

**RHETORIC AND REALITY:
THE DENIAL OF ABORIGINAL RIGHTS IN CANADA**

by

Corinna Lynn Netherton

B.A., Simon Fraser University, 1997

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

in

The College of Graduate Studies

(Interdisciplinary Studies)

THE UNIVERSITY OF BRITISH COLUMBIA
(Okanagan)

August 2013

© Corinna Lynn Netherton, 2013

Abstract

The Government of Canada's denial of the nature of its colonial relations with Indigenous peoples is embodied in its efforts to keep the peace between Aboriginal and non-Aboriginal peoples. This peace is maintained through political decisions which deter from Aboriginals' efforts to achieve autonomy. The rhetoric of the state narrative and the reality in practice is outlined in this thesis. Explored is how legislation impacts the rights of Aboriginal peoples and how reconciliation can be achieved with one another to build a relationship of mutual respect. Reconciliation includes overcoming colonialism and hegemonic control that still exists. Denial is an inherent trait that is manifested in society and is guided by the state through the nation's laws. There continues to be an oppression of Aboriginal human rights and social justice in Canada, which is contradictory to international initiatives. This thesis explores the concept of denial as a symptom of colonialism that obstructs the much needed process of decolonization that is genuine reconciliation.

Table of Contents

Abstract	ii
Table of Contents	iii
List of Abbreviations	v
Glossary	vi
Acknowledgements	vii
Dedication	viii
Chapter 1 Introduction	1
1.1 Research Objectives/Questions	4
1.1.1 Objectives/Goals	4
1.1.2 Question	4
1.2 Literature Review	5
1.3 Theory	9
1.4 Methodology	11
1.4.1 Indigenous Methodologies	11
1.4.2 Methods	12
1.4.3 Textual Analysis	13
1.5 Chapters Outline	14
1.6 Significance and Contribution	16
Chapter 2 Denial	17
2.1 Literal Denial	19
2.2 Interpretive Denial	20
2.3 Implicatory Denial	20
2.4 Personal Denial	21
2.5 Cultural Denial	22
2.6 Historical Denial	22
2.7 Contemporary Denial	23
2.8 Official Denial	23

Chapter 3	Rhetoric and Reality: The Constitution Act and Aboriginal Rights	28
Chapter 4	Rhetoric and Reality: Socio-economic Inequality	42
4.1	Health	45
4.2	Living Standards	49
4.3	Education	55
Chapter 5	Rhetoric and Reality: International Law	68
5.1	The UN Convention on the Prevention and Punishment of the Crime of Genocide (UNGC).....	70
5.2	The UN Universal Declaration of Human Rights 1948	77
5.3	Other International Human Rights Laws:	79
5.4	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)	82
Chapter 6	Reconciliation	90
6.1	Reconciliatory Justice	92
6.2	Ending Denial	94
6.3	Indigeneity	96
6.4	Decolonization	97
6.5	Reconciliation	100
6.6	Reconciliation, Health and the Environment	101
6.7	Obstacles to Reconciliation.....	102
Chapter 7	Conclusion: Work in Progress	108
References	115

List of Abbreviations

AFN	Assembly of First Nations
CMHC	Canada Mortgage and Housing Corporation
HDI	Human Development Index
IRS	Indian Residential Schools
IRSSA	Indian Residential Schools Settlement Agreement
NIB	National Indian Brotherhood
RCAP	Royal Commission on Aboriginal Peoples
RHS	First Nations Regional Health Survey
SSC	Supreme Court of Canada
TRC	Truth and Reconciliation Commission of Canada
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGC	United Nations Genocide Convention

Glossary

Aboriginal peoples - includes self-identified people of First Nations, Métis and Inuit.

Aboriginal rights - “an inherent and original right possessed by an Aboriginal person or collectively by Aboriginal Peoples” (Young-ing, 2001, p. 136).

Colonialism - “exploitation of a people by a larger or wealthier people” (Barber, Fitzgerald, Howell, & Pontisso, 2005, p. 151).

Decolonization - the process of undoing colonization by incorporating difference, anti-racism ideology; in Canada incorporating Indigeneity into social, educational, economic, and political institutions.

Denial - “a process by which people block, shut out, repress, and cover up certain forms of disturbing information or evade, avoid, and neutralize the implications of information” (Joseph, 2008, p. 208).

First Nations - “Aboriginal Peoples as separate nations who occupied territory prior to the arrival of Europeans” (Young-ing, 2001, p. 137).

Indigeneity - a shared cultural, social and political perspective of a group of people based on oral teachings/traditions where humans live in harmony with the ecosystem. There is a cyclical relationship in creating and maintaining a relationship between humans and the environment that is built on respect, reciprocity, and renewal. Humans and the environment are equal.

Indigenous peoples - an internationally used term designated by the United Nations to identify native peoples as a collective in a global context.

Reconciliation - “an end to a disagreement and the return to friendly relations” (Barber et al., 2005, p. 695).

Rhetoric - “art of effective or persuasive speaking or writing” (Barber et al., 2005, p. 716).

Self-determination - “the right of peoples to choose freely how they would be governed...the term should replace ‘self-government’ unless it is referring to the specific legislation” denoted by DIAND (Young-ing, 2001, p. 138).

Acknowledgements

I offer my sincere appreciation and thanks to my Supervisor, Gregory Younging, PhD, and my committee members, Allison Hargreaves, PhD and Adam Jones, PhD. Thank you for your ongoing support and guidance in this thesis.

Dedication

This thesis is dedicated to the ongoing struggle of Aboriginal peoples in Canada to be heard and to be treated with the equality and respect they deserve. Also recognized is the Idle No More movement that is pressing struggling to implore the Government of Canada to implement long-overdue measures to uphold the rights of Aboriginal peoples.

Chapter 1 Introduction

Denial of the ongoing oppression of Aboriginal peoples is embedded in the official narrative of the Canadian government. In this way, denial is a narrative of political maneuvering intent on keeping the peace not only globally but also domestically. Paulette Regan (2010) defines this official decision making as the “peacemaker myth” where political decisions are made to keep the peace but, in actuality, the peace is for the benefit of the colonizer not the colonized. In Canada, political decisions are made to keep the peace between Aboriginal and non-Aboriginal groups. The reality is that there is no peace, only further oppression and marginalization of Aboriginal peoples despite explicit evidence of ongoing human rights violations in Canada. A case study of these violations is the Indian Residential Schools (IRS) system in Canada that illustrates how human rights violations occurred for over a century. Now there are intergenerational effects and still little is being done to help people overcome the trauma associated with the legacy of IRS. Further, legislation and policies that seemingly appear to promote Aboriginal equality are not fully implemented. The myth and denial embedded in state decisions form an obstacle in establishing equality between Aboriginal and non-Aboriginal peoples.

The concept of denial incorporates many non-traditional meanings (Joseph, 2008; Cohen, 2001). Denial is “a process by which people block, shut out, repress, and cover up certain forms of disturbing information or evade, avoid, and neutralize the implications of information” (Joseph, 2008, p. 208). This definition of denial and the peacemaking myth are the underlying influences of political and legal decisions affecting Aboriginal rights in Canada (Regan, 2010). By denying our history of colonialism and injustice, we dissolve settler guilt (Regan, 2010). It is like saying colonialism did not happen. Of importance in the context of this discussion is official

denial, which is defined as “subtle, involving, variously, a twisting of the truth, a setting of the public agenda, managing news releases in the media, and selective concern about some victims but not others...[it] is built into the ideological fabric of the state” (Joseph, 2008, p. 210). By managing and obstructing factual evidence, denial acts as an obstacle towards acquiring an amicable relationship between Aboriginal and non-Aboriginal peoples.

In order to provide some context as to how this research topic was derived and where this research is situated, the significance of the IRS system in Canada is outlined. The IRS system is a result of a colonial ideology that used an assimilation policy under the Indian Act to integrate Aboriginal peoples into the Eurocentric society (Henderson, 2008; Milloy, 1999). Children were taken away from their families and communities and put into institutions where they were often unable to speak their language and practice their culture. The forcible removal or transfer of children, and the intent to destroy or eliminate in whole or in part a group of people is defined as an act of genocide (Chrisjohn, Young, & Maraun, 2006). The system was in operation for over a century, which meant that generations of Aboriginal children were subjected to abuse, neglect, racism, and discrimination. Many Canadians are to this day oblivious to the sordid history of IRS. The very fact that the truth of the history of IRS and Indigenous peoples is not well known is symptomatic of denial. Further, in general, Aboriginal history is not being taught in the public education system, which contributes to the lack of knowledge and understanding by the settler society. Indeed, even Prime Minister Stephen Harper declared in the September 2009 G20 Summit that “we also have no history of colonialism” (Henderson & Wakeham, 2009; Hui, 2009). Interestingly enough, the Prime Minister issued an apology for IRS a year earlier - the very system that occurred as a direct result of colonial ideology. This is emblematic of the kind of state discourse analyzed in this thesis.

There are also intergenerational effects of IRS. This means IRS survivors' children and grandchildren are victims of the subsequent trauma associated with IRS system, including lack of parenting skills, alcohol and drug dependency, marginalization, and disassociation from their culture, identity, language, and community. Since 2007, the Indian Residential Schools Settlement Agreement (IRSSA) has been in place. It incorporates compensation for abuse and the common experience and funding for healing, a National Research Center, and for the Truth and Reconciliation Commission of Canada (TRC). The mandate of the TRC is to present the truth of our history of residential schools in Canada. However, the government has only given the TRC until 2014 to finish its work, and it cannot achieve reconciliation within this time frame (TRC, 2011).

This research is situated within the mandate of the TRC. Denial of Aboriginal rights in Canada is symptomatic of a colonialism that is still present in our institutions and society. The rhetoric of the official state narrative is a stumbling block for change and an obstacle to reconciliation. As suggested in the Interim Report of the TRC (2011), reconciliation or a new relationship is built on four principles: “mutual recognition, mutual respect, sharing and mutual responsibility” (p. 23), and includes Aboriginal self-government and the right to self-determination. Reconciliation includes incorporating the values of Indigenous peoples. Brad Morse (2008), professor of law at the University of Ottawa, defines the act of reconciliation as “restor[ing] friendly relations between [which means] developing a shared vision of an interdependent society that acknowledges its past and deals with its horrors frankly and as positively as it can to avoid any reoccurrences” (p. 245). Reconciliation involves acknowledging and listening to the truth so that the problems are understood and rectified to prevent similar events from occurring in the future.

So how is reconciliation achievable when existing legislation and narratives do not promote a healthy relationship between Aboriginal and non-Aboriginal peoples? For instance, official narratives promoting Aboriginal rights in Canada, such as the Constitution Act of 1982, the Royal Commission on Aboriginal Peoples (RCAP) of 1996, the Statement of Reconciliation in 1998, and various human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) have been ignored. Evidence of ongoing human rights violations are found in the socioeconomic indicators that maintain Aboriginal peoples experience substandard living conditions compared to non-Aboriginal peoples in Canada (Canada, 1996a; Stavenhagen, 2004). The lower social and economic standards indicate that Aboriginal peoples are still marginalized. As such, this thesis looks at the underlying context of settler denial to unpack the rhetoric of the state's narratives and the reality of Aboriginal inequality in Canada.

1.1 Research Objectives/Questions

The research objectives/goals and question for this thesis are outlined below.

1.1.1 Objectives/Goals

1. Define denial and how it applies to official narratives.
2. Outline the official narratives that promote Aboriginal rights.
3. Demonstrate how official narratives do not actually promote equality.

1.1.2 Question

How can reconciliation between Aboriginal and non-Aboriginal peoples be obtained given the existing inequality that continues to be driven by government decisions in Canada?

1.2 Literature Review

There is a core base of literature on the topic of denial and the peacemaking myth that relates to the rhetoric of Canada's state narratives. There is a wealth of literature on overcoming denial and colonialism and moving towards reconciliation, especially in light of recent initiatives of the TRC. The peacemaking myth is introduced by Regan (2010) to describe how the government makes decisions with respect to Aboriginal peoples. The government seemingly attempts to keep the peace with non-Indigenous peoples by limiting “political recognition and self-government” of Aboriginal peoples (Regan, 2010, p. 84). Legislation affirming Aboriginal rights in Canada has been established, but not fully enforced.

The Constitution Act established in 1982 recognizes and affirms Aboriginal rights. Scholars, such as Walkem and Bruce (2003), claim that Aboriginal rights continue to be marginalized in the Supreme Court of Canada (SCC) in claims relating to the Constitution Act (Slattery, 2008). SCC's conservative approach in their rulings on Aboriginal rights is synonymous with a hegemonic colonial system. The Aboriginal perspective is lost against the Western hierarchical SCC structure. SCC judges Aboriginals against Western norms as opposed to considering the Aboriginal perspective. In the cases so far, SCC affirmed that Aboriginal rights exist but only to a point. There is still some reluctance or denial by the courts to affirm Aboriginal rights (Walkem, 2003). Cultural traditions, such as oral testimony were only recently acknowledged in SCC as having some credibility in the courts. This acknowledgement was only after Aboriginal peoples asserted their cultural heritage in court in *Delgamuukw v. British Columbia* (1997). By “interpreting s.35 (1), the SCC is engaged in a process that, at the same time, reflects and defines the Canadian state and society” (Walkem, 2003, p. 197). The significance of the preceding statement is that SCC's judgments reflect the majority of Canadian

values and also set a precedent for society. There is conflict between what is written in the laws and the unwillingness of the government to affirm Aboriginal rights as stated in the Constitution.

On the international level, Canada appears to be respected around the world as a country with a good human rights record. However, an internal examination of Aboriginal rights defies this myth. The country is supposedly one of good intentions (Regan, 2010). What is needed is for the federal and provincial governments of Canada to work together, a greater commitment by the Government of Canada to programs and projects to improve socio-economic conditions of Aboriginal peoples, and for Aboriginal communities to be consulted in the decision-making process regarding the development and management of their resources (Canada, 1996a; Stavenhagen, 2004). There continues to be disagreements between the federal and provincial governments concerning who is responsible for Aboriginal housing and infrastructure needs. Housing conditions on many reserves are still substandard and are considered equivalent to third world living conditions (Fox, 2009). The reality is that the international arena is becoming aware of Canada's ill treatment of Aboriginal peoples that is contrary to its respected demeanor.

International law firmly establishes human rights for Indigenous peoples as a movement towards self-determination and decolonization. However, international law is not always implemented by the nation-states. The UN Universal Declaration of Human Rights (1948) was established as an international tool for decolonization and, at the same time, as a means to protect Indigenous human rights (Henderson, 2008). Subsequent human rights laws include the *Declaration on the Elimination of All Forms of Racial Discrimination* (1963), and the *International Convention on the Elimination of all Forms of Racial Discrimination* (1965) (Henderson, 2008). UNDRIP recognizes the collective rights of Indigenous peoples on an international level and is a pivotal policy in self-determination (Daes, 2008; Henderson, 2008).

However, it is the state's decision to endorse international laws and incorporate them into their domestic policy. Former UN Special Rapporteur on Indigenous Issues, Erica-Irene Daes (2008) confirms that "nearly every international convention in the fields of human rights and humanitarian law" has failed because national courts did not apply it. If the "standards exist, states have ratified them, but national courts are unwilling or unable to enforce them in private legal actions" (Daes, 2008, pp. 88-89). Thus, even though Canada finally endorsed UNDRIP, its implementation strategy is yet to be unveiled.

Overcoming the various forms of denial is a process aimed at achieving reconciliation among Aboriginal and non-Aboriginal peoples and the Government of Canada. The first step is to recognize the impacts of colonialism and how policies continue to negatively impact Aboriginal peoples, so that human rights violations do not recur (Warry, 2007). The second step is to actively promote change. Reconciliatory justice is one model that recognizes the need to identify our colonial past, and it is a method for achieving reconciliation. The framework for restorative justice can be incorporated by the TRC (Joseph, 2008; Llewellyn, 2008). Telling the truth about Canada's collective history is necessary for the process of justice to begin. The work of the TRC in producing an accurate account of the history in Canada and the residential schools experience will help to bridge the gap between truth and reconciliation (Llewellyn, 2008). Reconciliatory justice may be interpreted as a stepping-stone on the path to reconciliation. However, the process hinges upon overcoming political and social strategies that implicitly promote denial, or that are made with the best intentions on behalf of Aboriginal peoples (Regan, 2010). How reconciliation will be achieved is elusive at best. Some of the theories include: the need to engage the public "at a deeper level in order to work toward reconciliation" (Llewellyn, 2008, p. 197) and the need to incorporate Indigenous values in our existing institutional

frameworks in order to decolonize (McCaslin & Breton, 2008). What is agreed is that reconciliation will involve the public and the state in the recognition of Indigenous culture and values.

As suggested above, how reconciliation can be achieved and what it will look like is unknown. Research indicates that no state that has suffered human rights violations has been successful in achieving reconciliation. The question to ask is if there is hope for Canada in achieving reconciliation? Australia's reconciliation models may be useful to provide examples for Canada to follow. Models for reconciliation in Canada have so far been based on reconciliatory justice that is defined by Joseph and resembles the current IRSSA process. In his analysis he investigates the process of reconciliatory justice as a way of "overcoming a culture of denial" (Joseph, 2008, p. 207). The similarities between Australia and Canada's reconciliation process include the official apology as an acknowledgement of past atrocities (Short, 2008). "Reconciliation is not just about saying sorry, it is about understanding the harm in a way that not only acknowledges the past but also leads to a new awareness and commitment to avoid repeating the same mistakes in the future" (Blackstock, 2008, p. 174). In comparing Australia and Canada's efforts towards reconciliation, "the Executive Director of Canada's Royal Commission on Aboriginal Peoples, after a visit to Australia, said that whereas Canada has done much more at a government level to resolve the grievances of those who were removed, Australia has done much more at a community level" (Bond, 2008, p. 272). Australia's reconciliation model incorporates grass roots organizations that support Indigenous rights and lobby change (Short, 2008). What is suggested is that both government action and grassroots movements are necessary for healing to occur. Although local change is necessary, the focus is on the changes that still need to occur at the national or state level in Canada. The question

remains: why has public awareness of Aboriginal issues failed to translate into government action (Warry, 2007)?

There is a need for a comprehensive report illustrating the denial of Aboriginal rights in Canada, and a recognition that the state needs to actively work on overcoming inequality and foster change. Building from a core base of literature on denial and the peacemaking myth, this thesis will provide an in-depth analysis of how the Canadian government has systematically avoided practical implementation of what it preaches. This research is timely given the mandate of Canada's TRC.

1.3 Theory

The governance model used in this research is the need for a paradigm shift from the Western ideology towards an Indigenous, holistic framework based on mutual respect. This movement can be visualized by placing Western ideology on one side and Indigenous ideology on the other. Where the two overlap is an area of mutual respect and decolonization (Sam, 2012). Shawn Wilson (2008) defines the main theories supporting this paradigm, presenting an epistemology derived from critical theory wherein the "reality has been shaped into its present form by our cultural, gender, social and other values" (p. 36). This paradigm change is the interaction between individuals or groups that promotes an improvement in society. Frantz Fanon expands upon culture and identity and defines colonization as oppression whereby the mind is reprogrammed (Hall, 2005). Colonization of the mind is what occurred in residential schools, where children were taught to be like the settler Euro-Canadian society and did not learn their own cultures and way of life. Emile Durkheim writes about the assimilation of children and the alienation from their traditional values and beliefs that now contribute to the social breakdown within Aboriginal communities (Hodgson, 2008). Contributing to the knowledge of

social breakdowns in Aboriginal communities, Indigenous scholar Taiaiake Alfred explains, “Canadians like to imagine that they have always acted with peaceful good intentions toward us [Aboriginal peoples] by trying to fix ‘the Indian problem’ even as they displaced, marginalized, and brutalized us as part of the colonial project” (as cited in Regan, 2010, p. ix). In this sense, Canada has maintained paternalistic control over Aboriginal peoples for over a century.

Colonialism has transformed the culture and identity of Indigenous peoples; however, now is the time to recognize the importance of embracing Indigeneity and focusing on “promoting change to improve society” (Wilson, 2008, p. 37). In this way, there is a need to overcome an outdated way of thinking in society. Non-Indigenous scholar Stephanie Irlbacher-Fox (2009) explains that “through positioning both Indigenous peoples and the injustices they suffer as non-modern and historical, and itself as a source of social, political, and material redemption, the state manages to legitimize both injustice and its ongoing colonial-based interventions into the lives of Indigenous peoples” (p. 2). What Fox suggests is that the state attempts to deny injustices of Indigenous peoples by putting them in the past. It is only by acknowledging the truth of our history of colonialism and racism and discrimination towards Indigenous peoples that we can overcome colonialism and embrace Indigeneity or difference.

Linda Tuhiwai Smith (1999) suggests that determining what is “real indigenous” in terms of cultural values and what constitutes authenticity is subject to political debate. These debates are a form of denial that further functions to “marginalize those who speak for, or in support of, indigenous issues” (Smith, 1999, p. 72). “‘Postcolonial theory’ involves a conceptual reorientation towards the perspectives of knowledges, as well as needs, developed outside of the west” and transforms society by challenging the existing power structures that create inequality (Young, 2003, p. 6). We have not achieved post-colonialism and, instead, are in the state of

neocolonialism where colonialism still maintains a presence in political and economic control. Constructivism is also applicable as a theory for change based on a shared goal “to find common meaning in the natural world” (Wilson, 2008, p. 37). This is in line with creating a new relationship between Aboriginal and non-Aboriginal peoples, and the Government of Canada, which is what this research seeks to promote.

