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**An Evaluation of the Truth and Reconciliation  
Commission of Canada (TRC) through the Lens of  
Restorative Justice**

Konstantin Petoukhov, Department of Sociology,  
University of Manitoba

**Abstract**

As one of the strategies to assimilate Aboriginal people into Euro-Canadian society, the Indian residential school system was established in the 19<sup>th</sup> century. Its main goal was to teach Aboriginal children English or French and to provide them with the necessary education in order for them to become self-sufficient, successful individuals. Many Aboriginal children encountered abuse, neglect and racism when attending residential schools. In 2006, the Indian Residential School Settlement Agreement was created as a mechanism of redress for residential school experiences and consists of a government apology, monetary compensation payments, and the Indian Residential School TRC. Restorative justice – which operates on principles of restoring respect and dignity of victims, empowering victims, listening to their stories of how wrongdoings have affected them, and establishing an accurate record of past harms – may have the potential to address the abuse and neglect which occurred in residential schools. The goal of this paper is to examine the extent to which principles of restorative justice have been built into the design of Canada's TRC. The presence of restorative justice elements in the TRC may serve as one of the early indicators of the TRC's successes or failures in its long-term goals of healing of Aboriginal peoples and reconciliation of nations.

## **Introduction**

In the past, truth commissions have been established to address human rights violations and political violence, such as South Africa's apartheid and Chile's and Argentina's disappearances and mass murder (Hayner 2001). Truth commissions, which are non-judicial bodies that are created with the goal of resolving conflicts arising from historical injustices, have often been described as institutions of restorative justice (Minow 2000; Kiss 2000). Justice scholars such as Gibbs (2009) and Guest (1999a; 1999b), in turn, argue that restorative justice bears resemblance to traditional Aboriginal justice practices and presents a useful framework for conflict resolution for the historical injustices experienced by Aboriginal peoples. Although certain truth commissions appear to incorporate several restorative justice principles into their practices, closer assessment of the design and implementation of the Canadian TRC is required in order to ascertain whether or not it does, in fact, possesses the potential to deliver restorative justice to redress wrongs inflicted by residential schools. I begin by first considering restorative justice and its overlap with Aboriginal justice practices, followed by a discussion of "restorativeness" of the TRC's design and activities.

## **Restorative Justice**

Restorative justice scholars such as Johnstone and Van Ness (2007), Marshall (2003), and Pranis (2007) argue that there is no single, all-encompassing definition of restorative justice, but only an "eclectic accretion of cultures, practices and experiences" (Pawlychka 2010:4). However, there have been various attempts to create a working definition of restorative justice. Tony Marshall (2003:28), for example, argues that restorative justice is a "process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future." One method to conceptualize restorative justice is through a three-pronged definition of key restorative justice principles.

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First, restorative justice views a wrongdoing as a cause of harm that needs to be repaired. The second principle, in turn, relates to the admission of the responsibility by the offender and empowers the victim to express how the harm could be addressed. Thirdly, restorative justice seeks “to build and maintain peace” through healing and righting wrongs (Van Ness 2009). A second method of conceptualizing restorative justice that Strang and Braithwaite (2001) and Van Ness (2009) offer is rooted in the argument that restorative justice’s values and principles stand in opposition to those of retributive justice. More specifically, restorative justice employs non-punitive measures to resolve conflicts.

In addition to challenges associated with defining restorative justice, questions arise with respect to the degree that restorative justice does and does not resemble traditional Indigenous ways of doing justice. While not all Aboriginal justice practices are restorative, justice scholars such as Griffiths (1996) and Nielsen (1995) view restorative justice as a process that emerged from Aboriginal justice traditions. As Zion explains, for example, “[American] Indian law is based on healing” (2005:70; see also Sullivan and Tifft 2006). Ross (2006:12) argues that one of the points of overlap between restorative and Aboriginal justice values is that instead of punishing the wrongdoer, the focus is on “teaching and healing of all parties involved.” Sawatsky (2009), in turn, argues that Aboriginal justice has recently focused on restoring Aboriginal identities damaged through historical injustices such as assimilation. Some of the means of restoring Aboriginal identities are through decolonizing Western justice and healing Aboriginal communities (Smith 1999). Henderson and McCaslin (2005:5) explain that Aboriginal peoples have been attempting to move away from Eurocentric notions “about the good and the just,” such as conceptualizations of crime and how to address it.

Aboriginal justice practices, much like restorative justice, are mainly characterized by the participation of victims, offenders, community members, and a mediator, while the harm

is viewed as an injury done to a person by another person. Gibbs (2009:54) elaborates that one connection between Aboriginal and restorative justice paradigms is evident in the “recognition of the interdependence of victims, offenders and their communities.” Accordingly, the relationships between the offender, victim, and the community may be harmed as a result of the wrongdoing and rebuilding those relationships is crucial in the process of making the community whole again. Diane LeResche refers to this outlook on healing and restoration as “sacred justice,” which signifies the “way of handling disagreements that helps mend relationships and provides solutions. It deals with the underlying causes of the disagreement... *[S]acred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged*” (quoted in Ross 2006:27, emphasis original). While the victim’s needs guide the restorative processes, the perpetrator takes the responsibility for his or her behaviour and once the harm is repaired, the perpetrator is welcomed to rejoin the community.

