing impacts of the residential school system. The following year, on 27 October 2022, the Canadian House of Commons officially recognised the residential school system as a form of genocide, reinforcing the severity of its legacy and aligning with analysis by the United Nations Special Rapporteur on the rights of Indigenous Peoples (Special Rapporteur on the rights of Indigenous Peoples, 2023).

The increased media attention surrounding residential schools continued in 2021 with the discovery of unmarked graves at former residential school sites, prompting both national and international discussions on the ongoing legacy of these institutions. This heightened media scrutiny pushed deeper public engagement, often driven by affective injustice an emotional response to perceived unfairness that motivates collective action. As Chon and Park argue, affective injustice is a key factor in social media activism, shaping how individuals engage with issues even when not directly impacted (Chon and Park 2020, 78). Social media platforms such as Twitter and Instagram have played a key role in amplifying Indigenous voices, facilitating public education, and mobilising advocacy for Indigenous rights. Hashtags such as #EveryChildMatters, central to Orange Shirt Day on 30 September, have been used to honour children affected by the residential school system. Following the discovery of unmarked graves at the former Kamloops Indian Residential School, in 2021, hashtags such as #KamloopsIndianResidentialSchool, #215children, and #kamloops215 gained widespread use, prompting conversations and expressions of solidarity across Canada and internationally.

The use of digital platforms has contributed to the dissemination of survivor narratives and the broader recognition of historical injustices. Hashtags have two purposes: (i) markers of online discourse; and (ii) tools for community-

building and mobilisation. As Zavattaro notes, digital activism enables individuals to engage with social justice issues in ways that can translate into offline action, reinforcing the connection between online engagement and tangible advocacy efforts (Zavattaro 2021, 286). Furthermore, this new platform, has provided an alternative public sphere where Indigenous activities challenge dominant narratives and assert what Brink terms as 'politics of visibility' (Brighenti, 2022). This visibility has forced public institutions and policymakers to acknowledge the historical and ongoing impacts of colonial policies, contributing to broader conversations about accountability and reconciliation.

However, while social media has allowed Indigenous communities to reclaim space in public discourse, it has also introduced new challenges. The democratisation of digital activism does not necessarily equate to equal access or sustained visibility. Indigenous activist and organisations can struggle to maintain an online presence due to limited resources and structural inequalities (Lupien 2020). Additionally, digital platforms expose Indigenous advocates to online harassment, misinformation, and attempts to undermine their narratives, reinforcing the marginalisation they seek to resist. The contested nature of social media discourse was exemplified in 2021 when *The Dorchester Review* posted an image of smiling residential school children with a caption implying that they were 'having an absolute blast', prompting widespread condemnation. Indigenous leader, Elder Taz Augustine, responded that such representations trivialised the lived experiences of survivors and fail to respect the memory of those who suffered under the residential school system (Chacon 2021).

## 3.2. The Digital Landscape of Indigenous Activism

Digital platforms have transformed the landscape of social movements, providing Indigenous communities a means to bypass traditional media gatekeepers and directly address issues of systemic injustice and colonial legacy. Idle No More, which began in 2012 as a response to Canadian legislative actions undermining Indigenous land rights, highlights how digital activism can draw attention to Indigenous rights (Richez et al. 2020, 1). Through hashtags like #IdleNoMore, the movement quickly gained momentum, with participants in Canada and globally using social media to share information, organise protests, and build a sense of solidarity. These digital campaigns allow Indigenous communities to amplify their voices, often silenced or marginalised in mainstream media, fostering a sense of shared recognition among diverse groups and allies (Intahchomphoo 2018, 85). In fact, these platforms provide an alternative avenue to educate the public and shape the

discourse around Indigenous rights, framing the issues in ways that resonate with a broad audience. More importantly, they challenge state-sanctioned narratives of Canadian history (Richez et al. 2020, 2). This visibility seems to be part of a broader decolonial movement that aims to resist and dismantle the colonial state's authority, positioning Indigenous identity as a foundation of political resistance rather than as a subset of Canadian identity politics (Mills 2017, 5).

However, while social media facilitates visibility and engagement, it does not necessarily lead to substantive policy change. While Idle No More's digital presence increased the salience of Indigenous issues within Canada's public discourse, it had limited impact on legislative outcomes (Richez et al. 2020, 5). This gap between awareness and action reflects the broader structural limitations of digital activism. Social movement theories such as political process theory fail to account for Indigenous resistance because they presuppose the legitimacy of the state – a state that Indigenous movements inherently question (Mills 2017, 8). This creates a fundamental misalignment: digital activism may engage public discourse, yet activism alone cannot dismantle the deeply embedded colonial structures that Indigenous movements seek to change. Thus, social media's power lies more in symbolic visibility than in political transformation. Consequently, despite the extensive online mobilisation, Idle No More has faced challenges in achieving policy concessions, suggesting that even though social media can shift narratives, translating this momentum into formal political change remains challenging within Canada's institutional framework. This finding aligns with the notion that digital movements often encounter barriers when seeking to move from the digital sphere into tangible policy shifts, especially within rigid political systems (Richez et al. 2020, 7).

