

SYMPOSIUM ON WHAT CAN INTERNATIONAL LAW REPAIR?

A CANADIAN EXPERIENCE OF REPARATIONS: INDIAN RESIDENTIAL SCHOOL SETTLEMENTS

*Tamara Thermitus**

Introduction

My parents, immigrants from Haiti, settled in Canada. I grew up in Sept-Îles, a town with an Indigenous community. We were the first Black family to put down roots there. One day, Steve, an Indigenous friend, invited me to his home, a brand-new house on the reserve.¹ I was shocked. The walls were covered with graffiti of despair, “red sacrifice,” and “black mourning.” As an Indigenous person assigned a house by the Federal Government, it “was living in prison.” For Steve, an Indian residential school (IRS) survivor’s descendant, it was the symbol of the “civilizing” society that wiped out his Indigenous values and culture, eradicating the foundation of his identity. The graffiti was a form of resistance.

Steve taught me a lesson: how the impacts of the IRS policy, rooted in colonialism, systemic racism, and violence, derailed Indigenous people’s destinies. This history of oppression of Indigenous peoples is mainly unknown. As a settler state, the Canadian government implemented policies designed to take control of Indigenous lands and eradicate Indigenous identity and culture. The Indian Residential Schools were designed to assimilate Indigenous peoples by eradicating their culture.

In 2005, on behalf of the government of Canada, I led the team that negotiated the terms of Canada’s Truth and Reconciliation Commission. This experience allowed me to be part of a historic settlement recognizing historical injustices² faced by Indigenous peoples like Steve. In this essay, I will explore how legal principles, such as international law, can inform national settlement aims aimed at healing and reconstructing national relationships with Indigenous peoples.

The Factual Context

Power, control, and isolation were key to the colonization of Indigenous peoples. In the nineteenth century, the Canadian government crafted a policy to educate Indigenous children. Religious entities³ were responsible for its implementation. This policy was the cause of the loss of Indigenous language, culture, and spirituality.⁴

** Lawyer Emeritus and Boulton Senior Fellow, McGill Law (2023–2025), she was the chief negotiator for the Truth and Reconciliation Commission’s mandate, Montreal, Canada.*

¹ Indian Act, R.S.C., 1985, c. I, Art. 38.

² Dire Tladi, Jus Cogens, and Reparations: *Can We Just End the Separation?*, 119 AJIL — (forthcoming 2025).

³ The Roman Catholic Church, the Anglican Church, the United Church, and the Presbyterian Church.

⁴ Government of Canada Press Release, [Prime Minister Harper Offers Full Apology on Behalf of Canadians for the Indian Residential Schools System](#) (June 11, 2008).

In 1883, Prime Minister John A. McDonald presented the IRS policy:

When the school is on the reserve, the child lives with its parents, who are savages [T]he Indian children should be withdrawn as much as possible from parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.⁵

According to Duncan Campbell Scott, deputy superintendent of the Department of Indian Affairs (1913–1932), the policy was “a final solution to our Indian Problem.”⁶ In those institutions, Indigenous children were subject to physical, sexual, psychological, and spiritual abuse. The legacy of this colonial experiment extended beyond individual survivors, and intergenerational dysfunctions affected the family and inflicted long-term harm on Indigenous communities.⁷ The Supreme Court’s chief justice, Beverley McLachlin, characterized the effect of the IRS policy as a “cultural genocide.”⁸

Government Responses to the Legacy of the IRS

In 1990, the grand chief of the Assembly of Manitoba, Phil Fontaine, was a whistleblower about IRS abuses. During an interview on national television, he revealed that his experience of abuse arguably changed the course of history.⁹ After his testimony, IRS survivors brought numerous class actions against Canada and religious entities that ran the schools.

The government’s initial response was designed to address the issues raised in the Royal Commission Report on Aboriginal Peoples¹⁰ and foster reconciliation as recommended in the Statement of Reconciliation.¹¹ The programmatic approach focused on monetary compensation on a case-by-case basis and had traumatic effects on the IRS survivors.

In the Report on Canada’s Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools (Report),¹² the Assembly of First Nations’ (AFN) legal team exposed the injustice suffered by the survivors and their communities. They highlighted that the government response gave little or no credibility to the survivors; it ignored the deeper and structural discrimination, disregarding Indigenous knowledge in favor of Western knowledge, an example of epistemic violence.¹³ Further, the IRS experience invalidated and deprived the Indigenous peoples of their experiential knowledge. This loss had consequences beyond material—the loss of Indigenous knowledge impacts the ability of Indigenous peoples to make sense of their lives.

⁵ [Prime Minister John A. McDonald’s 1883 Declaration](#), Canada, House of Commons Debate, 1107–08 (May 9, 1883).