Taking into account the overlap between restorative and Aboriginal justice practices, the former is not always the preferred mode of Aboriginal dispute resolution processes. As Nielsen (1992) and Milward (2008) argue, Aboriginal responses to wrongdoings range from banishment and exile to torture, which stand in opposition to restorative justice practices. As Cunneen points out, for example, certain Indigenous tribes in Australia employ methods of “sanctioning and punishment [that] may involve inflicting serious physical injury” (2007:126). Given this caveat, however, the reviewed literature suggests that Aboriginal peoples in Canada employ mainly non-retributive approaches to the dispute resolution, such as community-based strategies that have goals of restoring relationships between the victim, perpetrator, and the community members.

Based on a review of the literature on restorative justice and Aboriginal justice, at least six main themes have emerged. The remainder of this section focuses on the discussion of

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the key themes of restorative justice, which I have selected to include based on their overlap with Aboriginal justice practices and relevance to the work of truth commissions. Consequently, these themes form the basis for my analysis of the restorativeness of the Canadian TRC.

*Victim-centeredness*

Restorative justice scholars such as Llewellyn and Howse (1999), Roche (2006), Woolford (2009), and Zehr (1985) agree that restorative justice practices usually tend to have the goal of empowering victims by paying special attention to their needs. Restorative justice practitioners such as Robert Yazzie (2005) posit that in order to repair the damage inflicted by a wrongdoing, the needs of affected parties must be taken into consideration, and victims need to be provided with supports to address power imbalances during restorative encounters. Providing victims with a safe environment that includes the presence of supportive individuals such as victims' families, relatives, and friends, may help them share their experiences without feeling intimidated by the presence of the perpetrators.

*Inclusiveness and engagement*

Various definitions of restorative justice (see, for example, Braithwaite 2003) state that it is fundamentally inclusive and involves the participation and engagement of all the affected parties during restorative encounters. As Llewellyn (2002) argues, for example, restorative processes should "ensure that the individuals and institutions responsible for the abuse have an opportunity to participate in repairing the harm they caused" (p. 299). Inclusiveness is also said to be one of the key principles of many Aboriginal justice practices (Sawatsky 2009; Ross 2006). Restorative encounters, such as healing circles, also allow all parties to express the ways in which they have been affected by a wrongdoing.

*Participation and inclusion of all parties*

Restorative processes are inherently negotiated and agreed-upon phenomena in that the parties affected by a wrongdoing participate in charting the course of how justice is to be carried out for their specific case (Huculak 2005). More specifically, the goal is to come to the consensus, through a collective decision-making, on how to resolve an injustice (Zehr and Mika 1997). This negotiative quality can contribute to victim empowerment by giving them an opportunity to take control and ownership of the justice process. Therefore, in order to gain insight into negotiative quality, it is necessary to examine the extent of victim consultations, which typically take place prior to the commencement of restorative processes.

*Reparations for the harm done*

One of the key elements of restorative and Aboriginal justice practices includes encouraging perpetrators to take responsibility to repair the harm done by a wrongdoing (Yazzie, 2005). As Valandra (2005) suggests, in the process of righting the wrong, reparations must be borne by the perpetrator. By accepting responsibility for a wrongdoing, perpetrators acknowledge wrongs of the past, recognize their duty to repair the damage, and admit their guilt or complicity in the commission of the offence.

*Truth-seeking and overcoming the denial of injustice*

At its core, restorative justice is concerned with discovering the truth about the past (Zehr 2002). The healing power of truth told by victims and perpetrators, according to Hayner (2001), stems from the disclosure of narratives and facts about the injustice. Similarly, Llewellyn and Howse (1999) argue that truth-telling is closely tied to an admission of guilt by the wrongdoer, without which the restoration and reparation of the harm cannot occur. Truth told by perpetrators is an important component of restorative justice because it helps prevent vengeance on the part of victims and thus has been associated with long-term goals of fostering

peace and harmony. This, according to Joseph (2005:263), is linked to the recognition of injustices, reconciliation, and “reconstructi[on] of a society based on peaceful coexistence.”

### **The Canadian TRC and Restorative Justice**

Through treaty settlements reached with Aboriginal groups beginning in the 1800s, the government of Canada was invested with responsibility for the education of Aboriginal children. During the residential school era, 1830s to 1990s, First Nations, Métis, and Inuit children, along with their relatives and communities, suffered wrongs committed against them by the Canadian government and the churches. These wrongs include but are not limited to: widespread sexual, physical, emotional, and spiritual abuse; student-on-student abuse; the aggressive assimilation of Aboriginal children into Euro-Canadian culture; substandard living conditions at Indian residential schools; and neglect resulting in death and disease. Various mechanisms such as class action law-suits, the Alternative Dispute Resolution process, apologies and compensation packages by the government and churches have been introduced in attempts to redress residential school experiences. The heretofore lack of conflict resolution success demonstrates the complexity and seriousness of the legacy of residential schools, as well as the unsuitability of the previous processes to heal the resulting damage.