1.4 Methodology

The guiding methodology for this research is rooted in both Western and Indigenous approaches. The reason the research is situated in both is that there are roots in both. Indigenous peoples as well as non-Indigenous peoples have been colonized and, as a result, our society and institutions reflect a Western ideology. The main focus is on Indigenous methodologies since Indigeneity speaks to decolonization and the need for change. At the same time, the influence of the Western system cannot be ignored. Where Western and Indigenous ideologies connect and overlap is the center of change where there is understanding and mutual respect (Sam, 2012). Developing and maintaining a relationship built on mutual respect is the core of Indigenous values. Overall, this research analyzes the discourse in the official narrative and the lack of implementation of Aboriginal rights in Canada. It is this lack of implementation that corresponds to various forms of denial outlined in the literature.

1.4.1 Indigenous Methodologies

Indigenous methodologies focus on the need for decolonization. Indigenous scholars Shawn Wilson (2008) and Linda Tuhiwai Smith (1999), for example, discuss the need to incorporate an agenda that “connects local, regional and global efforts which are moving towards the ideal of a self-determining indigenous world” (Smith, 1999, p. 115). Indigenous methodology incorporates mutual relationships, which is one of the four entities of the research paradigm, as

summarized by Wilson (2008): ontology and epistemology are based on a “process of relationships that form a mutual reality...axiology and methodology are based upon maintaining accountability of these relationships” (pp. 70-71). It is about the need for change that incorporates the basic principles of being responsible for maintaining effective long-term relationships, developing a credible reputation, creating a reciprocity of respectful behaviour, and the showing of or accepting respect (Smith, 1999). By addressing these principles, researchers engage in ethical research where research findings are shared. While recognizing the guiding Indigenous principles in this research, also embraced is “the commitment by indigenous scholars to decolonize Western methodologies” through critical inquiry for social justice (Denizen & Lincoln, 2008, p. 2). Decolonizing education systems is crucial in order for changes to occur.

Decolonization is a critical analysis aimed at acknowledging the need for social justice in order to move towards reconciliation. As such, a space is created wherein differences of cultures can be acknowledged and respected. Within this space an equal place for Indigenous peoples within Canada can be developed. From an Indigenous perspective, the process is one of social justice characterized by transformation, decolonization, and healing (Smith, 1999). An example of this movement is the justice system, where there have been some attempts at making the system “more Indigenous-friendly or a little less oppressive,” but progress has been slow and the colonial structure is still maintained (McCaslin & Breton, 2008, p. 511). The same can be applied to the political system and society as a whole.

1.4.2 Methods

Qualitative methods used include the textual analysis of library and online records to acquire information on legislative and political decisions affecting Indigenous peoples’ rights. According to author and researcher Elizabeth Hoffmann (2007), it is important to triangulate the

information obtained from participants with other types of methods, such as archival data, in order to address weaknesses or inconsistencies. Her approach is adopted in this research, but has some limitations. Thus, information obtained from libraries and online sources will be analyzed to construct a critical analysis. Participant information in the form of published statements will be used to supplement other literatures where applicable. In light of time and budget constraints, archival research and participant interviews were not completed.

1.4.3 Textual Analysis

There are several sources of information that were used to access documentation on the state narratives, denial, and reconciliation. Included are library searches for primary and secondary sources. Preliminary research and UBC Okanagan course material have been helpful in identifying key sources of scholarly material. A core group of authors who write about denial in the context of Aboriginal rights are inspirations for this research. They include Paulette Regan (2010), Robert Andrew Joseph (2008), and Stanley Cohen (2001). Online sources for additional information include: the Assembly of First Nations, the Government of Canada, Aboriginal Affairs and Northern Development, the Aboriginal Healing Foundation, the Truth and Reconciliation Commission Canada, and the United Nations (UN). Websites, articles and reports have provided information to supplement the extensive selection of literature.

Due to time and budget constraints, archival sources such as Library and Archives Canada and the UN Archives in Geneva were not utilized. The latter was subject to permission to review restricted documents. With respect to the UN, the application was submitted and approved by the Office of the High Commission outlining boxes of restricted records to be reviewed in their collections from a list that they provided in an email. The other part of the application included submission of a form outlining the project, and a letter of recommendation

by the supervisor of the project. Of course, there are unrestricted documents that can also be reviewed. Access to a limited number of records was approved. Email inquiries for document information were initiated with the Library and Archives Canada. A discussion with the librarian at UBC Okanagan suggested that there may be documents on shelves in other repositories that are not catalogued. Due to time constraints, this information was not sought.

1.5 Chapters Outline

This thesis consists of seven chapters. Chapter 2 defines the various non-traditional classifications of denial as outlined by both Cohen (2001) and Joseph (2008). Denial as a colonial trait is ingrained in the Canadian fabric so it is important to both identify that denial incorporates many forms and is active in the social, political, and legal institutions in Canada. Aboriginal rights can be interpreted as rights existing under legislation defining the relationship between the Crown and Indigenous peoples such as the Constitution Act 1982, or as rights defined under international protocols like the UN Universal Declaration of Human Rights. The latter refers to responsibilities of the State towards their Indigenous peoples that presume autonomy of Canada as a nation. Autonomy of the state can be interpreted as paternalism where the state makes decisions for Indigenous peoples. The denial of Aboriginal human rights by Canada domestically and internationally is the focus of this thesis.

Chapters 3 to 5 outline the rhetoric and reality of Aboriginal rights in Canada, starting with socio-economic conditions in Chapter 3, continuing to the Constitution Act in Chapter 4, and concluding with international law in Chapter 5. Chapter 3 outlines findings from government reports from 1996 and 2004 that convey that Aboriginal housing, education and health are well below acceptable standards in Canada. The fact that the reports are still relevant today is representative of denial by the government to actively correct the problems.

Chapter 4 outlines how the Constitution Act of 1982 applies to Aboriginal peoples in Canada. According to the speeches given by Her Majesty Queen Elizabeth II and Prime Minister Elliott Trudeau in the proclamation ceremony and the wording in the Constitution itself, Aboriginal rights are seemingly important. However, in application, in the courts there is a sense of reluctance to uphold Aboriginal rights as affirmed in the Constitution.

Chapter 5 expands upon Chapter 4 by reviewing international laws that have been established in a global context to entrench Indigenous human rights. This chapter not only looks at the discourse between the establishment of international laws and their application by the nation-state, but also reflects upon Canada's participation and application of the laws in their domestic policies. Considering that international laws confirm Aboriginal human rights, it is remarkable how these rights continue to be denied.

Chapter 6 reflects on the concept of reconciliation as a utopian model that is achievable, but will require a lot of work by both Aboriginal peoples and other Canadians, given the obstacles that still exist. More importantly, reconciliation will require the support of the federal government in creating opportunities for self-governance and decolonization. What is needed is greater transparency and effective communication in agreements and negotiations between Aboriginal peoples and the Government of Canada.

The concluding Chapter 7 summarizes and emphasizes the need for active changes by the Government of Canada in instilling equal rights of Aboriginal peoples. This is a starting point for all Canadians to decolonize and overcome the settler guilt associated with denial that has been entrenched in the Canadian social fabric.

1.6 Significance and Contribution

As an ally of Indigenous peoples, it is my goal to help promote the recognition of Aboriginal rights in Canada by illustrating the gaps between the state rhetoric and reality. A good example of this is the ongoing issue of the marginalization of Aboriginal peoples, like those on the Attawapiskat reserve in Northern Ontario, who live in third world conditions without access to adequate housing, water, and sanitation. How is it that this situation can occur today and most of the world does not know about it until it is publicized in the media? The living conditions at Attawapiskat are not unique. There are several other reserves that face a similar predicament (Atleo, 2012). At the national level, the question is what can be changed to promote effective change in Aboriginal recognition and equality since the issues continue. This situation reminds us that reconciliation has been partial at best, despite the rhetoric. Hopefully this research will help promote awareness of the need for a paradigm shift in this country. This research is well situated in the context of the TRC and the current initiatives for reconciliation.

It is understood is that this thesis will be available online through the UBC library so that it is accessible to the institution and to anyone who wishes to access it. It is hoped that the thesis may be useful to include in the TRC National Research Center once it has been established. Through this medium, the thesis will reach a broad audience of not only scholars, but also the general public.

Chapter 2 Denial

“Statements of denial are assertions that something did not happen, does not exist, is not true or is not known about.” (Cohen, 2001, p. 3)

In order to understand the gap that exists between Aboriginal and non-Aboriginal peoples, it is important to understand how denial underlies the political, legal, and social structure in Canada. As will be shown in subsequent chapters, there is a gap between how the relationship is experienced and how it is presented. The Government of Canada has a reputation for maintaining peace globally and domestically. Nationally, political decisions are avowedly made to keep the peace between Aboriginal peoples and other Canadians. This domestic peace is a myth. In reality, there is a divide between the two groups. Often decisions affecting Aboriginal peoples are made on their behalf without consultation. The end result is further marginalization of Aboriginal peoples that creates distrust in government. This point is further clarified in later chapters. Ongoing instances of human rights violations in this country continue to be a problem for Aboriginal peoples. Social and economic inequalities in Aboriginal communities are not adequately addressed. This chapter provides a foundation for the rhetoric of denial and defines and explores the concept of denial in its application to both past and present practices of the political, legal, and social systems, as well as Indian Residential Schools (IRS). Two main arguments of this chapter are: (1) denial keeps colonialism alive and constitutes an obstacle to equality, and (2) the government of Canada is actively involved in denial, often in the form of saying one thing and doing another so as to placate as much of the population as possible. This denial helps to preserve the entrenched power structures.

Sociologist Stanley Cohen (2001) and Maori lawyer Robert Andrew Joseph (2008) provide a framework for classifying and identifying denial. Cohen's work *States of Denial: Knowing about Atrocities and Suffering* provides a psychological framework for denial that is further expanded upon by Joseph (2008) in his article "A Jade Door: Reconciliatory Justice as a Way Forward - Citing New Zealand Experience." Together, their classifications explain denial in the psychological and political sense and outline categories that are useful in contextualizing denial in the context of Canadian society, both past and present.

On the surface, denial as a term may appear straightforward. The usual definition of denial is the process of declaring an action as something that is untrue, refusing a request or wish, or making a statement that something is not true, or suppressing the truth (Barber et al., 2005). Joseph (2008) expands upon the common definition and defines denial as "a process by which people block, shut out, repress, and cover up certain forms of disturbing information or evade, avoid, and neutralize the implications of this information" (p. 208). According to Joseph's (2008) definition, denial can be an everyday occurrence. In Canada, denial appears to be deeply rooted in our colonial history and remains active.

Cohen (2001) makes a distinction between political and social denial. These forms of denial can often work together in a powerful way. Political denial is a conscious effort, involving lying or covering up of information, and is cynical and calculated (Cohen, 2001). He defines social as a public form of denial that can be a mix of conscious and unconscious acts: "the zone of open secrets, turning a blind eye, burying one's head in the sand and not wanting to know" (Cohen, 2001, p. 6). Government rhetoric is a form of political denial that has been utilized to evade the truth in an effort to keep social order as suggested by Regan and Cohen. As such, Cohen's theory of denial provides a framework for analyzing the discourse of political rhetoric

and social behavior. In their book *Manufacturing Consent*, Edward S. Herman and Noam Chomsky (1988) develop a theory that summarizes political and social denial and how it applies to the government's rhetoric and the public's perception. Their work suggests that the government and the media are instrumental in altering the facts to form the public's opinion about an issue or political situation (Herman & Chomsky, 1988). On the other hand, when the facts are difficult for society to cope with, the public generally reacts by ignoring the facts or trying to forget them. Both social and political denials are ever-present in our everyday lives. Political institutions can falsify the truth that can be easily believed by the public.

Denial can be broken down into different classifications as noted above through Cohen (2001) and Joseph's (2008) work. Using Cohen's (2001) classifications of denial, Joseph (2008) succinctly summarizes the various forms of denial into eight categories: literal, interpretive, implicatory, personal, cultural, historical, contemporary, and official. Each of these classifications can be applied to Aboriginal rights in Canada and the legacy of the IRS system. The IRS system is symbolic of a colonial structure in Canada that oppressed people in an effort to assimilate them. Many examples below address IRS given the significance of the IRS system in Canadian history, and the legacy the system has created for the rights of First Nations peoples.

2.1 Literal Denial

Literal denial is a statement in which the speaker claims "something did not happen or is not true" and can be explained by the ignorance of the speaker of the facts, or by lying or deceiving the audience (Cohen, 2001, p. 7). The term is commonly defined as taking words at face value in its textual form without the use of metaphors or exaggeration (Barber et al., 2005). For example, the Prime Minister of Canada, Stephen Harper, maintains that colonialism did not occur in Canada (Ljunggren, 2009). In this sense, colonialism can be perceived as untrue or

inapplicable in a literal sense. Colonialism by a strict interpretation can be described as country taking over control of another country and occupying it. The Prime Minister refuses to acknowledge that colonialism occurred can also mean the forced control of the occupied lands of Indigenous peoples. Another example is the use of the term *genocide* in its application to IRS. Usually the term is associated with the Holocaust and the annihilation of a group of people. IRS scholars, such as Chrisjohn, Young, and Maraun, (2006), and Churchill (2004), used this term to describe the history of IRS with respect to the cultural destruction of a group of people by the forcible removal of children from their families. The courts do not accept the use of the term genocide, in its application to the history of IRS. Literal denial avoids broad interpretations that can limit the rights of people.

2.2 Interpretive Denial

Interpretive denial occurs when different meanings or interpretations are associated with an event. In this sense, the facts are not denied; rather words are changed “using euphemisms or technical jargon” (Joseph, 2008, p. 208). An example is that assimilation is not the intention of the Indian Act. Rather, it was perceived as a way to help Aboriginal peoples, who were in obvious need of guidance, to conform to the dominant views of society, which was the “right” way. Another example is the way in which the instances of excessive discipline in IRS are normalized as the reasonable standard of discipline of the time. Here we see discipline, as a form of punishment, is not denied. However, the severity of the actions is softened.

2.3 Implicatory Denial

Implicatory denial, as defined by Joseph (2008), occurs when the “observer denies...the psychological or moral implications that might follow the facts. “Any obligation to make a moral response is evaded by justification (they are getting what they deserve) and/or indifference (I

know what's happening but it does not bother me) to various forms of accommodation and normalization" (Joseph, 2008, p. 209). Cohen (2001) adds: "the psychological, political or moral implications that conventionally follow" (p. 8) an event is minimized in terms of its significance. In the case of IRS, it is not denied that the schools existed, but rather, the forced attendance of the children at the schools is justified in various ways. That is, there is nothing wrong with forcing Aboriginal children away from their families and communities to attend an IRS where they would receive a better education and quality of life than they would have received if they had stayed in their communities. In other words, there is justification for the assimilationist policies as a necessary means of incorporating Aboriginal peoples into the Euro-settler society. The system gave Aboriginals a better life than the one that they would otherwise have had. Therefore, the act of removing children from their families and communities is justified and normalized as the morally right thing to do.

2.4 Personal Denial

How denial is perceived can be personal or individual according to one's experiences. An example of personal denial is an individual who does not acknowledge that the abuse at the IRS was wrong because that individual was abused himself. This form of denial can be a form of intentional forgetfulness of harms committed against someone in order to protect that individual (Cohen, 2001). Another example is IRS survivors repressing their experiences and not acknowledging or discussing them with their children. Joseph (2008) defines this form of denial as the "psychological way of coping with disturbing knowledge" (p. 209). This form exhibits repressive symptoms such as False Memory Syndrome, Repressed Memory Syndrome, and Recovered Memory Therapy (Cohen, 2001). These syndromes can result from the way(s) a person copes with personal trauma.

2.5 Cultural Denial

Cultural denial is driven by society and determines what is “publically acknowledged” (Joseph, 2008, p. 210). This form consists of social amnesia or repression, which forms a convenient truth (Cohen, 2001). According to Joseph (2008), cultural denial is when the “prevailing colonial doctrine of *terra nullius*” (p. 210) or ‘no one’s land’ is recognized as being true by the general public. That is, it has become culturally prevalent in Canada to forget that Aboriginal peoples already inhabited the land with their unique cultural, political, and economic structures when European settlers arrived: the implication of this belief is that Aboriginal peoples do not have a right to the land. Another example is the stereotypes developed about Indigenous peoples. Indigenous peoples are depicted as lazy and unable to help themselves (Joseph, 2008). In adopting this view, there is a failure to recognize impacts of colonialism and assimilative practices that impaired Aboriginal culture and identity.

2.6 Historical Denial

Historical denial may include the obliteration of the “connection between past injustice and present disadvantage” (Joseph, 2008, p. 211). For example, the inequality between the living conditions on reserves compared to non-First Nations communities is not recognized as a symptom of colonialism. Historical denial entails forgetting or repressing traumatic events, such as the abuses and negative experiences suffered at or as a result of IRS (Cohen, 2001). Society and survivors do not connect the history of the IRS system and the Indian Act to the problems that these created in our current society, such as substance abuse, dependency on the welfare system, and general inequality. This form of denial is also evident in society’s mindset that the IRS system occurred a long time ago, and that a lack of records and reliable memories means that no one knows exactly what occurred (Cohen, 2001).

2.7 Contemporary Denial

Contemporary denial can result from stimulus overload in which we are selective about what we can absorb (Cohen, 2001). This form of denial can occur daily in our society, since we are bombarded with media at ever increasing intensity. There is no way a person can take in everything. As such, issues affecting Aboriginal peoples are often not acknowledged by non-Aboriginal peoples if these issues are not a focus of their concern (Cohen, 2001; Joseph, 2008). People become complacent about the concerns of others, because they cannot deal with the sheer volume of information.

2.8 Official Denial

On the other hand, official denial can be “public, collective, and highly organized...[or] is more subtle, involving, variously, a twisting of the truth, a setting of the public agenda, managing news releases in the media, and selective concern about some victims but not others...[it] is built into the ideological fabric of the state” (Joseph, 2008, pp. 209-210). In Canada, this form of denial appears to be embodied in the rhetoric of the state’s official narrative, which can impinge upon Aboriginal rights. For example, the state nominally recognizes Aboriginal treaty rights as affirmed by the Constitution Act. Yet, in practice, Aboriginal peoples must continually lobby for recognition of their rights in the SCC. A specific example of official denial in Canada (that is also considered literal denial) is the denial by Prime Minister Harper that colonialism occurred in Canada (Ljunggren, 2009). Colonialism was the foundation for the assimilation policy that led to the IRS system and the paternalistic treatment of the settler society of Aboriginal peoples that cannot be denied. Official denial is undoubtedly significant in Canada and to understanding the country’s treatment of Aboriginal peoples.

The various forms of denial can work in conjunction with each other. Cohen suggests that the different forms of denial do not always occur in isolation (Cohen, 2001). Alternatively, they can appear in combination. Examples of common groupings are literal and official, or historical and official denial. As already outlined, denial comes in many forms, but all can contribute to the lack of transparency that can prevent us from acknowledging or knowing the true account of the situation or event. As such, denial can be described as a veil that obliterates the truth (Fanon, 2004). All forms of denial outlined in this chapter can influence the official narrative and the recognition of the rights of Aboriginal peoples.

Ultimately, the rhetoric of denial can act as an obstacle towards developing an amicable relationship between Aboriginal and non-Aboriginal peoples. Paulette Regan (2010), author and member of the TRC Research Team, frames the concept of denial in terms of a peacemaker myth that is embedded in our society (p. 67). She explains that by denying our history of colonialism and injustice, we dissolve settler guilt (Regan, 2010). It is like saying that colonialism did not happen in order to separate the role of settlers from the process. Regan (2010) “unravel[s] the Canadian historical narrative and deconstruct[s] the foundational myth of the benevolent peacemaker – the bedrock of settler identity – to understand how colonial forms of denial, guilt, and empathy act as barriers to transformative socio-political change” (p. 11). She perceives denial and the peacemaking myth as efforts by the Government of Canada to merely keep the peace between Aboriginal and non-Aboriginal peoples in the country and to avoid having to genuinely address issues of inequality (Regan, 2010). This may explain that, until fairly recently, there has been a lack of publicized information about IRS by the government. The government may not have chosen to address the issues surrounding IRS had it not been for the lobbying of various Aboriginal groups and individuals.

After the Royal Commission on Aboriginal Peoples (RCAP) in 1996, there was recognition of IRS and the treatment of Aboriginal peoples. However, there was very little actual change in the way Aboriginal peoples were treated and little done to address issues of inequality. Jane Stewart's Statement on Reconciliation occurred on January 7, 1998, in reaction to RCAP promoting a 20-year implementation plan. Again, there was no change. The Indian Residential Schools Settlement Agreement (IRSSA) in 2007 occurred due to First Nations' lobbying on the need to settle and recognize the longstanding claims for IRS, but there was no apology. It was only after massive public pressure that an apology was made by Prime Minister Stephen Harper in 2008. Not much has changed, other than the settlement of IRS claims. There is still inequality between Aboriginal and non-Aboriginal peoples. The Indian Act is still in existence after a century, despite lobbying efforts by Aboriginal groups to abolish it, such as the Crown-First Nations Gathering in Ottawa on January 24, 2012. Prime Minister Stephen Harper confirmed that the:

Government has no grand scheme to repeal or to unilaterally re-write the Indian Act:

After 136 years, that tree has deep roots...[there are] ways that provide options within the Act, or outside of it, for practical, incremental and real change. (Harper, 2012, para. 19)

However, in light of the Prime Minister's speech, chiefs who attended the meeting wanted the Act replaced (Atleo, 2012). After all, the Act is symbolic of the oppression of Aboriginal peoples and the inequality that it promotes. The lack of progress towards equality is symptomatic of what Regan refers to as settler denial. Denial is a code of silence adhered to by the parties for an event or situation (Cohen, 2001). In this sense, denial can detract from the transparency that is necessary for a healthy relationship built on trust and mutual respect. Denial is symptomatic and representative of the colonial ideology in our institutions and in our society. Colonialism is still

built into Canadian political, legal, and social institutions, making equality difficult to achieve. Embedded within this structure is denial that breeds a society in which asking questions is seen as a sign of weakness or a challenge to authority, rather than a pursuit of the truth.