One significant factor limiting the effectiveness of digital activism is the digital divide within Indigenous communities. While digital platforms facilitate information sharing, disparities in access – shaped by geography, socio-economic status, and technological infrastructure – continue to limit engagement, particularly in remote and rural areas (Intahchomphoo 2018, 87). In many Indigenous communities across Canada, unreliable internet access and the high cost of digital devices obstruct full participation in online advocacy. In fact, the limited availability of digital resources affects the consistency and scope of Indigenous activism on social media, creating a barrier that prevents certain populations from fully engaging with digital movements (Middleton, 2008). Moreover, this divide often necessitates reliance on external support or public institutions, such as libraries, for access to digital tools, further complicating the continuity and self-sufficiency of online activism.

Furthermore, the limitations of digital activism extend to the realm of cultural preservation. Even though social media campaigns can raise awareness of Indigenous issues, the underrepresentation of Indigenous languages and culturally relevant content on digital platforms present core challenges for advocacy that seeks to promote and sustain Indigenous identities (Intahchomphoo 2018, 95). The predominance of English, coupled with the absence of Indigenous-specific digital spaces, restricts the ways in which Indigenous communities can authentically represent themselves online (Crystal 2003; Pasch 2010). This limitation is particularly evident in the context of movements such as Idle No More, where the preservation of cultural identity is as central as the pursuit of political rights. Without digital infrastructure that adequately supports Indigenous languages and cultural practices, online spaces remain environments in which Indigenous activists must adapt to existing frameworks.

Despite these structural limitations, Indigenous activists continue to navigate and leverage digital tools to foster solidarity and build alliances. The strategic use of digital media has allowed Indigenous movements to cultivate support beyond Indigenous communities, increasing visibility and moral support from diverse social groups (Richez et al. 2020, 4). This broader alliance-building amplifies the movement's reach and integrates Indigenous concerns into the wider public discourse on social justice, where they intersect with environmental and human rights concerns. These developments underline the hybridity of contemporary social movements, where digital and offline activism blend to create a comprehensive approach to social change. However, this integration remains shaped by the practical and structural constraints that continue to affect Indigenous access, representation, and agency in digital spaces.

#### Conclusion

Although the Canadian Truth and Reconciliation Commission issued its final report in 2015, the UN Special Rapporteur on the rights of Indigenous Peoples has argued that the legacy of the Indian residential school system – particularly the fate of children who went missing and never returned – remained largely obscured from mainstream historical narratives until the 2021 discovery of 215 unmarked graves at the former Kamloops Residential School drew global attention (Special Rapporteur on the rights of Indigenous Peoples 2023a). This revelation underscores a broader concern regarding the effectiveness of legal responses to systemic human rights violations. Legal mechanisms do play a role in formal recognition and redress, yet

they often fail to generate the same level of public engagement, potentially limiting their impact on collective memory and societal acknowledgment of historical injustices. Furthermore, legal responses inherently presuppose the legitimacy of the state and its institutions, which presents particular challenges in contexts such as Canada, where the judiciary, government, and legislature were themselves complicit in the very harms they now seek to redress.

Digital spaces, particularly social media platforms, have emerged as crucial forums for confronting and addressing such violations. These platforms offer affected communities opportunities to engage in activism, build solidarity, and sustain public awareness beyond the temporal limitations of legal processes. In Canada, digital activism has played a particularly significant role in keeping the legacy of the residential school system within public discourse, ensuring that the issues remain visible even after formal mechanisms such as the Commission have concluded their work. However, this form of activism presents both opportunities and challenges. While digital media allows Indigenous activists to assert their own narratives and challenge dominant historical accounts, social media platforms remain embedded within Western, imperial epistemologies, potentially constraining their transformative potential in ways analogous to state legal systems.

Moreover, digital activism can generate what may be termed a 'paradox of progress'. While increased visibility of legal responses to historical injustices raises awareness of ongoing systemic issues, it simultaneously exposes the limitations of these mechanisms in achieving meaningful change. This paradox fosters both hope and frustration – hope in the growing recognition of Indigenous rights and histories, and frustration with the inertia of state responses.

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