The Truth and Reconciliation Commission (TRC), which was established as a truth-seeking mechanism with the purpose of promoting reconciliation, therefore needs to be examined for its potential to address injustices which were committed during the residential school era. The TRC mandate states that through discovering the truth about the past, the TRC may help heal Survivors, communities, and future generations of Aboriginal people (TRC 2011). To fulfill its mandate, the TRC will host national and community events, which are intended to provide space for all those affected by residential school experiences to share their stories and to educate the broader public about the past. Upon completion of the TRC’s

mandate, the National Research Centre will be established to house Survivors' stories, which will be accessible to the public. Finally, the TRC is set to produce a report with recommendations to the Canadian government.

To begin the discussion about TRC's restorativeness, it is first useful to consider the extent to which it is a negotiated institution.

### **TRC as a Negotiated Institution**

This section discusses the ways in which parties affected by residential schooling had fair opportunities to participate in the negotiations that created the TRC. Applying this restorative justice philosophy to the TRC, it would seek to give voice to all those who have a stake in repairing the harm and "involve the parties concerned in designing the processes so that they reflect and meet their needs and circumstances" (Llewellyn 2008 193). Throughout this section, I maintain that Survivors are the primary stakeholders in the process of resolving residential school experiences. In my view, Survivors have the moral right to guide the process of reconciliation and that this process should be created on their terms. In other words, Survivors should be given the full control and ownership of how justice is to be carried out.

According to the IRSSA, parties to the Agreement include Survivors (as represented by the National Consortium and the Merchant Law Group), the federal government and its counsel, the churches, the Assembly of First Nations (AFN), Métis, and Inuit representatives. The TRC's mandate states that it was built upon principles developed by the Working Group on Truth and Reconciliation and the Exploratory Dialogues (1998-1999):

Accessible; victim-centered; confidentiality (if required by the former student); do no harm; health and safety of participants; representative; public/transparent; accountable; open and honourable process; comprehensive; inclusive, educational, holistic, just and fair;

respectful; voluntary; flexible; and forward looking in terms of rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-Aboriginal Canadians (TRC mandate, “Principles”).

The Working Group, which published a report titled *Healing and Reconciliation: Alternative Strategies for Dealing with Residential School Claims* (2000:v), conducted extensive consultation with Survivors, Aboriginal and non-Aboriginal governments, the churches, Aboriginal healers and leaders, and legal counsel. In this sense, the guidelines and principles that the Working Group developed, and upon which the TRC was later designed, are based upon a degree of dialogue between various parties about how to address residential school experiences.

In addition to the Working Group, the establishment and design of the TRC was influenced by the Canadian Bar Association’s (CBA) report *The Logical Next Step* (2005) and the AFN’s *Report on Canada’s Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools* (2004). The CBA’s report emphasizes the use of restorative justice principles in the TRC’s work, such as truth-telling, the acknowledgement of the harm done and the provision of reparations, and extensive consultations with Aboriginal leaders in establishing a truth and reconciliation process. Recommendations of the AFN report, in turn, are somewhat similar in substance to those of the CBA Report and underline the importance of developing a new system for monetary compensation payments for Survivors alongside “truth-telling, healing, and public education” (2005:3). The AFN Report, however, seems to incorporate more diverse perspectives than the CBA Report, and includes the work of experts such as university professors, judges, AFN representatives, Survivors, and lawyers, whereas the CBA Report includes predominantly legal perspectives. Overall, recommendations of both reports were used in designing the TRC and represented voices from a somewhat diverse cross-section of groups.

*Limitations of the TRC's negotiations*

Ellen<sup>1</sup> (expert on truth commissions and restorative justice) suggests that there are limitations with regards to participation of groups who were included in the process of negotiating the IRSSA and more specifically – the TRC (interview, 2011). Because the IRSSA is an agreement to settle the claims made by residential school Survivors, who were primarily First Nations, the negotiations “were largely not about day schools, not about Métis, not about Inuit, but about First Nations’ list of schools, [and therefore] lots of those folks [Métis and Inuit] weren’t at the table” when negotiations took place. For Ellen, the process of negotiations was also too government-controlled and too restricted in scope and, as a result, the TRC’s design was not fully restorative and not “reflective of the very principles that [the parties originally] wanted.” Furthermore, according to Ellen, the Settlement mediator, Frank Iacobucci, who was supposed to be a neutral party, was instead representing the interests of the federal government and failed to serve as an impartial mediator to the Agreement, which may have had a negative impact on the balance of power during the negotiations.