A case study of the IRS system in Canada illustrates how violations occurred for over a century without effective intervention: this is symbolic of denial. Generations of children were forcibly removed from their parents and families and transported great distances to attend residential schools where they were often neglected and abused. Now there are intergenerational effects, such as the loss of parenting skills and substance abuse, and still little is being done to help people overcome the trauma associated with the legacy of IRS. The lack of support for these people is a denial of the link between past events and the current situation.

Denial can play an integral role in impeding from efforts to acquire a true account of our aboriginal history in Canada. John Ralston Saul (2008) refers to the term *double denial*, as defined by Joseph Gosnell, to describe our collective denial of the true account of our Aboriginal history and the further attempts to marginalize them from the land that belongs to them (p. 21). Denial arguably started with the IRS system that denied children their right to a standard of education, health, and life comparable to non-Aboriginal peoples. This continues today. Denial is further perpetuated through the various oppressive policies under the Indian Act, which still exists today. Settler denial continues in society as we acquire the “forgive and forget” or “just get over it and move on” perspectives. There is also the “don’t ask, don’t tell” mentality that hinders discussion of traumatic events such as abuse at the IRS. Asking someone who has been victimized to forget or suppress their experience only makes the issue more traumatic as it affects the health of not only the individual, but also the family and community. What affects one person has repercussions on all. The IRS is an example of denial on a grand scale. Many people,

including staff and physicians at schools, knew or suspected that there were instances of physical and sexual abuse occurring in IRS. They did not reveal the abuses to the authorities for fear of repercussions, such as the loss of their jobs or being shunned by society. Further perpetuating the cycle of denial is the rhetoric of the state that seemingly promotes diversity and the rights of Aboriginal peoples, but in reality, constitutes further denial. Denial, in this way, renders reconciliation between Aboriginal peoples and other Canadians virtually impossible to achieve.

The focus of this thesis is on official denial as outlined by Cohen where the Government of Canada's denial of Aboriginal rights is first, how it is defined in treaty agreements between the Crown and Indigenous nations and, second, how it is defined in terms of Indigenous peoples as Canadian citizens under international human rights protocols. The undertones of government rhetoric seemingly evince denial in an official capacity. In this way, the government's narrative is somewhat different to the reality. The subsequent chapters outline and reflect on the gap between the rhetoric and the reality of Aboriginal rights in the context of the discourse in national and international law. This discussion suggests what must be overcome in order for reconciliation to be achieved between Aboriginal and non-Aboriginal peoples in Canada.

Chapter 3 Rhetoric and Reality: The Constitution Act and Aboriginal Rights

The Constitution was thought to be a “renewal of our hope...a fresh beginning” (Trudeau, 1982, para. 23). - Prime Minister Pierre Elliott Trudeau

“For if individuals and minorities do not feel protected against the possibility of the tyranny of the majority...do not feel they will be treated with justice, it is useless to ask them to open their hearts and minds to their fellow Canadians” (Trudeau, 1982, para. 12). - Prime Minister Pierre Elliott Trudeau

At the proclamation ceremony for the Constitution Act on April 17, 1982, Prime Minister (PM) Pierre Elliott Trudeau and Her Majesty Queen Elizabeth II gave impressive speeches promoting respect for the diversity and culture of Aboriginal peoples in Canada. The Prime Minister (1982) said, “I speak of a Canada where men and women of aboriginal ancestry, of French and British heritage, of diverse cultures of the world, demonstrate the will to share this land in peace, in justice, and with mutual respect” (Trudeau, 1982, para. 6). Similarly, Her Majesty the Queen of England reiterated aspects of Trudeau’s speech; the Queen declared that differences exist, but that reason and compromise would overcome them. The emphasis of her speech was on the “respect” of each other’s rights, so that all Canadians could prosper. Further, she recognized the historic relationship between Canada’s Aboriginal peoples and the British Crown. She described this relationship as being one of “innate respect,” pointing out the national and provincial governments’ willingness to consult with native people’s representatives and to work together to resolve long-standing differences (Dan1stEarlofBugerton, 2012). Both speeches depict a sense of promise of better relations between Aboriginal peoples and other Canadians, which would begin with all levels of government working together to mitigate differences and find solutions to problems.

This chapter first looks at Canada’s implementation of the Constitution Act and then outlines how landmark federal and provincial Supreme Court cases have challenged the court in

recognizing Aboriginal rights under the Constitution Act including *R. v. Sparrow* (1990), *R. v. Van der Peet* (1996), *Delgamuukw v. BC* (1997), and *Haida Nation v. BC* (2004). In reviewing the judgments in these cases, a pattern can be seen in which it appears that the courts have interpreted and defined Aboriginal rights according to the Western point of view, as exemplified by the existing common law system. This view can be interpreted as an effort to maintain peaceful relations between Aboriginal peoples and other Canadians. The most important section of the Constitution Act pertaining to Aboriginal rights is section 35(1): “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” (Constitution Act, 1982). The wording of this section is explicit: Aboriginal rights exist and are recognized and affirmed. However, in actuality, these rights are not affirmed and are subject to interpretation by the courts.

The four First Ministers’ Conferences on Aboriginal Constitutional matters from 1983 to 1987 were an opportunity for Assembly of First Nations leaders to meet with provincial premiers to attempt to define Aboriginal self-government following the patriation of the Constitution (Belanger, 2010). However, the conferences did not clarify Aboriginal self-government or Aboriginal rights. The meetings ended up as another exercise of government power and more rhetoric that suppresses Aboriginal concerns over the ownership of the rights to the land and resources. The behavior by the Ministers, with their counterclaims challenging traditional land boundaries and inherent Aboriginal rights, was contrary to the peaceful, respectful nature exhibited by Aboriginal representatives who confirmed the need for a partnership between Aboriginal peoples and the government (National Film Board of Canada, 1987). The Canadian government basically exhibited a total lack of respect for the Aboriginal parties who were present during the conferences.

The ministers' lack of respect for Aboriginal concerns at the conference was contrary to Prime Minister Brian Mulroney's intention as declared in his 1985 speech: "Let us decide at this Conference that our Constitution shall acknowledge that aboriginal peoples have a right to self-government" (para. 49). Yet, the Minister's disregard for Aboriginal concerns was mirrored in the proceedings in 1983 and through the statements of one minister. Premier Richard Hatfield, New Brunswick, who supported Aboriginal peoples and their participation during the proceedings. He confirmed there was no commitment by the First Ministers to actively engage with the issue of self-government and equality. This candid response by Hatfield was in response to an amendment that was presented on self-government. The equality clause amendment was passed with a seven out of ten ministers in support, but Prime Minister Trudeau dismissed it (National Film Board of Canada, 1987). If that wasn't enough, in the 1985 meeting, the ministers proposed that right to negotiate self-government be removed from the Constitution (National Film Board of Canada, 1987). The First Ministers' conference was a classic example of a political rhetorical game under the auspices of the colonial ideology that continues to be displayed in the court system, especially in constitutional matters.

R. v. Sparrow (1990) was based on an individual who was exercising his right to fish based on existing Aboriginal cultural rights under the Constitution Act (*R. v. Sparrow*, 1990). The two significant decisions made in the case focused on the word "existing" and the phrase "recognized and affirmed" as stated in section 35(1). First, with respect to "existing" rights, the court ruled that there had to be flexibility in the rights to allow for their evolution over time, so that the right was not confined by the implementation of the Constitution Act in 1982 (*R. v. Sparrow*, 1990). This meant that fishing as a cultural form existed prior to the Constitution and is protected under the Constitution as an "existing" right. Second, the court ruled that the

government could not override or infringe upon such rights, as per the Act, without justification (*R. v. Sparrow*, 1990; Hanson and Salomons, 2009). As a result of this ruling, the courts now had to justify their reasons for not ruling in favour of Aboriginal rights, thereby recognizing and affirming their rights as per the Constitution. However, the onus was still on plaintiffs to prove that their Aboriginal rights exist. Lawyer, Paula Mallea (1994), who focuses on Aboriginal and Constitutional law in Canada, also points out there continued to be quibbles in the lower courts in an attempt “to diminish the impact of [the] *Sparrow*” decision (p. 62). For example, there was contention over whether the word “existing,” as it applies to Aboriginal rights, should refer only to pre-settler, Aboriginal practices and whether the rights in question had to be integral to Aboriginal cultural survival. In short, the Sparrow case marked the real recognition of Aboriginal rights by the state, yet agents of the state appeared to be quick to erode what they could of these recently recognized rights.

The second case, *R. v. Van der Peet* (1996), challenged the Constitution Act on the right of Aboriginals to sell fish on a non-commercial basis. As such, the court “prohibited the sale or barter of fish caught under such a license” since the plaintiff caught the salmon under the Indian food fish license (*R. v. Van der Peet*, 1996, p. 2). Of importance is that the case considered those present practices, customs, and traditions which had continuity with pre-contact. These rights are supposed to be protected by section 35 (s.35). The judgments in the case involved two specific decisions. First, the case recognized and defined Aboriginal rights as “an activity [that] must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right” (*R. v. Van der Peet*, 1996, p. 3). Second, the court took into account that Aboriginal rights existed prior to contact and were specific to the culture in question. The test defined what is “integral to the distinctive culture,” what is the perspective of the Aboriginal

group in question, and how that perspective relates to the “Canadian legal and constitutional structure” (*R. v. Van der Peet*, 1996, p. 3). Therefore, the proof that had to be established was that commercial fishing was a practice, custom, or tradition that existed prior to contact. That is, the claim had to “be based on the actual practices, customs and traditions related to the fishery, here the custom of exchanging fish for money or other goods” (*R. v. Van der Peet*, 1996, p. 5).

The judgments for the cases above appear to be supportive of Aboriginal constitutional rights. Stated in the case is “what constitutes a practice, custom or tradition distinctive to native culture and society must be examined through the eyes of aboriginal people” (*R. v. Van der Peet*, 1996, p. 7). However, it seems that the onus is on Aboriginal peoples to prove what is a cultural practice or tradition in an institution that has little understanding of what their perspective is. As such, the court structure is alienating and denies Aboriginal peoples an equal platform for discussion.

The provincial case of *Delgamuukw v. BC*, adjudicated the claim by the Gitksan and Wet’suwet’an for Aboriginal title over their traditional land in northern BC (Slattery, 2008). As with the *R. v. Van der Peet* (1996), this one was judged in accordance with s.35 (1) of the Constitution. The appellant claim “was based on their historical use and ‘ownership’ of one or more of the territories” (*Delgamuukw v. BC*, 1997, p. 3). Further, the case was about proving the historical and sacred connection to the land, which was traditionally passed through their oral history. The trial judge and Court of Appeal dismissed ownership claims and the oral submission in the courts (*Delgamuukw v. BC*, 1997). Yet again, the court, in considering their rights, sidelined Aboriginal peoples. The Gitksan and Wet’suwet’an were unsuccessful in their efforts given the court’s unwillingness to accept an alternative view of oral testimony/evidence. In this way, the system alienated them from a process that is supposed to uphold their rights. Even

though the court did not rule in favor of the Gitksan and Wet'suwet'an, the case was significant, since we now see oral history challenging the court in a new direction.

The case was appealed in the BC Court of Appeal in June 1993 for claims for Aboriginal title and self-government (*Delgamuukw v. BC*, 1997). The previous finding from Chief Justice McEachern, that the Aboriginal right to self-government and Aboriginal title were extinguished with the term “existing” under section 35(1) of the Constitution Act, was upheld (Hurley, 1998). That meant that the court did not recognize Aboriginal rights or title prior to 1982. However, there were still questions about what precisely these rights entailed.

The interpretation of the word “existing” under section 35(1) was further defined on appeal. In addition, the appeal court found that the trial judge's treatment of the various kinds of oral histories did not satisfy the principles laid down in *R. v. Van Der Peet* (*Delgamuukw v. BC*, 1997). In *Van Der Peet* the ruling included that a custom or tradition is determined by Aboriginal peoples not the courts (*R. v. Van der Peet*, 1996). So the court's interpretation that oral history was invalid in court testimony was problematic, since it represents the court's interpretation as opposed to the Aboriginal perspective. By a narrow margin, in a 3:2 decision by the chief justices, the judgment of the lower court was upheld (*Delgamuukw v. BC*, 1997). However, based on the trial judge's assessment of oral history and the interpretation of Aboriginal title a new trial was deemed necessary by the court. What this initial trial exhibits is that there is a stark contrast between the existing legal system and incorporating the Indigenous perspective into it.

Delgamuukw did not end there. The case went to the Supreme Court in 1997. The context of Aboriginal title and rights prior to 1982 continued to be discussed and further defined by the court (*Delgamuukw v. BC*, 1997). The judgment of Aboriginal title “recognized [that] aboriginal rights are not absolute and may be infringed by the federal and provincial governments”

(*Delgamuukw v. BC*, 1997, p. 9). Thus, there are limits set on Aboriginal rights as determined by either the provincial or federal government in Canada. The SCC in *Delgamuukw* warned that the “inclusion of [the] Aboriginal perspective must not strain ‘the Canadian legal and constitutional structure’” (Walkem, 2003, p. 212). As such, Aboriginal rights can be upheld as long as they do not infringe on the existing legal structure. At the same time, the SCC confirmed is that there is a “fiduciary relationship between the Crown and aboriginal peoples” where the duty to consult Aboriginal peoples must be recognized (*Delgamuukw v. BC*, 1997, p. 9). The duty to consult Aboriginal peoples over land and resource decisions that affect them was confirmed by the SCC in *Delgamuukw*.

The Supreme Court decision made some move toward defining Aboriginal title but the same cannot be said for self-governance. There were errors made by the trial judge, and the court could not make any decision of self-government (*Delgamuukw v. BC*, 1997). Therefore, the issue of Aboriginal self-government continues to be unaddressed. The other issue of federal and provincial jurisdiction and the “extinguishment” of Aboriginal title were further clarified.

In *Delgamuukw*, the jurisdiction of the federal and provincial levels of government is examined. The issue is “whether the province had the power to extinguish aboriginal rights after 1871, either under its own jurisdiction or through the operation of s.88 of the *Indian Act*” (*Delgamuukw v. BC*, 1997, p. 3). Therefore, it is evident that the boundaries of federal and provincial government continue to be an issue relevant to Aboriginal rights. It was determined that the provincial government did not have legislative power over Aboriginal rights (*Delgamuukw v. BC*, 1997). Thus the rights of Aboriginal peoples are confirmed as a federal responsibility.

Another provincial court case that pushed for the court's interpretation of the Constitution Act is *Haida Nation v. BC* in 2004. This case challenged two big forestry companies and the province on the duty to consult in changes to the management of a tree farm license. The Haida Nation argued that there was a duty to consult on the basis of Aboriginal title to the land. Weyerhaeuser acquired the former forestry giant MacMillan Bloedel on November 1, 1999, and the access to the land was transferred to the new company (*Haida Nation v. BC*, 2004). The Haida Nation challenged this transfer and also challenged the tree-farm license in general. The final judgment in the case was there was a moral obligation of the Crown to consult with Aboriginal groups. Interestingly, the province of BC had a policy for consultation with First Nations that was established in October 2002 (*Haida Nation v. BC*, 2004). The policy was established after the takeover by Weyerhaeuser. The court ruled that the company (as a third party) was not liable to consult because it was the Crown's responsibility (*Haida Nation v. BC*, 2004). In the end, the duty to consult was a moral but not a legal obligation for both the federal and provincial governments vested in the honor of the Crown.

The point of outlining these cases is to illustrate that small steps are occurring toward recognizing Aboriginal rights in the SCC. On the federal level, Aboriginal rights were defined according to pre- and post-contact situations and how those rights are protected under the Constitution. On both the provincial and federal levels, Aboriginal rights were further expressed in the duty to consult within the provincial and federal framework. Oral and traditional culture entered the courtroom, forcing the courts to consider a new approach to legal testimony. These cases suggest there is a piecemeal approach to maintaining peace between Indigenous and non-Indigenous peoples in Canada. In other words, Aboriginal rights could be upheld as long as they did not infringe upon the existing non-Indigenous framework. From an Indigenous perspective,

the court process can be perceived as a denial of Aboriginal rights that only further marginalizes Aboriginals and treats them as second-class citizens. At the same time, there is a fiduciary obligation emerging on behalf of the government to recognize and affirm Aboriginal rights under the Constitution (Bell & Paterson, 2003). The irony is that the Constitution Act was implemented to establish Aboriginal peoples as equals to other Canadians after years of oppression and marginalization, but in actuality, this is yet to be achieved.

Instead of equality, there is what can be perceived as an attempt to maintain social order. Both authors Ardith Walkem and Halie Bruce (2003) confirm that there are efforts of the government to maintain peace between all parties. They argue that “the Canadian government feared that s.35 might upset the established legal and political order, undermine the powers of Canadian governments, and result in the creation of a special class of citizens who had greater rights than ordinary Canadians” (Walkem & Bruce, 2003, p. 11). This sentiment may explain the courts’ decisions in these cases. There is a perceived fear that Aboriginal peoples will acquire special privileges that may be interpreted as negatively affecting other Canadians. Unfortunately, most people are uninformed about the history of Aboriginal peoples in Canada and the oppressive policies that shape their everyday lives. If most people were educated in the history of Aboriginal peoples and understood the continued restrictions imposed by the courts, for example, they might see the situation differently.

Alternatively, it could be argued that the courts are proceeding cautiously. Even though there has been some recognition of Aboriginal rights, there still appears to be some denial or reluctance by the courts to affirm what is in the Constitution. In this sense, there is a denial of rights in order to maintain peace, but we can ask: at whose expense? The whole idea of denial of rights in an effort to maintain the peace is contradictory, since the Constitution is already a law

that confirms Aboriginal rights. That is the whole point of implementing an Act or policy. After years of feeling like victims, a legal document was supposed to reinforce the claim that Aboriginals had rights equal to everyone else's. As a result, Aboriginal peoples experience an ongoing struggle as they lobby for equality and recognition of their cultural identity within the legal structure.

It is important to remember that the Government of Canada, not Aboriginal peoples, instituted s.35. That means that the Act was a Western instrument, which was implemented without consultation with the Aboriginal peoples to whom it referred. It is another manifestation of colonialism representing a misguided attempt at reconciliation. The cases outlined above illustrate how the courts ultimately decide what is an Aboriginal right. Thus, the court has all the power, and it decides what constitutes an Aboriginal right on behalf of Aboriginal peoples. For example, the judges in the court decide if they are willing to consider oral testimony as factual evidence. Oral history is ingrained in Indigenous culture and tradition that is passed down through generations. This history can be used as a legal tool. For a court process that relies on factual documentary evidence, it is difficult to incorporate and find legitimacy in oral testimony. However, the *Van der Peet* judgment concluded that "the courts must not undervalue the evidence presented by aboriginal claimants simply because that evidence does not conform precisely to the evidentiary standards applied in other contexts" (*R. v. Van der Peet*, 1996, p. 4). Thus, oral history should have a legitimate place in the courts.

Jurisdictional boundaries have been an issue with respect to Aboriginal rights in Canada for generations. Constitutional speeches by both Prime Minister Trudeau and Queen Elizabeth confirm that there are problems with federal/provincial boundaries. Borrows (2002) defines a process of denial whereby politicians and developers "draw, erase, and redraw legal borders to

include and/or exclude certain peoples, institutions, and ideas” (p. 34). From the cases outlined above surrounding the issue of oral testimony, federal and provincial jurisdictional boundaries appear to be drawn and redrawn. Oral testimony was not accepted by the province, but has some validity in the federal process. Aboriginal rights are defined according to provincial and federal authorities. Regardless, the end result is that Aboriginal peoples lose their voice in an effort to establish rights they already supposedly have. The Constitution Act was promulgated to uphold Aboriginal rights, but instead, Aboriginal rights, title, and culture are still on trial.