⁶ ANDREW STOBO SNIDERMAN & DOUGLAS SANDERSON, [VALLEY OF THE BIRDTAIL: AN INDIAN RESERVE, A WHITE TOWN, AND THE ROAD TO RECONCILIATION](#) 37 (2022).

⁷ Reakeeta Smallwood, Cindy Woods, Tamara Power & Kim Usher, *Understanding the Impact of Historical Trauma Due to Colonization on the Health and Well-Being of Indigenous Young Peoples: A Systematic Scoping Review*, 32 J. TRANSCULTURAL NURSING 59 (2021).

⁸ Sean Fine, *Chief Justice, Says Canada Attempted “Cultural Genocide” on Aboriginals*, GLOBE & MAIL (May 28, 2015).

⁹ *Chief Phil Fontaine’s 1990 Account of Physical and Sexual Abuse at Residential School*, CBC (Oct. 30, 1990).

¹⁰ Government of Canada, [Report of the Royal Commission on Aboriginal Peoples](#), Vols. 1–5 (1996).

¹¹ *Statement of Reconciliation: Learning from the Past* (Jan. 16, 1998).

¹² Assembly of First Nations, [Report on Canada’s Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools](#) (2004).

¹³ MIRANDA FRICKER, [EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING](#) 1 (2007).

Stressing the urgency to tackle this complex legacy rooted in racism and colonialism, the AFN rejected the government's response. Ignoring Indigenous voices was not neutral; it led notably to democratic exclusion.

The voices of survivors must be heard. Sharing their experiences was an act of resistance that invigorated social change.¹⁴ Moreover, in the process, survivors reaffirm themselves as agents. Justice would no longer be left in the hands of politicians, civil servants, lawyers, or judges who had little, if any, understanding of the damages that stemmed from IRS policies based on white supremacy and systemic racism.

The vision of the AFN was detailed in the Report, which explained "how the government's approach was discriminatory, sexist, under-inclusive, devoid of Indigenous legal traditions and cultural awareness." The settlement should be rooted in the Gathering Strength Dialogue Principles¹⁵ reflecting Indigenous values.¹⁶ It should: (1) be inclusive, fair, accessible, and transparent; (2) offer a holistic and compressive responsibility recognizing and addressing all the harms resulting from IRS; (3) respect human dignity and racial and gender equality; (4) contribute toward healing and reconciliation; and (5) do no harm to survivors and families. As a consequence of this pushback from the AFN, a consultation process was set up.¹⁷

The IRS Settlement Agreement Considered Numerous Pluralistic Legal Approaches to Alleviate Epistemic Injustice.

Several principles from the Supreme Court of Canada's decisions on Indigenous law formed the foundation of the policy framework known as the "7 Rs." The 7Rs were the *Recognition* of the historic place of Indigenous peoples and the *Respect* for the Indigenous peoples' distinct constitutional status,¹⁸ *Redress* for historical wrongs, *Responsiveness* as the duty to consult,¹⁹ *Representation* to remedy their overrepresentation in the criminal justice system,²⁰ *Reconciliation* as an underlying dynamic process, and, ultimately, the *Renewal* of an egalitarian relationship based on those six principles.

Tort law seeks compensation for physical and specific psychological harm. As courts are not designed to address broken social relationships, the IRS experience needed an alternative form of justice to tackle systemic violations. IRS survivors suffered extensive human rights violations recognized by international conventions.²¹ Theodoor van Boven's Study concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms²² was one of the key elements used as a foundation for negotiating the settlement.

¹⁴ Patricia Monture, *Confronting Power, Aboriginal Women, and Justice Reform*, 25 CANADIAN WOMAN STUD. 25 (2006).

¹⁵ Government of Canada, *Gathering Strength: Canada's Aboriginal Action Plan* (2005).

¹⁶ Kathleen Mahoney, *The Untold Story: How Indigenous Legal Principles Informed the Largest Settlement in Canadian Legal History*, 69 U. NEW BRUNSWICK L.J. 198 (2018).

¹⁷ Marie-Louise Fehun Aren, *Advancing Legal Recognition and Community-Led Reparations for Indigenous Rights in Combating Climate Change and Environmental Degradation*, 119 AJIL UNBOUND ____ (forthcoming 2025).

¹⁸ *Constitution Act*, Sec. 35 (1982); see also Government of Canada, *INAN, Section 35 of the Constitution Act (1982), Background* (Jan. 28, 2021).

¹⁹ *Taku River Tlingit First Nation v. British Columbia* [2004] 3 S.C.R. 550; *Haida Nation v. British Columbia* [2004] 3 S.C.R. 511, 2004 SCC 73; see also Fehun Aren, *supra* note 17.

²⁰ Scott Clark, *Overrepresentation of Indigenous Peoples in the Canadian Criminal Justice System: Causes and Responses*, DEP'T JUST. CAN. (2019).

²¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, Mar. 7, 1966, 660 UNTS 195; *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 UNTS 3.

²² Theodoor C. Boven, *Study Concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, UN Doc. E/CN.4/Sub.2/1993/8 (July 2, 1993). This study laid the foundation for the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law.

In addition, *Critical Race Theory*²³ informed the settlement approach and required that IRS legacy should be unpacked.²⁴ Understanding the historical context is central to analyzing the relationship between race, power, and privilege. *Critical Race Theory* questions the law that devalues historical groups and interrogates its presumed objectivity and neutrality. *Critical Race Theory* and *Tribal Critical Theory* emphasize the necessity for systemic change.²⁵ Specifically, *Tribal Critical Theory* focuses on confronting the lingering effect of colonization within society. To transform the colonial relationship, it is fundamental to hear the voices of Indigenous peoples. Furthermore, since Indigenous women were victims of the IRS system, an intersectional approach was essential, as developed in *Indigenous Feminist Legal Theory*.²⁶

As the Royal Commission on Aboriginal Peoples stated: “Just as social problems spring in part from collective experience, so solutions require change at the collective level. Aboriginal people acting alone cannot shift the weight of disadvantage and discrimination.”²⁷ Indigenous and non-Indigenous people must collaborate to build a new partnership. The AFN “reached out to thousands of survivors, elders, and intergenerational survivors to ascertain what they wanted from the process and under what terms.” Addressing the needs of victims was central to the pursuit of justice. Offenders must acknowledge the harm they have caused and make amends. Through accountability and reparation, the perpetrators were offered an opportunity to renew their relationship with the survivors and Indigenous peoples. The *Truth and Reconciliation Commission* is the primary avenue to achieve that objective.

Elders, as gatekeepers of Indigenous wisdom, knowledge, and history, played a crucial role in developing the settlement and its acceptance by their nations. By sharing their vision of reparative justice in an Indigenous context, the elders’ voices were pivotal to achieving a settlement that would lead to reconciliation.

*Terms of the 2015 IRS Settlement Agreement*²⁸

The landmark IRS settlement agreement²⁹ serves as an authoritative legal approach to redress colonialism and address the ongoing impacts of racism on Western societies. Its conceptualization of reparations focuses on “the undoing of colonial relations, modes of domination and patterns of distribution that still structure global relations.”³⁰ By recognizing the need for an in-depth understanding of the epistemic injustices suffered by Indigenous peoples, it lays the groundwork for a comprehensive strategy that paves the way for reconciliation.

The IRS settlement comprises multiple components designed to address the multiple harms. “Compensation is ordinarily a central component of the right to an effective remedy,”³¹ it took the form of a fund to provide a

²³ Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction* (1st ed. 2001); Victor Ray, *On Critical Race Theory: Why It Matters and Why You Should Care* (2022); see also E. Tendayi Achiume, *Race, Reparations, and International Law*, 119 AJIL 397 (forthcoming 2025).

²⁴ Jack M. Balkin, *Deconstruction* (1995–1996).

²⁵ Jeanette Haynes, *Writer, Unmasking, Exposing, and Confronting: Critical Race Theory, Tribal Critical Race Theory, and Multicultural Education*, 10 INT’L J. MULTICULTURAL ED. 1, 2 (2008).

²⁶ Emily Snyder, *Indigenous Feminist Legal Theory*, 26 CANADIAN J. WOMEN & LAW 365 (2014).

²⁷ Government of Canada, *Highlights from the Report of the Royal Commission on Aboriginal Peoples*.

²⁸ Chiara Giorgetti, *International Claims Commissions as a Means of Reparation*, 119 AJIL UNBOUND 151 (2025); Elena Baylis, *Repatriation as Reparations*, 119 AJIL UNBOUND ____ (forthcoming 2025).

²⁹ *Agreement in Principle of the Residential School Settlement*.

³⁰ Achiume, *supra* note 23.

³¹ Rosa Freedman & Nicolas Lemay-Hébert, *The Haiti Cholera Claims: From Symbolic to Material Reparations*, 119 AJIL UNBOUND ____ (forthcoming 2025).

Common Experience Payment,³² recognizing the IRS survivor's experience and providing a partial remedy for their loss. With the surplus of this fund (Can\$350 million), an education fund for IRS students and their descendants was established, thus acknowledging the intergenerational impact.

In addition, Prime Minister Harper apologized.³³ The Indigenous leaders received and accepted the apology on the floor of the House of Commons. Indigenous ceremonies were held to acknowledge the importance of Indigenous culture. This gesture of recognition and respect paved the way to reconciliation.