The negotiations have also failed to engage perpetrators of residential school abuses, despite the presence of high-level church and government officials at these negotiations. Therefore, there may still be denial of guilt among individual perpetrators, which runs contrary to the element of acknowledgement and admission of responsibility. This is an obstacle that the negotiations would not likely be able to overcome due to various factors. First, there may be fear of prosecution on the part of perpetrators, since they may not have been formally charged with a criminal offence prior to the TRC negotiations. Secondly, many perpetrators have passed away since the residential school system closed. Despite the above limitations, TRC negotiations make attempts to empower Survivors and to solicit input from Survivor

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<sup>1</sup> I have created aliases for the three interview participants with whom I spoke during the course of writing this paper. They are hereby referred to as Ellen, Monica, and Jane.

groups with regards to what the TRC's design should consist of, and therefore bear a degree of restorativeness.

### **TRC as an Inclusive Process**

Whereas the previous section considered establishment and negotiations of the TRC, this section examines TRC national and community events, through which it intends to carry out its mandate. TRC events have the goal of educating the Canadian public about residential schools and their impact on Aboriginal people. Jane (legal expert involved in negotiating the TRC), suggests that it creates opportunities for coming together and opens the space for “listening, learning, and recognitions [of the harm done]” (interview, 2010). However, she notes that there will be challenges in its work associated with engaging all parties, Aboriginal and non-Aboriginal alike.

#### *Inclusiveness of TRC events*

TRC events seek to include community members such as Survivors' relatives, friends, and the general public, including non-Aboriginal and new Canadian peoples. Monica (legal expert) emphasizes the importance of including the general public in TRC events: “awareness [among the general public serves as the best] defense against future violations [towards] marginalized groups” (interview, 2010). The impetus of public participation in TRC's processes also results from the inaction of the public, which allowed residential schools to continue for generations. Despite this fact, many Canadians do not perceive themselves to be perpetrators of wrongs committed against Aboriginal people. Taiaiake Alfred (2008), however, argues that all non-Aboriginal Canadians, old and new alike, have somehow benefitted from injustices inflicted on Aboriginal people during colonialism, which include the residential school era.

The TRC national event in Winnipeg in June 2010 attracted four church entities that were in charge of running residential schools. Church members participated in various ac-

tivities during the event, some of which include listening to Survivors' stories about residential school experiences, running Interfaith and Listening Tents that provide information to the public on current reconciliation efforts of churches in communities, and issuing apologies-on-request to Survivors (TRC National Event brochure). Thomas Novak of Roman Catholic dioceses in Manitoba says that the main role of the churches during the TRC national event "was [to] show up and show their support to the survivors," challenge racism and celebrate Aboriginal cultures (quoted in Suderman 2010). This goal seems to be in line with that of the federal government, which is to promote healing and reconciliation. It is unclear, however, whether the churches' definition of reconciliation is similar to those of the TRC and the federal government, since none of the three entities define it in their mandates (Standing Senate Committee on Aboriginal Peoples 2010). For the churches, the meaning of reconciliation seems to be synonymous with forgiveness – something for which many Survivors are not ready (Smith 2010).

The harm done by residential schools is unique because perpetrators include not only government and church staff, but also students who inflicted abuse on other students. This is often referred to as "student-on-student abuse" (AFN 2004). The AFN argues that the government should take responsibility for this type of abuse because the residential schools promoted conditions of neglect that made possible "the creation of violent and sexualized environments at [the schools that] materially and foreseeably increased the risk of abuse of the students in its care" (*ibid*: 27). However, even though the IRSSA implemented the AFN's recommendation to recognize the issue of student-on-student abuse and to consider them eligible to apply for monetary compensation, Murray Sinclair explains in a CJOB (2010) interview that "'student on student abuse' went unspoken during the deliberations behind the negotiations that led to [the IRSSA]," and therefore excluded student perpetrators from the TRC mandate (see also INAC 2010).

Despite the initial exclusion of student perpetrators, Sinclair urges these individuals to participate in TRC events, because “many [Survivors] have to live near their abusers in small communities. [...] Some alleged abusers [former students] are elders, work for band councils, are community leaders or even family members” (Puxley 2009). For student abusers to keep silent about the past would likely “*perpetuate* the inter-family antagonisms that plague community politics, hiring, education, welfare, housing – and healing” (Ross 2008:6, original emphasis). However, given the dual role of these students as both victims and perpetrators of residential school abuse and neglect, it is unclear how the TRC intends to address this dilemma.

#### *Challenges to the inclusiveness of TRC events*

One of the obstacles to the public and Survivor participation in TRC events is limited knowledge and awareness about the existence of the TRC. The Environics Research Group’s National Benchmark Survey (2008:ii) shows that only one in five Aboriginal people in Canada is likely to be aware of the TRC. Figures seem to be identical for non-Aboriginal people’s level of awareness about the TRC. What is alarming about these limited levels of awareness is that they point to the potential to generate relatively low levels of participation of individuals who lack knowledge of the TRC. In contrast, a relatively high proportion (over 80%) of Survivors seem to be aware of the Common Experience Payment, for which the TRC is intended to provide a “context and meaning” (TRC Mandate). The lack of participation in TRC processes may lead to a lack of understanding about monetary compensation for residential school experiences. To overcome this challenge, the TRC would need to promote public knowledge about the importance of the TRC. High participation rates of the broader Canadian public serve both as an essential component and an indicator of the TRC’s success: “there has to be a huge buy-in and the TRC is the framework that would allow for that” (Ellen interview, 2011).