The loose interpretation of Aboriginal rights under the Constitution reflects the process that Borrows illustrates above. The Constitution maintains that Aboriginal rights cannot be extinguished, but it is still an expensive and lengthy process to adequately prove that an Aboriginal right stands in Canada. The logistics of plaintiffs moving through the court system actually hinders (denies) rights that are supposed to be confirmed under the same system. Consequently, the repatriation of the Constitution Act mobilized Aboriginal peoples to lobby for their rights, to become politically involved, and to move towards the reestablishment of their nationhood through decolonization (Poplar, 2003). Although there have been landmark cases to reaffirm Aboriginal rights, it is still the burden of Aboriginal peoples to prove their rights exist in court, as demonstrated by the major court decisions above (Stavenhagen, 2004). Borrows (2002) draws an important conclusion. He summarizes that “by contrasting Aboriginal and non-Aboriginal traditions in a dichotomous manner, the Supreme Court does not appear to have acknowledged the common law’s broad social function” (p. 15). To expand upon this statement, the court failed to truly understand the significance of the cultural aspects and traditions, such as oral history, that are the heart of the social community. It appears they are still operating for the most part under an assimilative and paternalistic ideology. Borrows (2002) suggests that “*sui*

generis” (the mix of Aboriginal concepts and common law) is what needs to occur in the court system that will allow for differences, but will also promote cooperation between both Aboriginal and non-Aboriginal people (p. 12). A mixing of both needs to occur, but further progress can include infusing Indigeneity into the existing legal structure. Perhaps another perspective and system will provide a platform for a new and improved system to be born. In essence, there would be a decolonization of the existing legal institution. As Borrows (2002) summarizes, there is a need to build “strong ties of cooperation and unity between Aboriginal and non-Aboriginal people” (p. 12). In this process, Aboriginal culture and people can be recognized as culturally unique.

While partnerships have been developed between Aboriginal and non-Aboriginal peoples, there is still more work to be done. Prior to the Constitution Act, Aboriginal rights were confined by the Indian Act, which contains outdated policies and only serves to marginalize Aboriginal peoples. Although their rights are still governed by the Indian Act, the Constitution has provided something of a platform to affirm their traditional rights, both past and present. However, the process does not involve a consultation between the courts, Aboriginal peoples, and representatives. The courts are using a Western system that continues to act paternally in making judgments on behalf of Indigenous peoples. It hinders the process of reconciliation.

The court does not operate in isolation from the rest of society. The institution reflects and influences the perspectives of the general population. Walkem (2003) states of the court process that by “interpreting s.35(1), the SCC is engaged in a process that, at the same time, reflects and defines the Canadian state and society” (p. 197). In this way, the SCC has the power to control the public’s opinion of Aboriginal peoples and how they are treated. The hierarchical and paternalistic decision-making exhibited by the courts is a continuance of the problems that

exist between Aboriginal and other Canadians. Integrated in the decision-making process is both official and historical denial as described according to the criteria outlined in Chapter 2. The courts have the ability to control the limits of Aboriginal rights in Canada by determining their rights in a historic context and how those rights relate in present day. What this indicates is a society that is still reluctant to treat Aboriginal peoples as equal to other Canadians, whereby the Indigenous perspective is overshadowed by the Western system. Borrows (2010) best summarizes this inequality and discord between Indigenous legal systems and common law:

The subversion of values that sustain Indigenous legal traditions generates confusion and disrespect for 'the law' in the broad sense within these communities. When people's respect for law is diminished, this creates a significant challenge for peace, order, and development. The destabilization of any society's sense of obligation generates substantial uncertainty, and society's sense of obligation generates substantial uncertainty, and Indigenous peoples certainly experience this result when their laws are denied. (p. 122)

The lack of recognition of Indigenous traditions in the courts has further extenuating effects on society as a whole. The lack of trust in the Western system can lead to great uncertainty and discontent with the systems that are seemingly constructed to uphold everyone's rights and freedoms.

Interestingly, all of the reports discussed in the next chapter (RCAP, the Stavenhagen report, and the Kelowna Accord) were issued after the inception of the Constitution Act. These reports mirror the messages of the Constitutional speeches, emphasizing the need for cooperation between all levels of government. This means that in 2005, twenty-three years after the Constitution Act, the same issues remained unaddressed. Equality and respect for Aboriginal

peoples was still lacking. The inequality created a divide in the relationship between Aboriginal and other Canadians. “Baby steps” are taken in court in clarifying the rights of Aboriginal peoples under the Constitution Act. However, the gradual concessions by the courts over the last thirty years can be viewed as manifestations of the government’s peace-making approach. The next chapter continues the discussion of inequality and explores inequality as unmet social and economic needs and human rights of Aboriginal peoples in Canada.

Chapter 4 Rhetoric and Reality: Socio-economic Inequality

The reorganization of health and healing systems can do much to improve the well-being of Aboriginal people. And good health, in turn, can contribute to the political and economic renewal of Aboriginal people to a degree that has long been underestimated by Aboriginal and non-Aboriginal people alike. Whole health may depend on politics and economics, but the dependence is mutual. The new political and economic systems that Aboriginal people are now struggling to build will not achieve the peaks of creativity, efficiency and integrity of which they are capable unless and until the health of all the people becomes a contributing force. (Canada, 1996a, 3.3.5.4 para. 9)

In an effort to promote change and provide initiatives to narrow the gap between Aboriginal and non-Aboriginal peoples, government sponsored reports and action plans were released in 1996, and again in 2004/2005. The Royal Commission on Aboriginal Peoples (RCAP) in 1996 was a pivotal and comprehensive document that defines the social and economic inequality experienced by Aboriginal peoples in Canada and provides recommendations. UN Special Rapporteur Rodolfo Stavenhagen's "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People" in 2004 can be considered a follow-up to RCAP to report on Aboriginal human rights in Canada. In the same year, the Kelowna Accord roundtable discussions were instituted to come up with an action plan to improve the lives of Aboriginal peoples. This chapter, first, recognizes that there have been government initiatives to study social and economic conditions of Aboriginal communities and outlines the main problems; and, second, argues that there has been little improvement in social and economic conditions. RCAP, the Accord, and the UN report by Stavenhagen are used to illustrate the lower standards of socio-economic conditions experienced by First Nations in comparison to other Canadians. This analysis supports the argument that there is still inequality between Aboriginal peoples and other Canadians despite efforts and the government rhetoric and initiatives that seemingly promote change.

Canada's Human Development Index (HDI) ranking, is published yearly in the United Nations (UN) Development Programme *Human Development Report*. The ranking is significant, since it reflects the nation's standing in how it treats its people or human development. The first report, in 1990, recognized that human development includes not only economic wealth but is also:

a process of enlarging people's choices. The most critical of these wide-ranging choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living. Additional choices include political freedom, guaranteed human rights and personal self-respect. (UN, 1990, p. 1)

The HDI measures social and economic factors including education, health, and the standard of living for Canadians. Each participating country is ranked accordingly. Since 1990, for the most part, Canada's ranking in the world has ranged between first and eighth. The low ranking of eight occurred in 2003 and, again, in 2010.

Stavenhagen (2004) reflects upon Canada's HDI ranking. In the report, Stavenhagen claims that when the HDI "is calculated for Registered Indians...it reveals a substantially lower score for this population, which would be ranked about forty-eighth among the countries in the report" (p. 10). If Aboriginals were calculated alone, Canada would rank substantially lower in the HDI. Yet, "Canada recognizes that key indicators of socio-economic conditions for Aboriginal people are unacceptably lower than for non-Aboriginal Canadians" (Stavenhagen, 2004, p. 10). The important point is that despite the government's narrative supporting human rights in the international arena, Aboriginal peoples are still experiencing substandard treatment. If Aboriginal peoples were the focus of the index, Canada's ranking may be considerably lower in the world and the country would have a less favourable image.

RCAP and Stavenhagen reports and the Kelowna Accord not only provide an analysis of socio-economic conditions, but also offer recommendations for how to solve the problems. A comparison of the mandates of the reports shows some similarities in their objectives. All of the mandates refer to the socio-economic gap between Aboriginal and non-Aboriginal peoples.

RCAP mandate states:

The Commission of Inquiry should investigate the evolution of the relationships among aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole. It should propose specific solutions, rooted in domestic and international experience, to the problems which have plagued those relationships and which confront aboriginal peoples today. The Commission should examine all issues which it deems to be relevant to any or all of the aboriginal peoples of Canada. (Canada, 1996a, 1.1.1.1 para. 2)

The Stavenhagen report's mandate is:

to close the unacceptable gaps between Aboriginal Canadians and the rest of the population in terms of educational attainment, employment and access to basic social services...[and to] report on the main challenges faced by Aboriginal peoples in their quest to fully enjoy their human rights. (Stavenhagen, 2004, p. 5)

The Kelowna Accord mandate is:

to “close the gap” between Aboriginal and non-Aboriginal Canadians...to improve the socio-economic conditions of Aboriginal people...[and] to bring the standard of living for Aboriginal peoples up to that of other Canadians by 2016.” (Patterson, 2006, p. 1)

From the mandates outlined above, it is evident that the intention behind the reports was to address the inequality between Aboriginal peoples and other Canadians to create a better

relationship between them. The gap can be narrowed if the socio-economic inequality is lessened. In all of three reports, it is suggested that if socio-economic inequalities are rectified, then a better relationship will develop. If we consider the health, living conditions, and education categories that are used to calculate HDI, all three reports yield similar findings about Aboriginal communities. The findings are used to illustrate that there has been little change in socio-economic conditions, despite the rhetoric supporting change. The main issues identified in the reports from 1996 to 2004/2005 are compared to the 2006 Census statistics, where possible.¹

4.1 Health

Individual and collective health is important for a vibrant community. Inadequate health services and the inability to access them impair an individual's ability to function to his or her full potential. All three of the reports mentioned above refer to the inadequate health care services for First Nations people and the health problems that Aboriginal peoples experience. RCAP, the Stavenhagen report, and the Kelowna Accord summarize general information pertaining to life expectancy, infant mortality, child welfare, and other health-related concerns. The health concerns outlined in the reports generally confirm the findings outlined below.

First, Aboriginal life expectancy is lower than other Canadians due to a higher incidence of disease and illness (Canada, 1996a; Stavenhagen, 2004). Among the factors contributing to a lower life expectancy are higher rates of injury and accidental deaths, infectious diseases, life-threatening degenerative conditions, overcrowding, education failure, unemployment, welfare dependency, incarceration and legal problems, injury, violence, and self-destructive behavior (Canada, 1996a). In 2004, "life expectancy [for Aboriginals was] 10 years lower than the rest of Canada" (Stavenhagen, 2004, p. 11). According to the 2006 Census, life expectancy of First

¹ The 2006 Census figures are the most current published statistics from Census Canada at the time of writing this report.

Nations “still lags behind that of the total population of Canada” (Statistics Canada, 2006, p. 14). Second, infant mortality is higher for Aboriginal peoples. In 1996, infant mortality for “Indian people” was about twice as high as the national average (Canada, 1996a, 3.1.2 para. 4). According to the Kelowna Accord, “Aboriginal infant mortality was almost 20% higher than for the rest of Canada” (Patterson, 2006, p. 10). Unfortunately, there are no comparable 2006 census statistics available. Third, other critical health related issues reported include the high incidence of HIV/AIDS, diabetes, tuberculosis, and suicide: “tuberculosis is 6 times higher, that of heart disease 1.5 times higher and that of diabetes [is] 4 times higher than among other Canadians” (Stavenghagen, 2004, p. 11). All reports confirm that life expectancy is lower, infant mortality remains higher, and other critical health issues remain higher in First Nation communities. From 1996 to 2006, not much has changed to increase the health of Aboriginal peoples.

In relation to the treatment of children, the Western system continues its assertive control over Aboriginal children and families. The legacy of IRS is a reminder that removing children from their families and communities is destructive. Some of the children were placed in foster care or adopted by non-Aboriginal families in the 1960s in a campaign that has become known as the “Sixties scoop.” The apprehension of children by child welfare authorities occurred when children were separated from their families and this is still occurring. Cindy Blackstock, a member of Gitksan Nation who worked in the area of child and family services reports that more children are cared for outside their homes now than under IRS. The continued removal of children can be attributed to the lack of coordination in jurisdiction and funding between the federal and provincial governments (Blackstock, 2008). It is up to child welfare authorities to determine if a parent is capable of caring for a child and to remove the child if they deem it necessary.

Communities are still coping with the removal of their children and intergenerational effects arising from residential schools, so the wounds are fresh. Associated with child welfare are issues of child neglect and abuse and addictions of fetal alcohol syndrome (Canada, 1996a). Interfamily abuse and violence is described as a serious problem as families lose their “authority and influence over their children” (Stavenhagen, 2004, p. 12). The cycle of abuse continues as children are distanced from their families and communities when there may be other alternatives available. Alternatives may include treatment and healing centers to keep children with their families and communities. Prime Minister Harper (2012), however, professes that the government is actively addressing the issue of child protection: “To protect children, we have brokered six child and family services harm-prevention agreements between Ottawa, First Nations and provincial governments” (para. 13). Even though these agreements are in place, many Aboriginal children are still growing up in the absence of their biological family.

Poverty is a major issue on reserves, and this directly impacts the health conditions of Aboriginal peoples in terms of infrastructure, housing, and social and economic opportunities. There is a need to decrease poverty by providing social assistance and economic opportunities, increasing funding for infrastructure and housing, increasing funds for maintenance and repairs to housing, creating better access to health services, increasing the supply of housing, increasing the quality and quantity of water available, and creating better systems for water and sanitation (Canada, 1996a; Stavenhagen, 2004). There have been some changes, but many Aboriginal peoples still have lower incomes, inferior housing conditions, and contaminated water, which can lead to infectious diseases (Canada, 1996a; Stavenhagen, 2004). This systematic cycle continues despite reports that already outline the problems and offer recommendations for change.

The problem with improving health can be attributed to the lack of funding at the federal and provincial level. As referred to in the section on child welfare, jurisdiction and funding at the federal and provincial levels of government appear to be inadequate. Aboriginal communities are denied services and they must continually press for better health facilities:

We saw in relation to fetal alcohol syndrome that a former minister of health denied the need for special program support to Aboriginal communities, thus overruling the recommendations of a House of Commons committee based on evidence gathered from Aboriginal people (and others with relevant experience). With regard to pollutants, we saw that Aboriginal people have difficulty proving ill health effects to outside ‘experts’ who control environmental review processes. (Canada, 1996a, 3.3.2.4 para. 23)

There is a seeming disregard from officials in addressing the problems. Over the last 16 years, there have yet to be major improvements in the health services and basic infrastructure provided for Aboriginal peoples. There is a lack of willingness by the government to correct the problems and to treat health services as a human right and a treaty right.

At the same time, government control and funding in communities is not always allocated sufficiently to improve conditions. Government control over where the funds are used and how they are used is an ongoing problem. More than a century of paternalistic control under the Indian Act has created a welfare decision-making process whereby government agencies control funding, not Aboriginal communities. This means that there has been little control by the communities in the allocation of funds in areas where they are needed most. Government funding is helpful, but greater community autonomy is needed to make these decisions.

Access to health care is considered a treaty right. Treaty 6, signed in 1876, included the “medicine chest clause” that symbolized the Government’s commitment to providing health care

to the Plain, Wood Cree, and other groups at Fort Carleton, Fort Pitt, and Battle River (Aboriginal Affairs and Northern Development Canada [AANDC], 1964). The clause stipulated that “a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent” (AANDC, 1964, para. 25). This clause accompanied a previous one stipulating that if any “pestilence” is experienced by Aboriginal peoples, the Indian Agent will assist them as necessary in a way that is “sufficient to relieve the Indians from the calamity that shall have befallen them” (AANDC, 1964, para. 23). As such, Treaty 6 provided the basic health care in 1876. Even though technology has changed, it can be argued that health care remains entrenched in the treaty. Thus, health care is a treaty right that is applicable today, and requires the government to “provide medicines and all that is required to maintain proper health” (Chiefs, 2005, p. 3). For communities such as Attawapiskat, examined further in the next section, health care as a treaty right is far from a reality.

4.2 Living Standards

Living standards in Aboriginal communities are related to the health outcomes outlined above. Inadequate infrastructure and housing maintenance cause many health problems and detract from a person’s quality of life. While the focus is on-reserve living conditions, it is important to acknowledge that there is also a need for better off-reserve living conditions. With the increased urban migration of Aboriginal peoples, there is an ongoing need for adequate housing in urban areas. However, this section provides an overview of the main issues of on-reserve housing and infrastructure using existing reports and statistics. The issues are complex and could be analyzed further, but that is beyond the scope of this thesis.

Statistics from 2004-2005 reported that there was a housing shortage of an estimated “20,000 to 35,000 units and growing” on-reserves (Patterson, 2006, p. 11). The shortages are

attributed to a lack of supply, poor maintenance of existing structures, and inadequate infrastructure. In comparison to other Canadians, First Nations peoples are less likely to own their own homes, and to live in conditions with running water and proper sanitation. The Aboriginal population is increasing, but the availability of viable housing is decreasing. According to RCAP, housing policy has been under review by the Federal Government since 1988 (Canada, 1996a). Inadequate housing and living conditions are not new issues.

The Indian Act defines the ownership of reserve land and how it is utilized. The problem comes down to issues of land ownership and the “lack of clarity and agreement on the nature and extent of government responsibility to respond to the problem” (Canada, 1996a, 3.4 para. 3). Policy has been elusive in terms of outlining, which level of government (federal or provincial) is responsible, and the government has been slow to resolve the issues. In 1992, the Assembly of First Nations and the Federation of Saskatchewan Indian Nations declared that housing was a federal responsibility according to the *British North America Act* 91 (24) of 1867, the “*Royal Proclamation of 1763*, enhanced by section 91 (24) of the *Constitution Act* of 1867, and sections 25 and 35 of the *Constitution Act*, 1982” (Canada, 1996a, 3.4.3.2.2 para. 3). Yet, there was no recognition of government financed housing as an Aboriginal right or treaty right, so housing is considered a social policy that is based on need as determined by the government (Canada, 1996a). However, even on the basis of need, on-reserve housing requirements have not been adequately addressed, despite ongoing claims by the government that it is committed to improvements and has allocated funds for this purpose.

Funding for housing and infrastructure remains an outstanding issue, even though agencies have been set up to help with financing. The Canada Mortgage and Housing Corporation (CMHC) requirements for financing for housing repairs, maintenance, and supply

are dependent on government funding and support (Canada, 1996a). However, to take advantage of CMHC funding, an Aboriginal person must have some means of paying back the borrowed funds. Many Aboriginal peoples do not have stable employment. There is also the issue of land ownership, since First Nations peoples on reserves do not own their own homes or the land. If people do not own their own homes, they are less likely to maintain them. Some of the changes could include: that housing be suited to the location and environment, that increased income or social assistance be provided to residents so that they can finance maintenance through CMHC, and that questions of ownership and responsibility be resolved (Canada, 1996a). The 2006 Census reports that 29% of First Nations people lived in homes that needed repairs, an increase from the 26% recorded in 1996 (Statistics Canada, 2010b, para. 1).

As outlined, housing continues to be a priority for Aboriginal peoples, because many people are living in substandard structures on reserves. There appears to be a need for changes to federal policies as well as a will to follow through and implement them (Canada, 1996a). An example is the federal funding given to First Nations communities for sewage and water disposal. The federal government withdrew their input into the operations of the systems “without ensuring the communities had the awareness, resources and skills to take over” (Canada, 1996a, 3.4.3 para. 3). This example suggests that, while the federal government is responsible for providing funding and installation for the sewage and water systems, there is a flaw in long term planning, in particular training members of Aboriginal communities to maintain and operate the systems. A substandard or insufficient water supply will affect not only sewer and sanitation, but also the domestic water supply and the overall health of Aboriginal individuals and communities. More comprehensive long-term strategies, including community consultation, would be beneficial for these infrastructure needs.

Adequate housing and health are basic needs for the safety and well-being of communities and are considered human rights under international law. Based on the above statistics, housing is not being adequately addressed at the national level. RCAP recommendations support the need for better housing, considering that shelter is already enshrined as a basic need. Housing must be recognized at the national level as a social right.

Internationally, housing is a human rights issue, and Canada has recognized this by signing international treaties:

Canada is a signatory of the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16 December 1966. Article 11 of the covenant recognizes ‘the right to an adequate standard of living...including adequate food, clothing and housing; and the right to continuous improvement of living conditions.’ (Canada, 1996a, 3.4.2.2 para. 8)

The right to housing is also covered under the Universal Declaration of Human Rights in 1948 and the International Labour Organization No. 169 (Canada, 1996a). If the right to an adequate standard of living is recognized at the international level, one can ask why it is not acknowledged at the national level. Secondly, there is the historic obligation of the Canadian government to support Aboriginal self-sufficiency with regard to control over their land and resources (Canada, 1996a). The obligation referred to in the Royal Proclamation is referenced earlier in this chapter. As already noted, Canada is a signatory to international agreements that recognize shelter and provision for basic needs as human rights for Aboriginal peoples, but these rights do not appear to filter down to the domestic level. If these initiatives were implemented, there could be greater autonomy for Aboriginal peoples and less dependency on the government for support and social services.

In the end, housing can be viewed as a cyclical and integrated problem in terms of health, safety, and the well being of individuals and communities. It is an issue of affordability, influenced by household incomes and viable employment opportunities. There is a relationship among all of these variables. If there is inadequate housing, it means people are more prone to health related illnesses, less able to work, and therefore, less able to support an adequate standard of living for themselves, their families, and their communities.

Inadequate funds for housing and a lack of policies to support funding for services results in an inadequate supply of housing for the people who most need them. If there is no funding for infrastructure, such as a sufficient water supply and waste management systems to support the community, negative health consequences could result, and this could mean people are unable to live in their own homes and may have to find other shelter. Ultimately, one variable affects others. In this sense,

Aboriginal people see housing improvements as [a] means of simultaneously increasing control over their own lives, developing increased capacity to manage complex programs and businesses, providing meaningful jobs, sustaining Aboriginal lifestyles, cultures, and generally better health, and [a] strengthening [of] Aboriginal communities. (Canada, 1996a, 3.4.2.1 para. 1)

Housing is necessary to the well-being of Aboriginal peoples, as well as contributing to health and safety, just as for other Canadians. If the needs of individuals are not addressed, then relations both within and beyond the community - regionally, nationally, and internationally - are affected. This cyclical effect can create greater inequality.