The religious entities had formally apologized for their role in the IRS. In 2022, the Pope apologized to IRS survivors on Canadian soil,³⁴ depicting the IRS experience as genocide.³⁵ In 2023, the Doctrine of Discovery, one of the bedrocks for racist theories that led to the IRS policy, was rejected by the Vatican.³⁶

Looking forward, the Independent Assessment Process, a streamlined alternative dispute resolution process, was established, respecting Indigenous traditions and values. In addition, the Aboriginal Healing Foundation, which aimed to strengthen communities' capacity to meet their long-term healing needs based on Indigenous knowledge, received additional funding.

Elements of the Settlement Aimed at Social Transformation

For Phil Fontaine, then the national chief of the AFN, no settlement could be reached without a truth-telling process. This was the key element to bringing about social transformation. The Truth and Reconciliation Commission, the first in a non-post-war conflict, provided a context for Common Experience Payments by preventing them from being seen as payments buying the survivors' silence or being cast as "blood money." As strongly advised by the Elders, the Commission was the space where survivors shared their stories in a non-adversarial process informed by Indigenous traditions.

By unveiling the multiple facets of the truth about the IRS, the Commission highlighted the social problems linked to the IRS that still afflict Indigenous communities, opening the door to healing the relationship with Canadians. The effects of the Commission are akin to "social therapy." It has received nearly 7,000 statements from survivors and their families. More than 155,000 Aboriginal and non-Aboriginal individuals attended its hearings.

In 2015, *What We Learned: The Principles of Truth and Reconciliation*,³⁷ the Commission report, and the ninety-four calls to action³⁸ were presented to Prime Minister Justin Trudeau,³⁹ who accepted them on behalf of the government. The calls to action were designed to address systemic racism by reforming policies at all levels of government. The report provides a roadmap for reconciliation between Indigenous peoples, Canadians, and states by promoting respect for human rights, addressing historical injustices, and ensuring that Indigenous peoples participate in decisions affecting them. From an Indigenous perspective, it offers hope and inspiration for a better future grounded on a new relationship based on mutual recognition and respect. The first principle is: "The United Nations Declaration on the Rights of Indigenous Peoples"⁴⁰ is the framework for reconciliation at all

³² Ashley Barnes, *Commonalities in Recent Reparations Practice: Reflections on a Wider Legal Sensibility*, 119 AJIL UNBOUND 145 (2025).

³³ Government of Canada Press Release, *supra* note 4.

³⁴ Pope Francis, "I Am Deeply Sorry," CBC (July 25, 2022).

³⁵ Ka'nehsìio Deer, *Pope Says Genocide Took Place at Canada's Residential Schools*, CBC (July 30, 2022).

³⁶ Bill Chappell, *The Vatican Repudiates "Doctrine of Discovery," Which Was Used to Justify Colonialism*, NPR (Mar. 30, 2023).

³⁷ Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (2015).

³⁸ Truth and Reconciliation Commission of Canada, *Calls to Action* (2015).

³⁹ Truth and Reconciliation Commission of Canada, *Reports*.

⁴⁰ GA Res. 61/295, *Declaration on the Rights of Indigenous Peoples* (2007).

levels and across all sectors of Canadian society”; another principle is that “a process of healing relationships . . . requires truth-sharing, apology, and public commemoration that acknowledges the wrongs of the past.”⁴¹

The National Research Centre was created to preserve the Commission’s archives and historical records. The settlement provided money to commemorate the IRS experience and ensure it would never be forgotten.

Conclusion

Can the justice system heal Indigenous peoples? Can settlement be a tool for social reconstruction in the face of human rights violations? These are some of the questions the IRS settlement has sought to answer, drawing on Indigenous knowledge and international law principles to address the IRS experiences fully.

Without recognition of the multiple violations of human rights, reconciliation and healing will be nothing more than wishful thinking. To address systemic violations of the rights of Indigenous peoples, justice must be reconceptualized.

The innovations of the IRS settlement mark a significant milestone that broadens the horizons of how disputes rooted in systemic violation of human rights and racism can be resolved. This agreement paved the way for other settlements, like the LGBTQ purge settlement.⁴²

The United States and Australia, nations stained by colonialism, will have to face their troubled legacy. The holistic approach was developed to address the Canadian experience⁴³ should serve as a model, notably creating a Truth and Reconciliation Commission in a non-post-war conflict.

A scene from the movie “Call Me Human” by Kim O’Bomsawin stands out in my mind: the Innu poet and elder Joséphine Bacon cuts off the head of a fish, recounting the history of the territory, its inhabitants, and the mythology of her people. This powerful scene serves as a poignant reminder of the importance of culture, not only as an element of epistemic justice but also in the process of reconciliation.

⁴¹ *Id.*

⁴² Government of Canada Press Release, [LGBT Purge Class Action Final Settlement Agreement](#) (2020).

⁴³ Krzysztof Pelc, *Backward-Looking Reparations versus Forward-Looking Buyouts: Distributive Justice Across Time in International Law*, 119 AJIL UNBOUND 134 (2025).