One of the serious issues with regards to the inclusion, or more correctly, exclusion, of Survivors is the federal government's reluctance to recognize experiences of Survivors who attended certain residential and federal day schools which did not meet the criteria outlined in the IRSSA. In order to be considered an eligible school, it must meet the following criteria: children attending the school must have been removed from their community and the government must have been "jointly or solely responsible for the operation of the residence and care of the children resident there" (INAC 2010:7). These criteria ignore experiences of many First Nation, Métis, and Inuit children, who suffered abuse and neglect in non-recognized government- and church-run educational institutions (Standing Senate Committee on Aboriginal Peoples 2010). Chartrand et al. (2006:16) argue that the abuse, neglect, and assimilation experienced by Métis children "did not differ materially from those suffered by Indian or Inuit students" and even though Inuit children attended day schools (as opposed to off-reserve boarding schools), they often suffered conditions similar to those existing in government-recognized residential schools.

The issue of Survivor logistics initially came up before the first national event was set to take place in Winnipeg in June 2010. Many Survivors are too old to travel great distances to tell their stories at TRC events. Others indicated that they "[did not] have the means to participate due to costs associated with transportation and accommodations" (CBC 2010a). Furthermore, many Aboriginal communities are accessible only by air and winter roads, and as a result, Survivors residing there were unable to make the trip to Winnipeg. The TRC was able to provide only limited funding for Survivors to cover costs associated with travel and even though band councils, the churches, the general public, bus companies and airlines, and local school board combined their efforts in assisting Survivors with travel arrangements, these efforts made possible the accommodation of only a small fraction of Survivors.

*Exclusion of perpetrators from TRC events*

Llewellyn (2008:197) warns that the TRC will inevitably encounter challenges with respect to including “individual and institutional wrongdoers.” More specifically, the voluntary nature of participation in TRC’s processes results in an unavoidable obstacle to the TRC’s work. This obstacle is represented by the legal framework under which the TRC operates. The TRC is limited by institutions such as the Canadian criminal justice system, which discourages perpetrator participation by threat of punishment. As a result, TRC national events encourage participation of only “high level government and church officials,” and exclude ordinary workers and residential school staff (TRC Mandate).

The community events, on the other hand, are more flexible and encourage the involvement of “church, former school employees and government officials in the reconciliation process,” but even in this case the language in the TRC mandate falls short of encouraging participation of perpetrators. At this point, it is not known how well the community events are attended by former staff, but in his letter to Presbyterian Church of Canada, dated January 27, 2011, Murray Sinclair writes to encourage “former residential school staff to share their memories with the TRC.” The issue with the participation of former staff is that they may not fully understand that the TRC is not a public inquiry, nor does it serve to determine guilt.

**Victim-Centredness and Empowerment in the TRC’s Context**

Victims’ empowerment, according to Braithwaite (2003:87), is “especially important [in the cases] where the victim suffers structurally systematic domination,” and may lead to a greater degree of control by Survivors over justice processes. In the case of Indian residential schools, Survivors have been disadvantaged and disempowered through colonial domination and perpetrators have maintained unequal power relations between the Canadian government and Aboriginal peoples. Empowerment in the context of restorative justice

could also be understood in another, more macro sense. According to Shearing (2001), it could mean investing communities with the responsibility to resolve injustices. However, one must be cautious of the rhetoric of “empowerment,” because it does not always work to serve to better communities. More specifically, empowerment sometimes entails neo-liberal notions of “responsibilization without resources,” which does not necessarily produce positive change (Shearing 2001:32).

#### *Individual empowerment*

To assess the ability of the TRC to empower Survivors, I examine TRC’s Commissioners’ Sharing Circles, which took place during the TRC national event in Winnipeg and focus on the TRC, and were designed to provide Survivors with opportunities to express their accounts of residential school experiences. These Circles are chaired by a mediator, usually a commissioner, who facilitates the process of truth-telling by Survivors. During the Winnipeg event, Survivor empowerment was evident in the presence of support systems, which included Survivor families and friends, and also fellow Survivors who were able to attend the event. In my observations of the event, the space created for Survivors seemed respectful and supportive, and allowed for the emotional expression and release of Survivors’ negative feelings and memories.