Of interest is that Prime Minister Harper (2012) recently claimed that sufficient funding has been allocated to address the housing and infrastructure problems: “We routed more than a

billion dollars of Economic Action Plan funding to investments for Aboriginal and northern communities, using one-time stimulus money to accelerate the building of new homes, and water and waste water systems to improve living conditions” (para. 17). Yet, as already stated, the problems of adequate infrastructure and housing continue.

The community of Attawapiskat in Northern Ontario is a good example of substandard housing where residents have been forced to vacate their homes and live in tents with no running water or sewer systems. The media has reported extensively on this issue. One fact that stood out was that many Aboriginal communities are in a similar situation. The Government of Canada has known about the situation and has invested money, but it has been insufficient. Members of the Attawapiskat community and band council have expressed concerns over government control of band funds, as stipulated in the Indian Act (Spence, 2012). In the meantime, the government has provided temporary shelter and homes.

Given the highly publicized housing crisis, the government appointed a third-party manager to oversee funding on behalf of the band. The band challenged this decision in court. The court ruled that the third-party management of funds was unreasonable. At the time of writing this thesis, the problem has still not been resolved, in the sense of providing adequate permanent housing for the people of Attawapiskat. Chief Spence publicized a media release on May 11, 2012, in response to the Department of Aboriginal Affairs and Northern Development’s media release on May 10, 2012. In the notice, Chief Theresa Spence (2012) clarified the inaccuracies presented by the government’s housing crisis perspective of her community. She clarified the difference between the ATCO camp construction trailers provided in 2010, and the current acquisition of mobile homes, and the use of the First Nation’s Healing Lodge as short-term housing. Both the ATCO trailers and the healing lodges were meant to serve as temporary

housing until more long term housing accommodations could be provided. The ATCO trailers are unsafe as they do not include amenities for common areas and are often unsanitary. In addition, the trailers are not enough to accommodate for the current and future housing needs. As a result, there is a gap between the temporary housing the ATCO trailers and the healing lodge provide and the need of more long term safe housing solutions like the mobile homes (Spence, 2012). Better education facilities are another area that the community has lobbied for, but that the government has yet to meet. The irony of this case study is that the government professes that “our Government will continue with our action plan to address the urgent health and safety needs of the people of Attawapiskat” (AANDC, 2011, December, para. 4). As stated, the government has an action plan for Attawapiskat, but it is questionable what action will be taken, and if it will be sufficient to meet the needs of the community.

4.3 Education

The Western education system was forced upon Aboriginal children through the Indian Act. As a consequence, due to language and cultural barriers, Aboriginal children generally did not receive an adequate education. The substandard education also lay with the lack of funding for educational facilities and staff. Of course, the early mindset was that Aboriginal children could not learn, or were not worthy of an educational standard equivalent to that provided for other Canadians. Today, there are still reports that Aboriginal children are receiving a lower level of education in comparison with other Canadians, despite contrary claims by the government. The Kelowna Accord reports that “in 2001, 44% of Aboriginal people ages 20 through 24 had less than high-school education, as compared to 19% for Canada as a whole” (Patterson, 2006, p. 9). According to the 2006 Census, “33% of Aboriginal adults aged 25 to 54 had less than a high school education compared to nearly 13%” of non-Aboriginals (Statistics Canada, 2010a, para.

2). (It is not specified if the statistics includes both on-reserve and off-reserve Aboriginals).

Although the statistics are not comparable in terms of age categories, they do provide a general sense of the lower numbers of Aboriginal peoples who have acquired a high school education. RCAP asks “why schooling has continued to be such an alienating experience for Aboriginal children and youth” (Canada, 1996a, 3.5.1.4 para. 4). The answer may lie in the Western approach educational institutions take that are contrary to Aboriginal children’s culture and traditional teachings. Community input into curriculum development that incorporates Aboriginal culture and language can help to overcome the alienation that Aboriginal children are experiencing.

First Nations education is a lifelong process that follows a holistic approach, which differs from existing Western institutions. Aboriginal education consists of four stages representing learning as a continual process throughout one’s life: child, youth, adult, and elder (Canada, 1996a). Adults and elders need to be involved in a child’s education process in order for the holistic approach to work. In so doing, children will be nurtured according to their culture and language, which will foster a cohesive and integral identity. By educating children “intellectually, spiritually, emotionally and physically,” a well-balanced Aboriginal child is more likely to result (Canada, 1996a, 3.5 para. 3). However, as mentioned above, most Aboriginal youth do not finish high school. This means that many Aboriginal adults do not have an education past high school, and neither do the elders. Furthermore, for over 25 years, Aboriginal peoples have expressed their concerns about the affects of the Western education system on Aboriginal children. Aboriginals wish to have their culture incorporated into the mainstream curriculum (Canada, 1996a). Yet today, for the most part, the current curriculum does not incorporate Aboriginal culture and values. Of course, the issues surrounding low rates of high-

school education among Aboriginal youth can be attributed to the legacy of the IRS system that was a racist Western educational system. Aboriginal cultural traditions were not a part of this system. Instead, a biased Western version of history was taught that was contrary to the true Canadian Aboriginal history.

All education, regardless of its level, is a treaty right under the numbered treaties. The federal government does not appear to agree. As stated in RCAP, “the federal government has denied that post-secondary education funding is a treaty right” (Canada, 1996a, 3.5.6.1.3.5.19 para. 9). Education as well as health is a treaty right. The stipulation for post-secondary funding is that the student has to live on a reserve. Under the Indian Act, the federal government is responsible for funding for post-secondary education for students with status (Canada, 1996a). But it is one thing to provide funding and another for people to be able to take advantage of it and/or want to pursue a higher level of education. On the other hand, the Prime Minister affirmed his commitment to Aboriginal education in a January 2012 speech to the Assembly of First Nations saying, “Aboriginal peoples are Canada’s youngest population. It is therefore in all of our interests to see aboriginal people educated, skilled and employed. And there will be no better point in history to ensure that happens” (Harper, 2012, para. 10-11). One can question if the Prime Minister has recently become enlightened for the need for greater attention to Aboriginal education, or if it the shortage of skilled labour in Canada that needs to be addressed.

What is the solution to the education problem? One proposal by RCAP was to place the control of education in the hands of Aboriginal peoples, paving the way for self-determination. Aboriginal control over an Aboriginal education system is not a new idea and has been a prominent issue since the 1970s (Canada, 1996a). In 1972, Aboriginals gained control over Indian Education with the inception of the “Indian Control of Indian Education” (ICIE) paper

prepared by the National Indian Brotherhood (NIB) (later known as the Assembly of First Nations). The paper was basically administrative in nature (Milloy, 1999). Further, section 35 of the Constitution Act of 1982 and UNDRIP confirm that lifelong learning is an inherent treaty right (Assembly of First Nations [AFN], 2010). Legislation confirms that Aboriginals have a right to education, funding, and government support. Yet, there still needs to be more Aboriginal education systems that incorporate their own culture, language, and value systems. These are education systems that could help to alleviate the cycle of poverty. In 2010, the Assembly of First Nations revised the NIB paper to create the “First Nations Control of First Nations Education 2010” and to update and further address similar issues identified in the ICIE paper (AFN, 2010). The fact that an updated paper on ICIE is needed, 38 years later, further emphasizes that little has been achieved since 1972.

RCAP lists some recommendations that would help structure Aboriginal education systems: moving toward self-governance; funding to provide funding for proper facilities and resources to incorporate Aboriginal language and culture; more Aboriginal content and curriculum in schools and/or more aboriginal education facilities; the review and removal of racism and discrimination in the curriculum; hiring of Aboriginal teachers and cross-training of other teachers in Aboriginal history, culture, and language; and offering more educational facilities near communities (Canada, 1996a). Although there has been some progress such as incorporating Aboriginal components into the curriculum in elementary and high schools and the revival of Aboriginal languages and culture by communities, there is still much that can be done to incorporate RCAPs recommendations. There is still inadequate funding for post-secondary education that deters students from acquiring a higher level of education. Yet, in the House of Commons debates on October 25, 2012, the Honorable Marjory LeBreton (Leader of the

Government) responded to a question regarding education improvements by contending that: “the government has worked very hard in cooperation with various Aboriginal communities and leaders to address the very serious issue of Aboriginal education. We have taken a great many steps, such as building over 30 new schools and completing 263 school infrastructure projects” (House of Commons Debate, 2012). Amidst the rhetoric, he acknowledged that more partnerships were needed with First Nations to develop education legislation and that the government remains committed to this task.

One inspiring story of surmounting the need for proper education facilities is Shannen’s Dream. Shannen Koostachin, a youth from Attawapiskat First Nation, who lobbied the government, along with others from her community, for a safe and well constructed school with adequate funding for maintenance and operations. They also wanted a school that represented the culture of their community, and provided a quality of education equal to that of other Canadian children. The initiative began in 2007 after years of students dealing with old and contaminated structures and temporary portables provided by the government (Forbister, 2012). Shannen and her friends used social media as a platform to initiate awareness and change. They created a YouTube video about the conditions of their school and what they wanted to see changed. The video went viral and prompted the then-Minister of Indian Affairs, Chuck Strahl, to meet with the youths to address their concerns. Initially, Strahl said there was no money to build a school. Shannen did not believe him and continued to speak to government representatives at the Ontario Federation of Labour and in parliament. Her persistence achieved results in 2009 when Strahl agreed to build a new school. On June 22, 2012 the school was finally opened (“Shannen’s Dream,” 2012). Unfortunately, Shannen did not live to witness it as she was killed in a car accident in May 2010. Her initiative helped to inform the general public of the need for such

institutions, not only in her community, but in other Aboriginal communities. The initiative was also successful in that the 2012 budget included a commitment from the government to allocate funds for schools on reserves. This was significant since, previously, funding was not guaranteed (“Shannen’s Dream,” 2012). This story is a tribute to the perseverance and the ongoing struggle for a proper education by the youth in Aboriginal communities and also to the utility of social media in creating awareness and change.

Summary

It is important to remember that RCAP and the Kelowna Accord were national reports and initiatives. The Stavenhagen report was internationally initiated to investigate Aboriginal human rights in Canada. Since then there have been follow-up reports/initiatives, such as the AFN report card, First Nations Regional Health Survey (RHS), and the Auditor General’s report, all reflecting on the state of Aboriginal peoples. First, a unique model was developed by the AFN for grading the progress of the recommendations outlined in RCAP. The AFN developed a report card to commemorate the ten-year anniversary of RCAP, grading the government’s progress on improving social and economic conditions for Aboriginals. The overall consensus was that “the federal response has been limited to providing some funding in targeted areas such as early childhood development, diabetes, housing, sewage infrastructure, some aspects of education reform, water management, and social assistance” (AFN, 2006, p. 2).

The report card confirms recent finding on the lack of progress on health care, living conditions, and education as discussed above. In summary, “the reality for First Nations communities today is *ongoing poverty*, and an increasing gap in living conditions with other Canadians” (AFN, 2006, p. 2). The report card graded the Government of Canada on the categories outlined in the five volumes of RCAP. Of interest are the criteria assembled under the

heading of “Canada’s Failure to Act,” including the lack of jurisdiction of First Nations over their housing, an absence of integrated health services, and the failure to establish healing centers under First Nations control. Overall, Canada received 37 F’s and 13 D’s, which makes up 50 out of a total of 66 categories that were graded. This is a failing grade (AFN, 2006). Among the categories that received failing grades were: recognition and implementation of International Human Rights in Canada; fully implementing, renewing, or creating new treaties; self-government in family law, including child welfare, and a restructuring of Canada’s institutions by abolishing INAC (Indian and Northern Affairs Canada, now Aboriginal and Northern Development Canada). Of significant concern is that education continues to receive little attention and also received a failing grade. Overall, housing did rate better than the other categories with significant progress in improvements in water and sewage systems. However, from the large number of failing grades, it is a clear that little has been accomplished in narrowing the inequality gap in socio-economic conditions between Aboriginal and non-Aboriginal peoples some ten years later after RCAP.

Second, RHS released on February 15, 2011, contains figures on health and safety. This national report was produced by First Nations and contains data from 2008 to 2010 (First Nations Information Governance Centre [FNIGC], 2012). The key findings validate those of the RCAP and Stavenhagen reports, and the Kelowna Accord: Aboriginal peoples are still in need of home repairs, access to potable water, and greater employment opportunities. The number of First Nations students finishing high school is still below the rest of the Canadian population (FNIGC, 2012). The main point of referring to the RHS report is to show that the same socio-economic problems outlined in the reports from 1996 to 2010 are still present in 2010. On June 12, 2012, Shawn Atleo, National Chief of the AFN, confirmed that the general health of

Aboriginal communities is lower than that of other Canadians. He also indicated that action must be taken to improve the living conditions of Aboriginal peoples (AFN, 2012). However, in a House of Commons debate in October 2012, the Honorable John Duncan (Minister of Indian Affairs and Northern Development, Federal Interlocutor for Métis and Non-Status Indians and Minister of the Canadian Northern Economic Development Agency, CPC), referred to positive measures taken by the government to improve water quality: “this government has taken strong action on water since coming into government in 2006. After 13 long years of neglect, we have invested strong resources into upgrading water and waste water systems across the country” (House of Commons Debate, 22 March 2011). One can ask where and what improvements were made.

Third, the Auditor General’s report completed in 2011 examined recommendations from seven audit reports between 2002 and 2008, concerning government progress in solving social and economic conditions: specifically, water quality, education, child welfare, housing, land claim agreements, and reporting requirements (Wiersema, 2011). Overall, progress was unsatisfactory noting “the education gap has widened; the shortage of adequate housing on reserves has become more acute; the presence of mold on reserves remains a serious problem; and administrative reporting requirements have become more onerous” (Wiersema, 2011, para. 3). Even though numerous recommendations were made by Stavenhagen, the Kelowna Accord, and RCAP the same inefficiencies remain. The boundaries between the provincial and federal jurisdiction remain blurred and acts an obstacle to progress:

The federal government, mainly through Aboriginal Affairs and Northern Development Canada, supports services such as education and drinking water on reserves that are provided by provincial and municipal governments off reserves. It is not always clear

what the federal government is aiming to achieve, because it does not define what type or level of service it is committed to supporting. (Wiersema, 2011, para. 6)

There appears to be some jurisdictional confusion with regard to what is being supported and by whom. Other problems include the lack of consultation with First Nations communities, as well as the lack of sufficient funding and a general support structure for programs. Needed is a change in legislation and policies and the structure for implementation (Wiersema, 2011). As already mentioned, funding is only part of the problem. Greater autonomy by communities over their affairs would help.

In conclusion, there is a continued deficit in Aboriginal living conditions compared to non-Aboriginal peoples. Despite reports such as RCAP and the Kelowna Accord to resolve the inequalities and rectify the problems Aboriginals continue to be marginalized. The reports outline that social and economic conditions have largely been ignored, despite all of the effort and expense invested. RCAP, the Stavenhagen report, and the Kelowna Accord focus in the discussions above focus on the need for improving social and economic conditions of Aboriginal peoples. These are human rights. Evident from the discussion of the reports is:

1. Aboriginal peoples' rights were confirmed under the Constitution Act 1982 and also previously (see previous chapter)
2. The social and economic inequality of Aboriginal peoples continues to exist.
3. There is a need for greater equality to rebuild relationships with Aboriginal peoples and the rest of Canada.
4. There is a need for structural policy and legislative reform and for the different levels of government to work together to find solutions.

The gap between the government's rhetoric claiming that the problems are being addressed and the reality of the continued ill-treatment of Aboriginal peoples in Canada is clear. This gap symbolizes the ongoing systematic discrimination against Aboriginal communities. Yet, Prime Minister Harper recently asserted in his speech to the AFN in January 2012 saying, "We have extended the full protection of the Canadian Human Rights Act to First Nations Canadians living on reserve" (para. 16). The facts suggest otherwise. It appears that the government is actively trying to evade the issues.

Interestingly, Aboriginal peoples asked the commission prior to the work on RCAP: "Can you promise us that your recommendations won't just gather dust on a shelf" (Canada, 1996b, *Renewal: A Twenty-Year Commitment*, para. 91)? This statement reflects the continued lack of implementation of the recommendations outlined in the reports even after all the effort and money spent on them. The question also reflects the history of broken promises that pervades Canadian history. There remains a contradiction in Canada's participation as an advocate of human rights on an international scale in contrast to the nation's treatment of Aboriginal peoples. RCAP concludes that "The world has changed, and if Canada wants to retain a position of respect and influence in world affairs, Canada must change too. We cannot continue to advocate human rights to the third world while maintaining the remnants of a colonial system at home" (Canada, 1996a, 1.14 para. 17). The colonial system remains in effect, exerting Western dominance over Aboriginal peoples. Aboriginal peoples continue to be marginalized, as demonstrated by their socio-economic level compared to other Canadians.

In contrast to the Australian apology issued in 2008 by the former Prime Minister of Australia, Kevin Rudd, to the "Stolen Generations" of Indigenous peoples of that country, Prime Minister Harper's apology fell short of addressing the social and economic conditions of

Indigenous peoples. Australian Prime Minister Kevin Rudd's (2008) speech declared a need "to close the gap that lies between us in life expectancy, educational achievement and economic opportunity" (para. 11). He claimed that the gap would close by half within a decade of the apology:

This new partnership on closing the gap will set concrete targets for the future: within a decade to halve the widening gap in literacy, numeracy and employment outcomes and opportunities for Indigenous Australians, within a decade to halve the appalling gap in infant mortality rates between Indigenous and non-Indigenous children and, within a generation, to close the equally appalling 17-year life gap between Indigenous and non-Indigenous in overall life expectancy. (Rudd, 2008, para. 51)

Rudd confirmed the social and economic gap between Indigenous Australians and non-Indigenous Australians. He also reinforced the commitment to close this gap within a specified period of time. By 2010 substantial money had been allocated to address the gap (Australia, 2010). However, Rudd left his position in 2010 with an unfinished legacy.

An Australia's Reconciliation Action Plan (RAP) 2009-2012, formed partnerships and relationships in order to close the gap by creating opportunities for Aboriginal peoples (Reconciliation Australia, 2012). Measureable targets were set such as community cultural education and building partnerships for education and employment. As a follow-up to RAP, the RAP Impact Measurement Report 2012 reported on the success of RAP and confirmed that there was an increase in employment, education, and business opportunities; better relationships; and an increase in respect for Aboriginal culture (Australia, 2013). It is important to note that RAP surveyed organizations involved with RAP and not the general public. In contrast, the Australian Reconciliation Barometer 2012 (which measured the degree of reconciliation since the last

Barometer in May 2010), took into account the public's perspective. Contrary to the RAP Impact Measurement report, the barometer confirmed that there is still a gap between Indigenous and non-Indigenous Australians. In fact, there has been little change since May 2008 (the first year of the Barometer). It is suspected that it will take a generation to see any "significant change in the perceptions and attitudes of Aboriginal Torre Strait Islander and non-Indigenous Australians towards one another" (Auspoll Pty Ltd., 2013, p. 3).

A proposed Budget for 2012-2013, by ANTaR, a non-profit justice advocacy organization, reports that funding is still needed for programs such as Aboriginal community employment, education and language, health, housing, infrastructure and services, child care, land title claims, and for community awareness for reconciliation outreach programs (ANTaR, 2012). From this long list of proposed budget allocations, it can be concluded that socio-economic conditions still need to be addressed, and reconciliation still needs to be achieved in Australia. This is similar to Canada. Socio-economic conditions are central to narrowing the gap between Indigenous and non-Indigenous peoples. Both Canada and Australia have work to do in achieving reconciliation between Indigenous and non-Indigenous peoples. However, Australia appears to be making some progress in building education and employment partnerships with organizations in order to provide opportunities for Indigenous peoples.

In contrast to Rudd, Prime Minister Harper (2008) did not address the social and economic disparity in his apology to the survivors of IRS in Canada, nor did he offer any plan to close the gap. He merely confirmed that there was a need for reconciliation - not a need to solve the problems that continue to marginalize Aboriginal peoples in Canada.

The next chapter expands upon the Government of Canada's response to international mechanisms that were developed to support Indigenous human rights, both on an international scale and domestically.

Chapter 5 Rhetoric and Reality: International Law

“The Declaration is a major step toward establishing the normative vision. It seeks to eliminate the human rights violations suffered by Indigenous peoples and the nation-states’ justification for their oppression” (Henderson, 2008, p. 23).

For years, Canada has maintained an international reputation as a humanitarian nation. However, in light of the nation’s relationship with its Indigenous peoples, Canada’s reputation is becoming tarnished. High profile court cases such as *Lovelace v. Canada* (1981) can be considered the beginning of the international community paying attention to Canada’s treatment of Aboriginal peoples (Canada, 1996a). Specifically, this case dealt with discrimination under the Indian Act against Aboriginal women, who lost their status if they married a non-Aboriginal male. The UN Human Rights Committee agreed that the rights of Aboriginal women had been denied under Article 27 of the *International Covenant on Civil and Political Rights* (Mallea, 1994). However, even though the UN recognized this infringement on human rights, the UN has no jurisdiction to change laws in Canada, but the case did draw the attention of the UN to broader injustices towards Aboriginal peoples (Canada, 1996a). Even though Bill C-31 was finally passed in 1985 by the Government of Canada to amend the Indian Act, allowing women and their children to regain their status, there are still limitations. “For example, any child whose parent (male or female) marries a non-Indian for two generations will be excluded from Status” (Mallea, 1994, p. 10). There are still limitations on who retains status based on marriage to “non-Indians” as defined by the Canadian government. It is not Aboriginal peoples who have made these policies. As outlined in a previous chapter, there have been several other cases, such as *Delgamuukw* that have challenged Aboriginal rights under Canada’s Constitution Act and the Charter of Rights and Freedoms. But their success has been limited.