Many Survivors became distressed during and after their stories. To alleviate their negative emotions, health supports and counseling, provided by Health Canada’s First Nations and Inuit Health Branch and led by the Indian Residential Schools Resolution Health Support Program, was readily available at the event and Sharing Circles in particular (NNAPF 2010). The goal of support workers and counselors, many of whom “are employed in aboriginal communities where they work with residential school survivors,” was to attend to Survivors who were experiencing difficulties (CBC News 2010a). At the same time, the TRC made attempts to ensure that Sharing Circles were designed to serve Surviv-

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ors as a “culturally appropriate setting to provide statement[s] of their IRS experiences” (NationTalk 2010). Sharing Circles began with opening ceremonies led by an Elder and “traditional spiritual supports such as smudge, eagle feathers and water that had been blessed with prayers were also offered to [Survivors]” (Sison 2010). As well, dreamcatchers were hung from the tent’s ceilings and a sacred fire was lit for the duration of the national event with the purpose of providing Survivors with a comforting setting.

*Community empowerment*

TRC events comprise only part of the trauma that Indian residential school Survivors go through in telling their stories and re-experiencing the past. Because Sharing Circles and private statement-taking are emotionally demanding processes, they may serve to exacerbate residential school trauma and produce negative mental health consequences when Survivors return to their communities after disclosing accounts of residential school experiences. In fact, it is in their everyday lives that Survivors are constantly haunted by the memories of residential school abuse and neglect. Therefore, community empowerment strategies are necessary for Survivors to deal with residential school trauma, regardless of whether they participate in TRC events.

The Aboriginal Healing Foundation (AHF), which was established in 1998 with a \$350 million grant and the purpose of creating “Aboriginal directed healing initiatives which address the legacy of physical and sexual abuse suffered in Canada’s Indian Residential School System, including inter-generational impacts” (AHF FAQs). The AHF received additional funding of \$125 million through the IRSSA, which was intended to last until 2012. Mike DeGagné, AHF’s executive director, argues that the AHF is a unique response to residential school abuse because the affected individuals “are dealt with best by community-based healing services like the ones we’re offering” (CBC 2009). Many Survivors acknowledge the help of the AHF and “the supports provided by the funding

will be even more important as they start to tell their emotional stories at the TRC” (*ibid*). Because the federal government chose not to renew AHF funding, this will inevitably bring an end to the many of the programs that the AHF offered. Survivors and Aboriginal leaders, along with the TRC staff, express discontent and concern about the abrupt end of AHF funding. Survivor Ben Pratt is “facing the prospect of testifying before the commission without support of the AHF” and points to the importance of Survivor testimonies in a CBC interview: “There is a lot of fear in [telling my story, but] … The more I talk about it, the better I feel inside” (CBC 2010b). Allowing the AHF to run at least until the TRC completes its work would provide Survivors with critical resources while facing their difficult past. Upon termination of AHF funding, Health Canada is charged with the responsibility to provide support to Survivors in their communities.

Although Health Canada has been given the responsibility to take over some of the AHF’s programs, Charlene Belleau, manager of the Indian residential schools unit of the AFN, argues that “[The Health Canada plan is] a government-driven process where they determine the criteria” (Pemberton 2010). NDP Aboriginal Affairs Critic, Jane Crowder, argues that First Nations, Inuit and Métis leaders expressed concern that the government, who was complicit in perpetrating residential school abuse, is now in charge of disbursing healing money and that “[the leaders] cannot accept that government will now be in charge of deciding when and where healing should happen” (Crowder 2010).

The shifting of the responsibility for healing the legacy of residential schools from the AHF to Health Canada reflects concerns of Shearing (2001) regarding the responsibilization of communities to repair the harm, while lacking adequate resources. Even though during TRC events Survivors are often able to obtain support, such as spiritual services and counseling, while sharing their memories and experiences, this support is often unavailable in their home communities after TRC events are concluded, leaving Survivors to deal

with consequences of truth-telling on their own. The withdrawal of AHF funds, combined with the increase in communities' responsibility for healing residential school trauma, works to disempower communities and leaves them vulnerable to dysfunctions resulting from residential schools. More specifically, the lack of resources creates dangerous conditions that could re-victimize Survivors through continuing trauma and denial of support services that would help Survivors heal.

### **TRC and Truth-Seeking**

One of the elements that the TRC consistently emphasizes is the need to discover the truth about the past. Its mandate refers to the healing power of truth and its importance in overcoming the denial of residential school harms. Telling stories may help create spaces in which these stories are not only heard, but are also understood (Ellen interview, 2011).

Survivors' opportunities for truth-sharing in the TRC occur mainly during the national and community events. The TRC emphasizes that both public and private disclosure of truth are equally important in creating an accurate representation of Canada's history and to educate the broader Canadian public about residential school abuse and neglect. Many Survivors agree that TRC events "give [them] a voice, an opportunity to be heard," and a space for respectful listening and uncovering years of abuse faced in residential schools (Survivor, TRC Sharing Circles June 17, 2010). Ed Martin, one of the Survivors who attended a residential school for nine years, explains that his experience during the TRC community event was very positive. He was able to tell stories about his time in the residential school to all who attended the event without the fear of being punished or hiding his feelings. To him, truth-telling carries healing power and, as he says, "it's better [to tell the truth] than having that hang over us and pains in the morning and better than all that anger and hatred you have there" (Cilliers 2009). Through sharing their stories, Survivors such as Judy Bayha note that they

come to understand many of their current troubles, such as the lack of parenting skills and rampant family violence, as results of residential school experiences, as opposed to individual failure (May 2010).

Another method through which the TRC is attempting to document the abuse and neglect is by obtaining church records. According to John Milloy, this has, so far, proved to be a challenging task for the TRC. One of the reasons why the churches have been slow and reluctant in disclosing their records is because the records are protected by privacy legislation. If disclosed, church records may incriminate individuals who perpetrated abuses in residential schools, but have not been criminally charged, as Catholic Church's lawyer Pierre Baribeau argues. The churches' unwillingness to disclose records presents an obstacle to truth-seeking and contributes to the denial of their culpability in residential school injustices. The Roman Catholic Church has been the most uncooperative of all churches in releasing its records, which, it states, is due to its fear of being extensively sued over new evidence of abuse and neglect. The United Church, on the other hand, is more concerned about the reputation of brothers and sisters who live in the community than about widespread lawsuits. However, entities such as the Presbyterian and Anglican churches have been, for the most part, cooperative in providing the TRC with access to their records (Curry 2010).

#### *Perpetrators' acknowledgement of wrongful acts*

In the context of residential schools, one of the ways through which perpetrators can aid the restoration of Survivors' self-respect and dignity is by acknowledging the harm done. This would involve the perpetrators of abuse telling the truth about the past and admitting their role in carrying out abusive acts. During Sharing Circles at the TRC national event in Winnipeg, Survivors expressed the desire to hear truth from the perpetrators. Also, Survivors wanted the perpetrators to hear Survivors' stories and how they felt after they have been abused. This, however, was impossible to achieve

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because the perpetrators were not included in TRC events and the admission of criminal acts would have resulted in their being criminally charged. According to Emma Paris, without perpetrators, truth-telling by victims resembles a “group therapy session, [where victims are] telling stories to each other” (Baute 2010). This poses a serious challenge to the prospects of acknowledging the past and bringing justice, healing, and closure to Survivors.

*Challenges for truth-telling*

In their paper, Corntassel et al. (2009) argue that Indigenous methodologies of truth-telling in the context of the TRC are missing. The TRC, in their view, is allowing Survivors to tell only part of the story, which includes only their residential school experiences and the ways in which they have been affected by residential schools. In doing so, the TRC runs the risk of

Framing these questions in a narrow way that doesn't fully appreciate the ongoing impacts of residential schools on communities, families and individuals and the lived experiences of resilience and resurgence that need to be shared with intergenerational survivors and other Indigenous peoples (ibid: 140)

The TRC, in their view, is too reconciliation-driven and is too state-controlled to permit a thorough understanding of the continuing legacy of residential schools. Reconciliation is not an Indigenous term, they argue, and the rhetoric of reconciliation has been imposed upon Aboriginal people through asymmetrical power relations. The process of reconciliation in this sense is dangerous because it overemphasizes closure and coerces individuals to move on and forget, an outcome for which many Survivors and their families are not ready.

One of TRC's limitations relates to the inability of Survivors to share their experiences in the English language or their refusal to translate them into English, which led to at least two problems with truth-telling. First, there was an apparent

expectation that Survivors would speak English while telling their stories to all those gathered in a Sharing Circle. This expectation impedes decolonization of Survivors' experiences, because truth-telling in this respect would be in the language of colonizers. Secondly, a large part of the audience, while listening respectfully to Survivors' stories, was unable to understand the meaning of their experiences, except for the universal meaning of tears streaming down these Survivors' faces. No translators were available to interpret stories and some Survivors expressed their discontent with this, for their stories seemed to continue to be locked away behind the language barrier. To complicate the issue of language, Survivors were given a time limit at Sharing Circles, usually ten minutes, though many Survivors refused to comply with this rule.<sup>2</sup>

A serious challenge to truth-telling is the inability of the TRC to allow Survivors to name perpetrators during its truth-telling opportunities. This is caused mainly by privacy legislation that limits the TRC's scope. The TRC came under heavy criticism from both Survivors and Aboriginal leaders for disallowing Survivors to identify perpetrators during Sharing Circles. According to the TRC, Survivors are allowed to identify the perpetrators by name only in private statement taking sessions, but their names will not be made public (CBC 2010c). This places constraints on "the ways and extent to which Indigenous peoples can make their stories heard" (Henderson and Wakeham 2009:12). Prior to TRC events, Survivors are "trained" and briefed on the types of truth that are acceptable for public disclosure, which excludes perpetrators' names. Without naming names, many Survivors are unable to tell complete stories of abuse and direct anger toward abusers and release their pain. As a result, perpetrators are rendered invisible and this makes it seem as though Survivors are telling stories about unknown, faceless individuals. To counter this limitation of the TRC, some Survivors in Sharing Circles chose to name names despite having

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<sup>2</sup> No time limit was imposed on Survivors' stories during private statement-taking sessions.