As a follow-up to the Royal Commission on Aboriginal Peoples (RCAP), Radolfo Stavenhagen's 2004 UN report on the human rights of Aboriginal peoples brought further international attention to discriminatory practices in Canada. An example of such practices is the substandard living conditions of Aboriginals in comparison to other Canadians. Canada appears to promote equality and non-discrimination in its participation in international movements to endorse human rights, but its actions suggest that this participation constitutes little more than lip-service. In the process of adopting the UN Genocide Convention (UNGC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Canada delayed endorsing them. Even though Canada has endorsed UNGC and UNDRIP, Aboriginal rights are still not addressed. Some mechanisms such as the International Labor Organization No. 169 that outlines provisions to protect the rights of Indigenous peoples have still not been ratified by Canada. This raises further questions about the true state of human rights in the country.

This chapter outlines existing international human rights mechanisms and Canada's delayed endorsement or non-adoption of them to show that, despite the rhetorical narrative that the Government of Canada uses to support human rights, its treatment of Aboriginal peoples suggests otherwise. This discussion illustrates the gaps between the rhetoric of international mechanisms and the Canadian government's failure to actually implement them. The fact that international law is not necessarily binding for individual states unless the state ratifies the law in question means that Canada is not obligated to adopt international law as domestic law. Meanwhile, Aboriginal peoples have Indigenous rights under UNDRIP in addition to human rights under other charters. Considering the international recognition of rights, an argument can be made that Canada does have an obligation to uphold Indigenous rights as stipulated in UNDRIP. Canada can also be said to have an obligation to support Aboriginal rights since it is

an active participant in the UN's discussions. Since the country tries to maintain an international status as a protector and promoter of humanitarian values, its reaction to international laws seems contradictory. In response to Canada's disregard for Aboriginal rights, Aboriginal peoples have come to regard themselves as governed by international law instead of national legislation. As such, Aboriginal peoples continue to lobby under international instruments such as UNDRIP since most of their human rights are continually infringed upon domestically.

5.1 The UN Convention on the Prevention and Punishment of the Crime of Genocide (UNGC)

Draft UN discussions over the inclusion of cultural genocide in UNGC reflect upon the Government of Canada's rhetoric and denial of human rights. It was originally proposed that cultural genocide be a separate category under the genocide convention, but the concerns expressed by various countries (including Canada) resulted in the omission of cultural genocide as a separate category. Many scholars, such as Ward Churchill (2004); Roland Chrisjohn, Sherri Young, and Michael Maraun (2006); and David MacDonald (2012) argue that Canada's colonial history and the IRS system should be read as genocide. According to the original framing of the concept, genocide can be cultural or physical in nature, but only physical genocide is recognized as a crime under the Convention. Cultural components were included in the Convention draft, but were omitted in the final version of the document. Canada was one of the countries that had issues with incorporating cultural genocide into the Convention.

Lawyer Paola Gaeta (2009), in her commentary *The UN Genocide Convention*, refers to the loss of the original definition of genocide as a "gap [that] can be identified between the rhetoric employed by the drafters and the legal obligations that were actually put in place" (p. 11). The gap is the omission of terms between the draft and the final Convention. This section

first, outlines how genocide and cultural genocide were originally defined; second, it analyzes the discussions by the nation states in the draft convention to illustrate Canada's reluctance to include cultural genocide; and, third, it analyzes the discourse of international and domestic narratives and how they apply to Aboriginal peoples in Canada.

Genocide, by its original definition, incorporates acts of both physical and cultural destruction. Dr. Raphael Lemkin (2008), who coined the term *genocide* and worked on the draft of the UN Convention, defined the concept as the:

destruction of a nation or of an ethnic group...a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. (p. 79)

As Lemkin argued, genocide includes the disintegration of things like culture, language, and social institutions. In the draft Convention, Lemkin classified attacks upon culture, language, and religion as cultural genocide. This definition is significant in the context of Indigenous peoples' present struggle to assert and maintain their rights to their culture and identity.

Canada's role in drafting the Genocide Convention shows the nation's concern over having its colonial history scrutinized under the category of genocide. As presented in the committee meeting records published in the *Travaux Préparatoires*, Canada's representative, Mr. Lapointe, expressed that "the Government and people of Canada were horrified at the idea of cultural genocide and hoped that effective action would be taken to suppress it" (Abtahi &

Webb, 2008, p. 1510). Canada wanted cultural genocide left out of the Convention, since its representatives thought that, “genocide should be limited to the mass physical destruction of human groups” (Abtahi & Webb, 2008, p. 1510). It is important to note that first, Canada’s interpretation of culture applied only to English and French or the European culture, which were considered the major entities in Canada. This interpretation did not recognize the significance of other cultural groups, such as First Nations. Second, Canada’s main reason for not including cultural genocide in the convention appears to be related to how the term is defined. They wanted to limit the scope to the physical destruction of groups of people. Mr. Stephens, Canada’s representative ensured that Canada was committed to “the preservation of the culture, language or religion of minority groups” (Abtahi & Webb, 2008, p. 1224). However, Mr. Stephens noted that the Canadian government “was opposed to the inclusion under the term ‘genocide’ and within the framework of the Convention, of a form of cultural destruction which appeared to it to be wholly and [essentially] a matter of minority rights and would, as such, be best be dealt with [under] the Covenant on Human Rights” (Abtahi & Webb, 2008, p. 1224-1225). By including the protection of language, culture and religion under the Human Rights Declaration, genocide would not be associated with the term “cultural genocide”. This would deflect any association of the acts of colonialism and assimilation in Canada with crimes of genocide.

The Canadian government was not the only country to object to including cultural genocide in the final document. Other countries including France, Iran, South Africa, New Zealand, Sweden, Denmark, and the United Kingdom also thought cultural genocide was best left out of the document (Abtahi & Webb, 2008). In fact, Iran, in its argument for not including cultural genocide, went so far as to imply that the government of a nation should itself be allowed to determine whether or not to interfere with a particular group’s religion or culture. The

government would have to decide “whether all cultures, even the most barbarous, deserved protection, and whether the assimilation resulting from the civilizing action of the State also constituted genocide” (Abtahi & Webb, 2008, p. 1511). It would appear that the “barbarous” cultures in the statement refer to Indigenous groups, who were the target of assimilation strategies at that time. In any case, most of the countries thought the term cultural genocide was too vague and needed to be better defined. This was the reason for suggesting that language, culture, and religion be protected under the Human Rights Declaration where the rights of minority groups would be recognized. However, it can be argued that the countries opposing Article III all had a vested interest in ensuring that they were not found in violation of cultural genocide.

Other countries supported the inclusion of cultural genocide, outlining some key concerns that could affect the survival of minority or cultural groups. Mrs. Ikramullah, the representative for Pakistan, had concerns about the omission of spiritual heritage as a target of genocidal attack. She stated in the *Travaux Preparatoires* that “to deprive a human group of its separate culture could thus destroy its individuality as completely as physical annihilation” (Abtahi & Webb, 2008, p. 2049). In her statement, she equated physical genocide with the destruction of cultural identity. She further clarified that “physical genocide was only the means; the end was the destruction of a people’s spiritual individuality” (Abtahi & Webb, 2008, p. 2049). The former U.S.S.R. representative, Mr. Morozov, expressed his concerns about the omission of cultural genocide because it is “feared that unless some provision regarding cultural genocide were included in the convention, some rulers who oppressed minorities might take advantage of its absence to justify crimes of genocide” (Abtahi & Webb, 2008, p. 2045). A case can be made that Canada falls within this description for the nation’s treatment of its Aboriginal peoples and

especially their adverse treatment in the IRS system. The IRS system was in full operation in 1948 when UNGC and the Human Rights Declaration were passed.

In order to provide some context for these conventions, it is important to define what they are and what constitutes the signatory states' obligations. A convention, as defined by the UN (1949) and under international law, is "an agreement among sovereign nations. It is a legal compact which pledge[s] every contracting party to accept certain obligations. Broadly speaking it is a treaty among many nations" (UN, 1949, p. 1). The UNGC is thus a treaty among nations with international rules and regulations. But even though the convention is an international mechanism, it is not binding under domestic law unless it is ratified and implemented by the nation state. International laws must also not conflict with domestic laws such as the Constitution or legislative acts (de Mestral & Fox-Decent, 2008). Canada is a signatory to the international genocide treaty, but it did not adopt all of the genocide criteria outlined in the Convention. As suggested by legal scholars Armand de Mestral and Evan Fox-Decent (2008), Canada has adopted a "dualist approach" to international law whereby the Canadian legal system decides which international laws they wish to ratify into its domestic law, and, in this way, international and domestic law are considered separate entities (pp. 581-582). In other words, elected legislators decide what is to be incorporated into domestic law on behalf of all Canadians.

Interestingly, Canada did not immediately adopt UNGC. The Convention was passed in the UN in December 1948 and was made effective on January 12, 1951; Canada did not ratify it until May 12, 1952. Among Canada's objections to implementing UNGC was that the Convention was already incorporated in the nation's criminal code. As Roland D. Chrisjohn, Tanya Wasacase, Lisa Nussey, Andrea Smith, Marc Legault, Pierre Loiselle, and Mathieu Bourgeois (2002) note, homicide was already considered a punishable crime in Canada. In this

way, the definition of genocide was included in mass homicide and, therefore, “the genocide convention would be redundant” (para. 21). Even though Canada finally endorsed UNGC, it has not incorporated the majority of the Convention’s principles into its domestic laws.

Further elaborating on the change of policies in Canada with respect to genocide, genocide scholar Ward Churchill (2004) raises some concerns. He suggests that Canada covered up its genocidal policies by eliminating any reference to the “serious bodily or mental harm to members of the group” and the “forcible transfer of their children” from the enforcement statute (Churchill, 2004, p. 8). Removing these references eliminated any potential acts of genocide under the IRS system. Under this system, there were well-documented instances of serious bodily or mental harm to children who attended the schools and their parents, as well as forcible relocation of children to the schools. Canada’s revisions did not end there. According to Churchill (2004), in 1985, after most of the residential schools had closed, Canada redefined the enforcement statute “to delete measures intended to prevent births within a target group from the list of proscribed policies/activities” (p. 8). However, Canada did commit crimes of genocide against Aboriginal peoples under Article II, subsections (a) through (e) of the Convention by: “killing members of the group”, “causing serious bodily or mental harm to members of the group”, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”, “imposing measures intended to prevent births within the group”, and “forcibly transferring children of the group to another group” (UN, 1949, p. 11-12). Not only were children forced to attend the schools, but many children died at the schools.

Recently, genocide has become associated with the IRS system and Canada’s colonial past in light of recent fact-finding by the Truth and Reconciliation Commission of Canada (TRC). Genocide scholars such as Dr. David MacDonald (2012) have argued that the treatment

of Aboriginal children and their attendance at IRS constitutes genocide according to the UN definition. Far short of addressing this issue, the problem persists that the Canadian government does not recognize genocide in the case of IRS and in the treatment of Aboriginal peoples. By transferring the blame onto the religious institutions that ran IRS until 1969, they have absolved themselves of any criminal responsibility. However, a case can be made that genocide continued after 1969. It is a complex situation, since the Canadian government's policies under the Indian Act constituted the framework for the system. Chrisjohn et al. (2002) makes an intriguing comparison to the denial of acts of genocide by the government "as an act even Houdini would envy" (para. 12). That is, an act to evade the issue and to create an illusion of support for human rights.

The denial of acts of genocide against Aboriginal peoples calls into question the dedication of the Government of Canada to equality and upholding international human rights law. It is apparent that, through the IRS system alone, Canada defied UNGC and also the UN Declaration of Human Rights. Gregory Younging (2009) summarizes this, writing, "from the start, Canada's treatment of Indigenous peoples was at odds with the UN human rights regime beginning with the *Convention on the Prevention and Punishment of the Crime of Genocide* and the *Universal Declaration of Human Rights*" (p. 330). Canada's dismissal of some of the criteria outlined in the Genocide Convention from its domestic law shows this divide. In this way, Aboriginal peoples' rights under international human rights law have been denied in Canada.

5.2 The UN Universal Declaration of Human Rights 1948

Human Rights legislation has been in place for decades for Indigenous peoples in Canada. In 1948, Canada ratified and endorsed the UN Declaration of Human Rights, which was finalized in the same year as UNGC. The difference between the two documents is that UNGC was more specific in addressing aspects of genocide, whereas the Human Rights Declaration was more general in its references to respect, equality, and non-discrimination for all people. Neither the Convention nor a Declaration is legally enforceable. It is up to the state to ratify and implement them. However, there is an obligation of the state to conform to international protocols (UN Association of Canada, 1998). The preamble to the Human Rights Declaration states an intention to create equality and uphold rights and freedoms for all peoples of the world, as well as to maintain good relations among nations: “whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...whereas it is essential to promote the development of friendly relations between nations” (UN General Assembly, 1948, para. 1,4). However, the point can be made that Canada failed to uphold the rights and freedoms of Aboriginal peoples not only on the national level, but also at the international level. In doing so, greater inequality has developed between Aboriginal peoples and other Canadians straining the relationship between the two parties.

The Human Rights Declaration was meant to maintain peaceful relations not only among nation-states, but also “among the peoples of territories under [the state’s] jurisdiction” (UN General Assembly, 1948, para. 8). Articles 2 and 18 of the Human Rights Declaration incorporate cultural recognition for language and religion, which was originally supposed to be covered under Article III of UNGC (UN General Assembly, 1948). The important point is that

there are provisions for language and culture as human rights. Yet even as Canada signed the Human Rights Declaration, the IRS system was in operation, restricting Aboriginals from practicing their culture and speaking their traditional languages. Cultural bans on events such as potlatches and sun dances were enshrined in Canadian law through the Indian Act. Clearly, this is contrary to the Human Rights Declaration.

Article 26 of the Human Rights Declaration contains provisions for education and developing children to their full potential stating “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups” (UN General Assembly, 1948, para. 49). The argument can be made that Canada did not uphold Article 26 in its relationship with Aboriginal peoples: children were not developed to their full potential in IRS. Indeed, they often received an education that was substandard compared with other Canadians. Not only that, but children lost their identity through religious and European ideologies that degraded them, humiliated them, and taught them to hate themselves. Article 26 contains provisions for the rights of parents to choose which form of education they want for their children. However, initially, children were forced to attend IRS, meaning that the choice of the type of education a child received was denied to the parents, some of whom may have preferred a traditional and more culturally appropriate learning environment. Thus, there is a gap between international law and domestic practices.

Even though the government of Canada apologized for IRS in June 2008, there has been little progress in reconciliation. Yes, IRS have long since closed but the intergenerational effects are present and serve as a constant reminder of past atrocities. The wounds are fresh. Education

facilities in Aboriginal communities are mostly substandard. First Nations education is still at a lower level than that of other Canadians. Communities are in the process of salvaging their culture and identity. The economic marginalization of Aboriginal peoples is still a reality. Even though there are domestic and international human rights laws of which the government is a signatory to, Aboriginal peoples have yet to see the effects. Their human rights are still being denied.

5.3 Other International Human Rights Laws:

Around the 1960s, human rights appeared to be a focal point given the number of international laws that established that expanded upon the UN Human Rights Declaration. This was likely the response to hate propaganda, which was on the rise at the time (Rosen, 2000). Many of these laws targeted racism and discrimination: the *International Labour Organization (ILO)* (1958), the *Declaration on the Rights of the Child* (1959), the *UN Declaration on the Elimination of All Forms of Racial Discrimination* (1963), the *UN International Convention on the Elimination of all Forms of Racial Discrimination* (1965) and the *International Covenant on Civil and Political Rights* (1966). It is of interest that Canada signed the *UN Declaration on the Elimination of All Forms of Racial Discrimination* (1965) on August 24, 1966, but delayed ratifying it until October 14, 1970 (UN General Assembly, 1965). This delayed reaction is a pattern. As outlined in the previous section, Canada also delayed ratifying the UNGC from 1948 to 1952.

Since the 1960s, other international laws have been developed concerning the rights of Indigenous peoples, including: *Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries* (1989), and the *Convention on the Protection and Promotion of the Diversity of Cultural Expression* (2005). Both of these laws uphold Indigenous human rights

internationally. In the case of the ILO No. 169, which recognizes cultural differences and promotes non-discrimination, Canada has yet to ratify it. The interesting point about ILO No. 169 (1989) is that it recognizes and promotes conflict resolution and prevention between the government and Indigenous groups. ILO No. 169 calls for consultation by the government on matters relating to Indigenous peoples, as well as equal access to employment, education, health, and social facilities. These are the same concerns that RCAP 1996 recognizes. Even though these laws are in place in Canada, Aboriginal peoples are still experiencing social, economic, and cultural discrimination. The unequal treatment and lack of consultation with Aboriginal peoples is not only at odds with all of the above conventions and declarations, but also with the Charter of the United Nations and the *Declaration on the Principles of International Law Friendly Relations and Co-operation Among States* (1970). These laws emphasize the importance of peace and security, not only among states but also within a nation.

A response report by the UN Human Rights Committee on *the International Covenant on Civil and Political Rights; Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant* dated April 20, 2006, illustrates Canada's tarnished international reputation on human rights. Outlined in the report are concerns about Canada's lack of implementation of non-discriminatory practices. Of the 19 concerns, eight of them directly relate to Aboriginal peoples, while at least another five can be considered applicable. These include concerns for the "full participation in all levels of government and of civil society including Indigenous peoples" ability to "receive and examine complaints from individuals under the State party's jurisdiction"; upholding the Inherent Rights of Aboriginal peoples; duty to consult Aboriginal groups in economic enterprises; making available legal systems for victims of human rights discriminations; providing a clear definition of terrorist offences to "ensure that individuals will

not be targeted on political, religious or ideological grounds, in connection with measures of prevention, investigation or detention”; “protection and promotion of Aboriginal languages and cultures”; discriminatory practices against “Aboriginal women and their children” under the Indian Act that override the Canadian Human Rights Act (calls for the repeal of section 67 of the Act); and the general treatment of Aboriginal women and children and access to the justice and welfare systems (UN Human Rights Committee, 2006, pp. 2-3, 5-6). The most troublesome of all the concerns is the Indian Act, which is still in existence and is referred to as discriminatory, yet it exists apart from the Canadian Human Rights Act and so is not affected by it (UN Human Rights Committee, 2006). Essentially, the report suggests that Canadian human rights are not being applied to Aboriginal peoples as a result of the Indian Act. Embedded in this legislation is the example of ongoing inequality and discriminatory treatment of Aboriginal peoples. At the international level, the UN has, again, reported on the ongoing injustices of Indigenous peoples in Canada.

Yet, Canada has professed its devotion to and respect for its human rights obligations in the report *Government Response to the Interim Report of the Senate Standing Committee on Human Rights - “Canada and the United Nations Human Rights Council: At the Crossroads”* (Canada, 2007; Andreychuck & Fraser, 2007). In response to the UN recommendation that Canada designate an official ambassador to work with the relevant federal departments to ensure human rights, Canada stated that the “functions and responsibilities of the proposed ambassador are currently met by a series of existing arrangements designed to ensure close and consistent coordination across all relevant federal departments” (Canada, 2007, p. 13). This response is characteristic of the Canadian government’s approach: officials make the argument that international human rights provisions are already implemented and provided for under domestic

policies. There is a repetitive pattern of responses by Canada with respect to human rights and Canadian government policy. If domestic policies are allegedly in place to deal with human rights, then it questions why Aboriginal peoples in Canada are still experiencing human rights abuses contrary to international standards. “*Canada and the United Nations Human Rights Council: At the Crossroads*” in May 2007, reviewed ways for the Council to operate effectively in order for Canada to respect its human rights obligations domestically (Andreychuk & Fraser, 2007). The UN emphasized “Canada has serious implementation gaps when it comes to domestic implementation of its many international human rights obligations” (Andreychuk & Fraser, 2007, p. 53). In 2012, despite the UN follow-up reports and the creation of UNDRIP, a gap remains between international and national human rights implementation, especially when it concerns Indigenous peoples.

5.4 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Since the treatment of Aboriginal peoples did not change under previous international laws, the UN worked with Indigenous peoples around the world to create UNDRIP. UNDRIP was established in 2007. The document does not contain any new articulation of human rights, but promotes the inherent rights of all Indigenous peoples (Joffe, 2010). UNDRIP can be considered a summation and affirmation of all other international human rights law including the UN Charter and the Universal Declaration of Human Rights (Henderson, 2008). Erica-Irene A. Daes (2008) and James Henderson (2008) were among the scholars who participated in the Declaration’s working group. They discuss the formation of UNDRIP as a pivotal policy in self-determination and establishing human rights on an international forum. “The Declaration is a major step toward establishing the normative vision. It seeks to eliminate the human rights violations suffered by Indigenous peoples and the nation-states’ justification for

their oppression” (Henderson, 2008, p. 23). Not only did Indigenous peoples from around the world participate in the document, but also the document lays out a foundation for decolonization and self-determination, forbidding such actions as the forcible removal of children (Henderson, 2008). The Declaration is a new start not only for Aboriginal peoples, but also for all Canadians. Endorsing and implementing UNDRIP is both symbolic and substantive, since Indigenous peoples are finally recognized as having rights and as equal citizens of the world.