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been instructed against it. Other Survivors, such as Peter Yellowquill, former chief of Long Plain First Nation, and Chantelle Devillier, protested during the TRC national event in Winnipeg and accused the TRC of censorship.

#### **TRC and Symbolic Reparations<sup>3</sup>**

Truth commissions are often able to make recommendations to provide reparations to victims of human rights violations. These may include monetary compensation, such as direct payments to the victims and returning confiscated possessions. Reparations may also come in the form of symbolic acts, such as apologies, reburials, commemorative activities, and memorials for those who have perished. Symbolic reparations are most often coupled with monetary compensation, as demonstrated in the cases of South Africa and Chile. In terms of reparations, the Canadian context is unique because the material compensation measures were negotiated through the IRSSA and separately from the TRC. On the other hand, symbolic reparations, such as commemoration initiatives, are the TRC's responsibility.

#### *TRC and commemoration initiatives*

One of the mechanisms through which the TRC is designed to provide symbolic reparations to Survivors is outlined in Commemoration Policy Directive of the IRSSA. According to this directive, commemoration activities must have the goals of:

Honouring, educating, remembering, memorializing and/or paying tribute to residential school former students, their families and their communities, and acknowledging their experiences and the broad and systemic impacts of the residential school system. Commemoration may involve the creation of, or improve-

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<sup>3</sup> In June 2010, the Government of Canada released a statement that promised to repeal sections 114-122 of the Indian Act, which allowed government agents to remove Aboriginal children from their communities and place them in residential schools. Although the removal of these sections of the Indian Act could be considered a form of symbolic reparations, it is unclear when, if ever, these sections will be repealed.

ments to existing, permanent memorials and commemorative structures, or ceremonies or other projects.

The IRSSA allocates \$20 million to commemoration activities, and the TRC is charged with the responsibility of reviewing commemoration research proposals and administering funding to the successful applicants. According to the TRC's *Commemoration Initiative Call for Proposals Guide*, commemoration processes are Survivor-driven and are based around Survivors' needs, thereby ensuring that their needs are represented in commemoration activities. The TRC is designed to accommodate three types of commemorative activities: (a) *Lasting Legacies Initiative*, which includes permanent physical structures such as "monuments, plaques, cairns, and traditional structures;" (b) *One Time Events*, which are designed to acknowledge students who passed away and to bring closure to their families, and may include activities such as "banquets, memorials, talking circles, potlatches, and pow-wows"; and (c) *Cultural Components*, which are intended to revive and maintain Aboriginal cultures and languages.

One of the initiatives that the TRC is undertaking that could be considered a symbolic action seeking to repair the harm is the *Missing Children* research project, which is based upon the Missing Children and Unmarked Burial Working Group's (2007/2008) recommendations and is intended to locate the records of children who died or disappeared while attending residential schools. The *Missing Children* research initiative is comprised of "representatives from major national Aboriginal organizations, a national organization representing former students of Indian Residential Schools, the churches, and the federal government" (MCUBWG 2008:3). It was created in response to the needs of Survivors and their families to learn about what happened to the missing children. The initiative may help bring closure and certainty, as well as promote "the healing and the psychological well-being of families of children" (CBC 2010d).

One of the problems that the *Missing Children* project faces is access to information. Because religious entities such as the

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Catholic and United Churches are reluctant to release student records, this may impede the search for missing children. Milloy also argues that another complication in carrying out this project is that the records held by the churches are incomplete, which will make it impossible to compile the complete list of graves. Another challenge for the *Missing Children* project is time and resources. Unlike the *Commemoration Initiative*, it is financed by the already-strained \$60 million TRC budget, and the costs associated with it were estimated to be millions of dollars. In addition, the project is likely to take a significant amount of time to complete and could stretch beyond the TRC's mandate. If the TRC fails to locate the missing children within five years, until 2014, there is a possibility that they will never be found.

### **Conclusion**

This paper assessed the restorative potential of the TRC in the early stages of its work, with much of it still lying ahead. Overall, TRC's design and processes incorporate a number of restorative justice elements to varying degrees of success. Based on the restorative justice framework employed in this paper, I conclude that the TRC does not closely approximate the restorative justice ideal. Despite demonstrating many restorative justice values, principles, and practices, it falls short of being fully restorative. In order to increase its restorative potential, the TRC must be able to overcome multiple challenges in its work, including limitations imposed by the exterior legislative framework, namely privacy and criminal justice legislation. Also, the success of the TRC greatly depends on the general public's willingness to take part in the journey with Aboriginal people on the path of healing and coming to terms with past injustices, while looking to the future and renewing relationships based on mutual respect and recognition. As Ellen notes, TRC's success, to a great degree, will depend on the government's willingness to follow the TRC's recommendations and the public's desire to learn about, understand, and accept the truth about the past (interview, 2011).

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