Ultimately, the Declaration protects Aboriginal peoples from acts of genocide and human rights violations. Unfortunately, “nearly every international convention in the fields of human rights and humanitarian law” has failed because national courts did not apply it. If the “standards exist, states have ratified them, but national courts are unwilling or unable to enforce them in private legal actions” (Daes, 2008, pp. 88-89). Canada’s decision to vote against the Declaration in 2007 reflects the uncertainty of this statement. In the 61st meeting of UNGA in September 2007, Canada voted against the adoption of UNDRIP along with three other countries: Australia, New Zealand and the United States (UN General Assembly, 2007). Canada apparently had issues with the broad interpretation of “lands and resources” and their implications for treaty rights, as well as the restrictive nature of the concept of “free, prior and informed consent” (UN General Assembly, 2007, para. 52). Apparently the free and prior consent as per Article 19 “could be interpreted as giving Aboriginal peoples a veto over virtually any legislative or administrative matter, even where such matters concern the broader population” (AANDC, 2008, para. 11). The problem is that Aboriginal rights may take precedence over those concerning other Canadians. At the same time, John McNee, Canada’s representative, confirmed that the country “continued to make further progress at home within

its constitutional guarantees for aboriginal and treaty rights, and with its negotiated self-government and land claims agreements with several Canadian aboriginal groups” (UN General Assembly, 2007, para. 49). There appears to be a disparity in how the government treats Aboriginal rights. On one hand, the government limits Aboriginal rights so that they do not take precedence over those of other Canadians. On the other hand, there is government rhetoric of a commitment to progress in securing Aboriginal and treaty rights. As a consequence, international mechanisms have yet to be incorporated into national policies.

Article 26 of UNDRIP was of particular concern to the government. Article 26 states: “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” (UN, 2008, p. 10). Canada found that this Article “is difficult to reconcile with Canadian recognition of a range of Aboriginal rights in relation to lands, from rights of use such as hunting and fishing, to Aboriginal title. There could also be attempts to use such language to support Aboriginal claims to ownership rights over much of Canada, even where such rights have been dealt with lawfully in the past” (AANDC, 2008, para. 10). The government had issues with the interpretation of Aboriginal rights and treaty rights as defined by UNDRIP and how it applies domestically. However, by maintaining this seemingly confrontational position against the adoption of UNDRIP, Canada again sent a negative message to Indigenous peoples.

As already indicated, Canada’s objections to accepting UNDRIP were due to concerns with the wording of the document and the potential overlap or conflict with existing domestic policies. The Declaration was voted down by the Conservative Party, which was the minority government at the time (Henderson, 2008). The details of Canada’s specific opposition to UNDRIP are not entirely clear, but conflict with treaty rights and human rights under domestic

laws are manifest concerns. A 2007 article by the CBC quoted various top Canadian officials as to why Canada did not adopt the Declaration, including the UN Ambassador and Canada's Minister of Indian Affairs. The UN Ambassador confirmed that Canada had concerns with the "wording on provisions addressing lands and resources" and with obtaining "prior informed consent with indigenous groups before enacting new laws or administrative measures" (CBC, 2007, para. 3). Chuck Strahl, Canada's former Indian Affairs Minister, stated that "Canada opposed the declaration because it lacks clear guidance for implementation and conflicts with the existing Canadian Charter of Rights and Freedoms, which the government believes already protects the rights of aboriginals" (CBC, 2007, para. 6). These statements suggest that Canada did not think it was necessary to accept the Declaration because the rights of Aboriginal peoples were enshrined in existing policies. Canada claimed that the Declaration's provisions failed to give clear, practical guidance to states. In particular, Canada referred to the issues of:

- "lands, territories and resources;
- free, prior and informed consent when used as a veto;
- self-government without recognition of the importance of negotiations;
- intellectual property;
- military issues; and,
- the need to achieve an appropriate balance between the rights and obligations of Indigenous peoples, member States and third parties". (AANDC, 2010, para. 8)

The rhetoric Canada employed in dismissing the Declaration sends a negative message. The message is one of dismissal of the importance of upholding Aboriginal human rights. UNDRIP affirms Aboriginal human rights and Canada must recognize the importance not only of ratifying the document, but of implementing it.

Canada voted against the Declaration in 2007, as it had previously in the 2006 Human Rights Council and again in the 2006 UN General Assembly (UNGA). In June 2006, in the First Session of the Human Rights Council, Canada voted against UNDRIP as well as the International Convention for the Protection of All Persons from Enforced Disappearance (Andreychuk & Fraser, 2007). In the 2006 UNGA discussions, Canada, which had been a strong active advocate in all discussions leading up to the Declaration, surprisingly decided to lobby against it and then tried to defer the adoption of the Declaration until the September 2006 Human Rights Council session (Joffe, 2010; Ahren, 2007). This response, among other expressions of opposition by Canada and other states, such as Australia, earned Canada a negative reputation of playing favorites. Canada, New Zealand, Australia, and the United States appeared to be unified in opposition against the other states (Ahren, 2007). Canada's pattern of objections towards the Declaration and its failure to embrace the Declaration reflects the nation's consistent inattention to Indigenous rights at home.

From the discussion of social and economic conditions in the previous chapter, it is clear that domestic laws and policies are not sufficient to guarantee equal rights for Aboriginal peoples. Henderson states, "unless nation-states that have made a commitment to international human rights enact appropriate domestic legislation, they can ignore their commitment with impunity – at least regarding their own citizens" (Henderson, 2008, p. 95). Canada appears to be evading its responsibility to address human rights by failing to follow through on international law by incorporating international mechanisms into the country's domestic policies.

On November 12, 2010, Canada finally endorsed UNDRIP. The official statement was that the "endorsement offers an opportunity to strengthen relations with Aboriginal peoples in

Canada, and to support our ongoing work on Indigenous issues internationally” (AANDC, 2010, para. 1). It is important to note that the Declaration does not automatically change Canadian laws as it is non-legally binding. However, since Canada is a UN participant, Canada can be considered as having a fiduciary obligation to adopt the Declaration. UNDRIP provides a framework for human rights at the international and national levels. A First Nations perspective suggests that Canada’s adoption of the Declaration is a symbolic gesture to aid in building and strengthening relationships with Aboriginal peoples in Canada. However, the Declaration was accepted only “in a manner that is consistent with [Canada’s] Constitution and legal framework” (AANDC, 2010, November, para. 13). Questions remain as to why, after refusing for three years to accept the document, Canada chose to accept UNDRIP. Canada was the penultimate country to ratify the document, ahead of only the United States. Perhaps international pressure influenced their decision.

This chapter has discussed human rights laws enshrined in agreements or treaties, whether international or national in nature. Although international law is not binding within a country it is the country that ratifies it in its domestic legislation. There are obligations for a country such as Canada to stand by what it claims to support. The message portrayed when Canada claims that an international law is superfluous, because it is already incorporated in domestic practice is negative one. The country denies that it has a human rights problem and needs to address it. Despite international laws such as UNGC, the UN Human Rights Declaration and UNDRIP, there appears to be no recognition or enforcement of these laws as they concern Indigenous peoples of Canada.

Canada’s policies have resulted in human rights violations and acts of genocide through the IRS system and other institutions. The Indian Act allowed the government to develop the IRS

system and, as a result, caused the genocide of a culture and a people. It is worth noting that in 2008, Canada publically acknowledged and apologized for the assimilation policy that led to the IRS system and for the abusive treatment of the children - though the nation still refuses to characterize it as genocide. Regardless of the rhetoric of the apology, the IRS experience is an example of genocide through a colonial ideology implemented through the national education system. The rhetoric of the apology promotes reconciliation and partnership with Aboriginal peoples, but the reality is that reconciliation is still not a reality.

From the IRS experience, we have learned that Canada's domestic policies need to be reviewed and revised where they infringe upon the basic human rights of cultures or individuals. Aboriginal peoples are currently working through the healing process and uniting in their political struggles for recognition and self-determination. Canada's movement to implement the principles of UNDRIP in its national policies may be a start for positive relationships in the future, but there are grounds for caution. Whatever the future direction, the common hope is that it will be positive and help Canadians to reconcile with the past. According to Younging (2009), "reconciliation must begin with: 1) throwing out all the historical disassociations and denials, and 2) getting out of the prevailing generation-centric headspace" (p. 327). Canada needs to be proactive and to be an influential trend setter for other countries to follow. There is a gap between the rhetoric of the nation's international narrative of supporting human rights and the ongoing discrimination and marginalization of the country's Aboriginal peoples.

What is needed to institute change and to create a new relationship based on mutual respect between Aboriginal and non-Aboriginal peoples? Reconciliation has been used to define positive change as "the conflict between Indigenous Peoples and the Canadian state is rooted in competing visions of Nationhood, sovereignty, territoriality, political and legal authority

reaching back to the days of first contact, and continu[es] to be manifest today” (Walkem & Bruce, 2003, p. 11). Decades later, we can argue that there is still a need for a more concrete legal mechanism to confirm Aboriginal rights. Some Aboriginal lawyers, such as Paul Joffe (2012), suggest that it is up to Indigenous peoples to effectively use UNDRIP, in combination with other legal mechanisms such as existing treaties, to lobby for their rights. The legal framework exists, but Canada chooses to overlook it. Should the government actually adhere to the human rights standards endorsed by UNDRIP, reconciliation between Aboriginal peoples and other Canadians may be easier to achieve.

Chapter 6 Reconciliation

“Human rights advocates have often found a great deal of rhetorical governmental support for their ambitious projects, only to realize later that the regime has no interest whatsoever in matching its words with deeds.” (Verdeja, 2004, p. 341)

“I see a day when Indigenous people will be sitting in the position where the white people and other people of the world will come to us and say, ‘Tell us what to do; tell us how to live on this earth. Tell us how to correct the damage that we have created on this earth.’” (Dave Courchene Jr. quoted in Canada, 1996a, 3.3.2.3 para. 13)

Reconciliation is, at present, elusive, but it is achievable. In this respect, the struggle for the recognition of Aboriginal rights can be won with considerable perseverance and struggle by both Aboriginal peoples and other Canadians. Colonialism has not only affected Aboriginal peoples, but also all Canadians although in different ways. In this sense, colonization can also be more generally viewed as adopting the ideology of colonialism and accepting the precepts of the ideology, consciously or sub-consciously. Generally, Aboriginals have been more socially and economically disadvantaged. Both Aboriginal and non-Aboriginal peoples have been oppressed and marginalized by capitalism where the elites benefit economically at the expense of other Canadians. In light of this, reconciliation can be achieved if there is a united effort to overcome the colonial ideology that plagues the nation. As outlined in previous chapters, there is a pattern of political misconceptions of the truth. The government insists they are working to decrease poverty and to create job opportunities for Aboriginal peoples, yet the same problems persist. Third world conditions characterize many Aboriginal communities such as Attawapiskat. Active engagement by the government to implement effective solutions is an ongoing problem. As a result, human rights are overlooked when it comes to Aboriginal peoples in Canada. The truth of the matter is that Aboriginal rights are continually sidelined for the benefit of political agendas. This chapter first defines reconciliation in order to understand what this may entail; second, it

outlines the key concepts that are needed to engage in the process of reconciliation; and third, it identifies some of the obstacles to reconciliation using current examples.

The term *reconciliation* has been widely used by scholars, such as Jennifer Llewellyn (2008) and Wayne Warry (2007), to identify the need for a respectful relationship between Aboriginal peoples, the Government of Canada, and the rest of Canadians. Relationships need to be repaired by narrowing the gap of inequality that exists between Aboriginal peoples and other Canadians. The Royal Commission on Aboriginal Peoples (RCAP) defines reconciliation as a holistic approach that includes not only physical changes, but also changes to the social fabric and structures in our society:

We address the requirements for structuring a new relationship in advance of urgent issues of social policy because commitment to changing historical patterns of Aboriginal disadvantage must be reflected in public institutions. Structural change will require time and can be accomplished only with the active participation of healthy, well-educated citizens, nurtured by stable families and supportive communities. (Canada, 1996a, 1.1.2 para. 3)

As outlined, there is ultimately a need for new social policies in order to rectify continuing inequalities. A new relationship needs to be developed based on effective partnerships between Aboriginal peoples and other Canadians. Reconciliation involves an effort by both parties. Changes in restructuring relationships and institutions will not occur quickly, and it will require a lot of patience by both parties.

6.1 Reconciliatory Justice

Reconciliatory justice is a process that can be used to define a broader notion of reconciliation. The process is based on “a theory of justice that...[is] concerned with the harms to people and relationships resulting from wrongdoings” (Llewellyn, 2008, p. 188). The focus is on repairing relationships as opposed to the punitive model of justice used in Canada today. If reconciliation using the reconciliatory justice framework is broken down into its constituent concepts, it may be easier to visualize and interpret. Central to reconciliatory justice is establishing the truth about injustice. In terms of a broader reconciliation of Aboriginals with other Canadians, this can encompass publishing the truth of our Canadian colonial history in order to overcome settler denial.

The truth is central to the mandate of the Truth and Reconciliation Commission of Canada (TRC). The TRC spawned by the Indian Residential Schools Settlement Agreement (IRSSA) is a form of reconciliatory justice. The IRSSA provides compensation for harms and injustices endured through the IRS experience, while the TRC is tasked with delivering a true account of the Canadian Aboriginal history. This history is one that accounts for colonialism and the displacement of Aboriginal peoples. By generating a factual account of our history, “Truth Commissions provide an arena for the symbolic recognition of what is already known but was officially denied” (Cohen, 2001, p. 13). The historical narrative that has been taught to Canadians erased the Aboriginal perspective from the minds of the settler population. Denial was integral to the process whereby the Indigenous point of view was repressed in society. As a result a biased perspective is taught in many of the educational institutions. This is the truth that needs to be acknowledged in order for reconciliation to begin.

Jennifer Llewellyn (2008) outlines a restorative justice framework for the TRC, including generating the truth and restoring relationships by achieving justice for past harms. Justice does not necessarily mean prosecution of harms done. The process is about resolving differences through dialogue so that relationships are restored. Similarly, Robert Andrew Joseph (2008) outlines eight steps in the reconciliatory justice process: recognition of the truth of our history, responsibility for acknowledging the injustices, remorse by offering a sincere apology, restitution through the return of Indigenous lands and resources, reparation through compensation for harms inflicted, redesign of political and legal institutions and initiating self-governance, refraining from past injustices, and showing reciprocity in a new relationship. Acknowledging the truth of our collective history is a necessary beginning in order for the process of reconciliatory justice to begin.

In analyzing the progress of reconciliation according to Joseph's (2008) steps in the reconciliatory justice model, it is clear that reconciliation has not yet been achieved. The truth is currently being generated through different mediums: TRC, revisions to education curriculums to include Aboriginal components, and public education. Responsibility for injustices has been partially established by the government and the churches by accepting responsibility for the harms to Aboriginal peoples in IRS. However, individual perpetrators have not showed remorse, since they were exonerated in the IRSSA. Apologies have been given by the Oblate of Mary Immaculate community on July 24, 1991, the Anglican Church in 1993, the Presbyterian Church on June 9, 1994, the United Church on October 27, 1998, and by the Prime Minister of Canada, Stephen Harper, on June 11, 2008. However, the sincerity of the IRS apology by the Government of Canada is debatable. Some Aboriginal peoples did not perceive it as sincere, while others were satisfied with the gesture (Rolfson, 2008). Restitution of lands and resources has not yet

occurred. The redesign of political and legal institutions and initiating self-government has also yet to occur for most Aboriginal communities. Reparation for the physical and sexual abuse through the IRS system is nearing completion. However, it is questionable if the system has adequately compensated victims, not only for the experience of abuses, but also for cultural loss. So far reconciliatory justice has been only partially achieved.

Reconciliatory justice is a process that hinges upon overcoming political and social strategies that have denial built into them, or that are made with the “best intentions” (Regan, 2010). Denial has many forms, as noted in Chapter 2. As this thesis has argued, government rhetoric is one form of denial that allows the government to appear committed to Aboriginal rights and reconciliation, while pursuing a very different agenda. Considering that reports such as RCAP and the Kelowna Accord have not been implemented to address inequality, we see that the government is more than willing to finance reports and commissions, but not necessarily to implement their recommendations. It would seem that the Government of Canada’s failure to initiate proactive strategies already outlined in the reports is more rhetoric amidst so much inaction. Apologizing for IRS and implementing the TRC is a start, but pressure must continue to be applied in order to hold the government to its word.

6.2 Ending Denial

Ending the systemic denial that is symbolic of Canada’s colonial past and present can be considered a new beginning and one that could help achieve future reconciliation. Overcoming denial could include accepting and processing our colonial past and the grave injustices that it has created. This incorporates self-reflection about how non-Indigenous peoples benefited from colonialism. In this process, non-Indigenous peoples have to recognize the truth and work to overcome settler guilt for their participation in the process. Ending denial is also about

recognizing broken treaty promises and rights, such as those under the Royal Proclamation of 1763, as well as the destructive underlying colonial ideology that led to IRS and assimilative policies. Acceptance of the past is key to making sure history does not repeat itself and acknowledging that colonial ideology has no place in the future of Canada. If denial is not ended, it will lead to greater strife between Aboriginal peoples and other Canadians.

What is needed is greater transparency in political agendas in order to work towards ending Aboriginal poverty and inequality. Such is the case in Attawapiskat, where the government accused the band of mismanaging funds to cover the needs for infrastructure and housing. Although the government insists that they allocated a substantial sum to cover housing, the end result is that the housing crisis has been going on for decades, and the needs cannot be met with the allocated budget. Greater transparency can occur through effective communication and developing workable partnerships between the government and Aboriginal communities, rather than by playing the blame game. Revising administrative systems to make it easier and faster to process building and housing applications, to take one example, would help communities address their needs more expediently. The community of Attawapiskat has this problem. For example, it took time to process applications and acquire funds from various government agencies to convert the healing lodge into a functioning building to house many people in need of emergency shelter (Obomsawin, 2012). Thus, there is a need for the government to take responsibility and to adequately address the socio-economic conditions in Aboriginal communities with action rather than rhetoric. A solution to this problem is to pressure the government to implement the recommendations outlined in RCAP and the Kelowna Accord, as well those in the recent Missing Women Report. Another solution is to finally repeal the Indian Act. In so doing, other systems would need to be set up to support Aboriginal self-

governance. By adopting and implementing effective policy, there can be positive changes. Implementing UNDRIP would be tantamount to proactive measures taken by the government in recognizing Aboriginal rights and overcoming injustices. At the same time, Aboriginal peoples need the acknowledgement of past injustices in order to heal, to forgive, and to regain their sense of identity as the first peoples in Canada.

Lobbying for change is an effective mechanism to get the government's attention and to promote action. The Idle No More campaign that was initiated in Canada by Aboriginal peoples in December 2012, is an example of grassroots activism attempting to end the denial of long-standing treaty rights. Aboriginal peoples and other Canadians are peacefully protesting the government's treatment of Aboriginal peoples. Specifically, the movement is protesting the government's lack of consultation with Aboriginal peoples in passing the recent omnibus bills in parliament. The movement is attempting to rectify the past by urging the government to recognize and solidify Aboriginal inherent rights for self-governance in Canada, as confirmed under the Constitution Act of 1982 and to actively stand behind treaty promises. Lobbying by grassroots organizations can be beneficial in promoting change since it is difficult for the government to ignore the media attention.

6.3 Indigeneity

Reconciliation and the process of reconciliatory justice are embedded in the Indigenous perspective and knowledge system. Indigeneity is synonymous with empowering Aboriginal peoples through the tenets of creating and maintaining effective relationships between people and their environment, showing respect, being responsible, and reciprocating and renewing the relationship among people and their environment (Armstrong, 2011). Another way of visualizing relationships is that individuals have relationships with other individuals, family members, their

community, their nation, and the natural world (Castellano, 2008). Individuals are nested in a host of different relationships, but they are not more important than any other person or thing in the relationship. Maintaining a healthy, holistic relationship built on the principles above can be considered the meaning of Indigeneity. Creating respectful relationships and practicing reciprocity are key for establishing the foundation for reconciliation.

Indigeneity is a path towards liberation from colonial legacies. Aboriginal peoples are in the process of regaining their voice and strength over oppressive institutions. Two ways to incorporate Indigeneity are, one, through an infusion of Indigenous culture and values, and two, through the creation of separate Indigenous-run institutions. An infusion of Indigenous culture and values into Western systems can serve to transform Western ideologies and structures. This process would involve consultation and implementation in conjunction with Aboriginal peoples to diffuse their culture, values, and knowledge into the existing Western system. Another way of incorporating Indigeneity is the construction of Indigenous institutions alongside Western institutions. This process allows for both systems to exist independently of each other. In this sense, it creates a choice for the public, allowing them to access, for example, an education system taught from an Indigenous perspective, or one taught from the Western perspective. Both processes will benefit not only Indigenous peoples, but also non-Indigenous peoples who either seek change or prefer the existing structure.

6.4 Decolonization

Decolonization is an unknown concept for most Canadians. The term refers to dismantling the colonial ideology by adopting and integrating Indigenous perspectives. That means recognizing Indigenous culture and values and incorporating them into Canadian institutions and systems. Implementing Indigeneity is difficult since many Canadians are

unaware of colonialism and its effects upon Aboriginal peoples and themselves. Our institutions are constructed on the premise of colonial ideology that further perpetuates the colonial mindset of most Canadians. Thus, many Canadians do not recognize the need for reconciliation and decolonization. This lack of understanding is unfortunate and is a form of settler denial that is ingrained in our colonial society. As a result, overcoming denial has to be achieved before decolonization can begin.

Reconciliation is about overcoming denial through education and self-awareness in recognizing the effects of colonialism. Only with awareness of the truth of our Aboriginal history can we truly heal. This requires viewing the world through an Indigenous lens. As such, decolonization can be considered a form of reconciliation. In order to decolonize, there must be understanding of the need to reconcile relationships both passively through self-reflection and actively through actions that promote change. MacDonald (2012) outlines what decolonization could look like, suggesting that decolonization is action-based and could include promoting Aboriginal self-government, recognizing and promoting Aboriginal languages, increasing representation of Aboriginal peoples in our institutions (proportional representation), “[guaranteeing] seats for Aboriginal peoples in both houses of Parliament” and “infus[ing] the country with coherent Aboriginal worldviews and narratives” (pp. 20-21). In this sense, reconciliation is the decolonization of our ideological framework that underpins our political, legal, and economic institutions.

Decolonization is a way of achieving a new direction. Although, steps must be taken by officials in government, it is equally viable to develop friendships that are built on the foundation of Aboriginal values: respect, reciprocity, relationships, and renewal. In this sense, we can consider two tiers: decolonization of the self, and decolonization of state political, economic and

social institutions. Stephanie Irlbacher-Fox (2009) refers to the “resurgence paradigm” as successful self-decolonization by which Indigenous peoples are “true to their Indigenous ways” (p. 4). A resurgence is occurring whereby Aboriginal peoples are regaining their voices and reconnecting with their cultures. Persistence and perseverance by Aboriginal peoples in claiming their rights has been key in their quest to create positive change and in the quest for implementation of self-governance and treaties. However, how can Aboriginal rights be fully recognized when our political and social systems are defined by colonialism? Equally problematic, as already mentioned, is that most non-Aboriginal peoples cannot relate to the need for, or meaning of, decolonization. They do not understand the foundations of Aboriginal issues in Canada. Decolonization has little meaning to a society that has been colonized so deeply that it cannot visualize or accept that there is another way to live.

There is also a need to recognize what decolonization means to Aboriginal peoples, so that both parties can move towards a common goal. John Ralston Saul (2009) confirms that there is a need for an action plan to create a paradigm shift towards reconciliation incorporating a new language that “evoke[s] and share[s] an understanding” (p. 314) between Aboriginal and non-Aboriginal peoples that does not derive from European roots. The new language can consist of coming to know the Aboriginal meaning of common vocabulary such as self-government, sovereignty, and relationship that is symbolic of the Aboriginal world view (Saul, 2009). If non-Aboriginal peoples adopt and come to know the Indigenous meanings of the basic vocabulary, then a context can be established for the paradigm shift that Saul discusses. This shift involves moving past the guilt of denial that is embedded in the minds of most Canadians and the stereotypical myths surrounding the images of Aboriginal peoples. In this sense, reconciliation is about recognizing that Aboriginal peoples are equals and have the same basic human rights as

other Canadians. However, in order for reconciliation to be achieved, the process of decolonization needs to be defined and interpreted so that all parties can identify the concept and the process (Saul, 2009). Implementing Aboriginal rights as outlined in the Constitution Act and UNDRIP can be a positive beginning for such a paradigm shift.

6.5 Reconciliation

Reconciliation between Aboriginal peoples and other Canadians is achievable in the long term. The process will not be easy or fast. What can be done to achieve reconciliation? There is no defined answer. However, an argument can be made that the values of society need to change to acknowledge and incorporate Indigenous tenets. Several scholars, such as Doudou Diéne (2011), a Senegalese former UN Special Rapporteur and former director of the Division of Intercultural and Interreligious Dialogue, have suggested that the outcomes of the TRC will be temporary unless there are changes to the underlying ethics and values in our society. Llewellyn (2008) also suggests that there will be a need to engage the public “at a deeper level in order to work toward reconciliation” (p. 197). From another angle, McCaslin and Breton (2008) discuss the need to incorporate Indigenous values in our existing institutional frameworks. What all of these scholars conclude is that the crux of reconciliation lies in public and state recognition of Indigenous culture and values. There is a need to change our existing institutions to make them work for Indigenous peoples.

Some possible paths towards reconciliation in Canada can be borrowed from the community initiatives in Australia, considering both countries have similar Indigenous histories. In the case of Australia’s Stolen Generations of Indigenous peoples, the public has been primarily engaged in the process of reconciliation. The Corroboree 2000 People’s Walk for Reconciliation across Sydney Harbour Bridge was successful in this regard: Indigenous and non-

Indigenous peoples trekked across the bridge to support diversity and the hope for reconciliation. Other Australian initiatives include creating booklets like “Sustaining the Reconciliation Process” and the “Roadmap for Reconciliation” and forming community outreach programs (Council for Aboriginal Reconciliation, 2000). However, despite successful community initiatives such as these, political changes to support Indigenous peoples appear to be inadequate. Scholar Wayne Warry (2007) asks an important question: “why has public awareness of Aboriginal issues in Canada and Australia failed to translate into political action” (p. 64)? Aside from the fact that Canada’s general public has yet to be fully aware of Aboriginal issues, it appears that the government needs to be committed to reconciliation and the initiatives that are necessary to achieve it. That is, the state must implement changes to promote better living conditions for Indigenous peoples and to recognize self-governance and treaties. The lobby movement of Idle No More is seeking these changes and calling for action on behalf of the government. The voice of the protestors along with the support of people all over the world, coupled with media attention, may be a force to pressure the government for change. Of course, this process is not only a state responsibility, but also a personal and community responsibility. The responsibility is not only to each other, but also in how we interact with the environment in order to implement a holistic approach.

6.6 Reconciliation, Health and the Environment

Reconciliation includes healthy people and a sustainable environment. Again, this includes must draw upon Indigenous tenets referred to earlier. Today, more than ever, this concept is extremely important since the air and the land are being contaminated by pollution caused by human activities. RCAP also makes this point. It argues that non-Indigenous peoples will one day turn to Aboriginal peoples to show them how to properly care for the earth, now

that the environment has become poisonous from over-exploitation (Canada, 1996a). Arguably, that day is already here. If non-Indigenous peoples had listened to Indigenous peoples, the environmental problems of today would not exist. Preserving the health of the environment is one of the principles behind the Idle No More initiative. The omnibus bills passed threaten the health of the waterways and Aboriginal peoples' livelihoods. As previously referred to, the Indigenous perspective can be visualized as an interconnected circle where land, animals, human beings, and the atmosphere are all interconnected. The Indigenous way is to live with the land in a way that is sustainable. No more is extracted or utilized than what the earth can sustain. However, in light of recently proposed developments, such as new pipelines for resource extraction and profit, there continues to be denial of an environmental ethic in our capitalist-run systems. In this sense, capitalism and consumerism are obstacles to reconciliation.

6.7 Obstacles to Reconciliation

Aside from the already mentioned lack of understanding of Aboriginal history in Canada, some events have made reconciliation difficult, if not impossible, to achieve. The recent omnibus Bills C-38 and C-45, passed in the House of Commons in 2012, erode Aboriginal treaty rights by limiting or removing power from band councils through revisions to the Indian Act. This affects rights to self-governance rights to resources, incorporates provisions to surrender land through a minority of votes by band members, and includes provisions to decrease the number of protected waterways under the Navigable Waters Protection Act. The bills spurred the Idle No More movement across North America, which has gained support around the world. The bills have been criticized for being passed too quickly and failing to allow for consultation with Aboriginal peoples about key natural resources. This not only violates section 35 of the Constitution Act of 1982, but runs counter to Article 19 of UNDRIP (AFN, Federal Omnibus, 2012). Attawapiskat

Chief Theresa Spence was also an inspiration for the birth of the Idle No More movement because her community is suffering severe social and economic inequality that includes a housing shortage. She was on a hunger strike from December 11, 2012 to January 24, 2013, until her request for a meeting with Prime Minister Harper to have a dialogue about the issues was met (CBC, 2013). This is an example of the extreme measures Aboriginal peoples have to take in order to be heard and taken seriously. This lack of recognition is an obstacle to reconciliation.

Even though the Idle No More movement has been initiated by Aboriginal peoples, it represents an opportunity for other Canadians to demonstrate support for Aboriginals. The omnibus bills affect all Canadians. Unfortunately, not all Canadians are aware of why the demonstration is occurring and how it affects them. During the House of Commons debates on omnibus Bill 38 on October 16, 2012, Mr. Nathan Cullen, the NDP Member of Parliament for Skeena-Bulkley Valley, stated “we heard from people, both experts in those fields, be it in energy, fisheries, the environment or pension security, that these changes would have some significant and potentially very damaging consequences, people who are experts in the field of this place and in democracy” (Canada, 2012, (1125) para. 4). This statement suggests that even Members of Parliament had concerns about the impact the bill would have on all Canadians, not just Aboriginal peoples. In this respect, the Idle No More campaign can be an opportunity to initiate the reconciliation process at the grass roots level and, perhaps, at the political level. Former politicians, such as Joe Clark, have recently showed a measure of support which indicates that there is hope for reconciliation if they, too, get involved (Sagan, 2012).

Another obstacle to reconciliation is the lack of transparency of the government’s intentions. This has been evident in the passing of the omnibus bills discussed above without adequate consultation not only with government representatives, but also with Aboriginal

peoples. The government appears to have a tendency to pass legislation without discussion to flesh out its implications.² A recent land claims agreement between the Innu and the Government of Canada contains a “certainty clause” that may have grave implications for Aboriginal rights. The certainty clause is perceived by Aboriginal leaders as another assimilation tactic by the government, requiring nations to give up their rights to the land by signing treaty and land claims agreements (Union of British Columbia Indian Chiefs, 2012). To take one example, “2.11.2 Subject to sections 2.11.3 and 2.11.7, Innu hereby cede and release to Canada and the Province all the aboriginal rights which Inuit ever had, now have, or may in future claim to have within Canada” (Land Claims Agreement, 2005, p. 21). Clearly what is suggested is that Aboriginal title must be relinquished in order for the Innu to enter into the land claims agreement with the Crown. Thus, the agreement “limits and defines Aboriginal Title and Rights” instead of recognizing that Aboriginal title existed prior to sovereignty and is not something to be relinquished (Union of British Columbia Indian Chiefs, 2012, para. 11). Certainty clauses in contracts emphasize the lack of understanding by the government of what Aboriginal title means to Indigenous peoples. Title to the land is tied to a spiritual connection with the land; it is not a legal status to bargain away.

The Innu land claims is another example of how the certainty clause has been used to waive Aboriginal rights. In arriving at the agreement, the Innu had to organize themselves into a nation called the Innu Nation, which represents a state organization, as well as accept funding from adversaries such as the Canadian government and other non-Innu organizations (Samson, 2012). By accepting funding from these sources, the Innu succumbed to the hierarchical paternalistic Western structure, which the agreement symbolizes. This colonial structure is

² Omnibus Bills C-38 and C-45 were passed in 2012 without consultation with Aboriginal peoples.

contrary to Innu values and customs. By imposing the Western system on the Innu through land claim negotiations, Canada remains in control of the negotiations.

Another problem in the claims process is that the text of the Innu agreement was not widely circulated to all members. Instead, a partial text was made available and only in English or French. Innu who were not familiar with either of these languages could not read the agreement and thus had only partial information. Added to the problems with the transparency of the agreement, the certainty clause was included in the category of other provisions at the end of the document and was buried in a footnote (Samson, 2012). As Colin Samson points out, Innu Aboriginal rights were limited to those in the agreement, which may not include the international rights outlined in UNDRIP. By signing the agreement, the Innu relinquished those other rights without negotiation (Samson, 2012).

However, the Department of Aboriginal Affairs and Northern Development maintains that land claim negotiations are beneficial because they establish:

1. “greater certainty over rights to land and resources therefore contributing to a positive investment climate and creating greater potential for economic development and growth;
2. greater control for Aboriginal people and Northerners over the decisions that affect their lives.” (AANDC, 2011, September, para. 3)

The Innu are forced to adopt a Western system in negotiations that is in direct contrast to their existing kinship structure, leaving them reliant on economic growth through resource development. The government loans help to stimulate the Innu economy, but only initiate a cycle of debt among the Innu. The land base the Innu gain is still less than they originally had and what they will need in the future to sustain their people. Another interesting point is that Canada still

retains control over Innu land for the sake of Canadian sovereignty for security and national defense, utility development, small game harvest, and eco-tours (Samson, 2012). Through this discussion, it is clear that Canada is the one establishing control over lands and resources in the negotiations, while maintaining paternalistic control over Aboriginal peoples. With the lack of clarity as to how the rights defined by UNDRIP apply to the agreement, “Canada proceeds as if these international standards were no impediment to its own policies” (Samson, 2012, p. 9). Not only is the certainty clause waiving all rights the Innu ever had or will have domestically, the agreement itself is ignoring rights outlined in UNDRIP which is recognized in the international arena.

This chapter has outlined the concepts of reconciliation as a process of justice whereby the myths and underlying denial are overcome. Greater transparency in government decisions and in the process of negotiating agreements is a necessary component in overcoming denial. Decolonization, as a process of reconciliation, can begin when there is recognition and the incorporation of Indigenous perspectives (Indigeneity) into existing social, political, and economic institutions. It is only through this process that a greater respect for each other can be gained, and a healthy relationship encouraged. In this sense, a paradigm shift towards decolonization is vital for reconciliation to occur. Other methods include: promoting Aboriginal language and culture, self-government, infusion of Aboriginal worldviews and narratives into the Western system, and increased representation of Aboriginal peoples into Western systems such as guaranteed equitable representative seating in parliament (as per the New Zealand Model). However, a paradigm shift towards greater equality and a resurgence of Indigeneity is also required. In the meantime, protests such as Idle No More are instrumental in reminding the

government that Aboriginal issues are still central to Canadian society and politics, and there is still a great deal of work that needs to be done in order to secure genuine Aboriginal equality.

Chapter 7 Conclusion: Work in Progress

This thesis has outlined the gaps between the rhetoric and the reality of Aboriginal treatment in Canada, as evidenced by the social and economic conditions in Aboriginal communities, and the failure to affirm the constitutional and international rights of Aboriginal peoples. Denial and the peacemaking myth are underlying themes that influence political, economic, and social decisions and deter from reconciliation. Denial is the underlying foundation of the Eurocentrism and racial superiority that has dominated the Canadian landscape for over a century and negatively affected Aboriginal peoples' human rights. The many forms of official denial play an integral part in Canadian history, as demonstrated by the formation of Indian Residential Schools (IRS) and the inception of the Indian Act. Paternalistic behavior towards Aboriginals has become a norm under the guise of the Indian Act and with it the stereotypes that influence much of our society. Official denial, in the form of government rhetoric, has promoted and instilled racism towards other cultures and ways of life. The underlying point is that denial has been the foundation of Canada's past and present. "But sooner or later colonialism realizes it is incapable of achieving a program of socio-economic reforms that would satisfy the aspirations of the colonized masses" (Fanon, 2004, p. 146). The lack of adequate socio-economic conditions on reserves illustrates that colonialism has failed the colonized. A colonial capitalist ideology has continued to play a pivotal role not only in society but also in the court system. Now the neo-colonial present displays an undercurrent of colonial paternalism by treating Aboriginal peoples as a group of people who need help to conform to an established norm (Regan, 2010). It is a system that denies Aboriginal peoples the rights that are already affirmed in legislation such as the Constitution Act of 1982.

There have been some successes in the Supreme Court of Canada (SCC): landmark cases that seek to uphold Aboriginal rights as outlined in the Constitution. Cases, such as *Van der Peet*, *Delgamuukw*, and *Haida* that have recognized the legitimacy of inherent rights, oral testimony, and the duty to consult with Aboriginal peoples over resource management concerns. However, it is apparent that it is still up to Aboriginal peoples to lobby for their rights and to challenge the courts to recognize the Aboriginal perspective. This is contrary to what the Constitution Act recognizes and affirms. Aboriginal rights appear legitimate only if they do not infringe upon those of other Canadians. Therefore, their rights as already predetermined by the courts are limited in practice. It seems difficult for the British Common Law system to recognize another perspective when the system, for the most part, is oblivious to that perspective or biased against it.

Aboriginal peoples are marginalized not only through the courts but also in Western social and economic systems. Social and economic conditions on reserves are a consistent reminder that their rights to basic needs, such as housing, education, and health care are not adequately provided. Since the Royal Commission on Aboriginal Peoples (RCAP) in 1996 these remain unmet. Large sums of money have been spent on reports such as RCAP and the Kelowna Accord in 2004/2005 to research and document the needs, problems, and issues in Aboriginal communities. Yet only minor improvements, if any, have been made. There appears to be a disconnection in government funding, planning, and consultation with Aboriginal peoples to actively engage in the problems, and to end the inequality as shown through the case study of the community of Attawapiskat. With the change from liberal to the conservative government in 2006, came changes in priorities. These changing priorities are reflected in the allocation of funding to different projects. The funding for the Kelowna Accord was diverted with the change

to the conservative government. Health care, education, housing, and infrastructure are basic human rights covered under international and Canadian law. Additionally, human rights are treaty rights to which Canada is a signatory. That means that access to sufficient health care, education, and living standards equal to other Canadians is a treaty right. Aboriginal peoples are subject to the same human rights as any other Canadian, yet inequality and injustice remain.

Reconciliation is about overcoming denial in all its forms – politically, personally, and socially. RCAP, the Stavenhagen Report, and the Kelowna Accord were efforts to achieve reconciliation. The reports and plans aimed to address social and economic disparity experienced by Aboriginal peoples. The Constitution Act of 1982 was seemingly another effort to confirm that Aboriginal peoples had equal rights. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is another effort at the international level to affirm Aboriginal rights, and to urge nation-states to adopt and implement the document domestically. Paul Joffe (2010) confirms that UNDRIP contains no new information, but simply confirms existing Indigenous human rights. The result has been a cycle of reports and action plans that outline the need for the same changes to education, living conditions, health care, and child welfare, to name just a few. Perhaps new or additional reports are not what are needed, since comprehensive documents such as RCAP already specify what changes need to occur. The government could use RCAP to implement future policy changes. As outlined, one report supplements or follows another. There is a cycle of paperwork that includes new legislation, reports, and commissions, with no foreseeable and affirmative action in response. In an environment where recycling and eliminating paper are important goals, perhaps the recycling of reports that have been shelved since 1996, yet are still legitimate, is an answer to the problem of inequality. In this sense, the

rhetoric overshadows the logic of addressing and solving Aboriginal inequality and the lack of basic human rights, which, in the end, constitutes denial.

Addressing inequality is not only a starting point for reconciling Aboriginal peoples and other Canadians, it is also about showing the world that Canada is a leader and active participant in promoting international human rights. Canada has become known as a violator of human rights in the eyes of the UN (UN Human Rights Committee, 2006; Andreychuck & Fraser, 2007). Remedial measures would be beneficial for Canada, allowing it to regain its humanitarian reputation in the world. The Canadian government can support this by addressing the problems with greater transparency and sincerity, and by actively engaging in actions for positive changes. That is, it should treat Aboriginal peoples humanely and follow through on its promises. Instead, Canada sidelines the issues with excuses, such as claiming that international laws are already incorporated into domestic policies.

We need to consider how to overcome denial of basic humanity ingrained in our institutions. Change can come in the form of a paradigm shift, as suggested by John Ralston Saul (2009). This shift would require that the state and society embrace decolonization. It would consist of embracing other cultural perspectives such as Indigeneity. A theorist of decolonization, Linda Tuhiwai Smith (1999), notes that Indigenous peoples cultivate “spiritual relationships to the universe,” (p. 74) something that is difficult for Westerners to perceive. She further concludes that Indigenous peoples have “different world views and alternative ways of coming to know, and of being” (Smith, 1999, p. 74). In this sense, non-Indigenous peoples have a great deal to learn. John Borrows (2003) points out that “Canada is a work in progress. An unfinished national project that inspires hope, and an advanced federal state that bleeds along

provincial seams” (p. 223). As a young nation, Canada struggles to define federal and provincial responsibilities, especially with regard to Aboriginal reserves.

Embracing Indigeneity and decolonizing political, legal, and social institutions is the paradigm shift that is needed. Decolonization can be a process of promoting reconciliation and overcoming inherent denial in Canada, but it is up to the state to initiate this change. The work of the Truth and Reconciliation of Canada (TRC) under the court ordered Indian Residential Schools Settlement Agreement can be considered a starting point. TRC’s mandate is to uncover the truth of Aboriginal history in Canada, and thereby lay a foundation for reconciliation. By recognizing the gap between acquiring the truth and achieving reconciliation, the chasm between Aboriginal and non-Aboriginal peoples can begin to narrow. RCAP confirms that there is a need to renew the relationship between all levels of governments in Canada, the people of Canada, and Aboriginal peoples that is ethical and built on “mutual recognition, mutual respect, sharing and mutual responsibility” (Canada, 1996a, 1.16.1 para. 1). Ultimately, a new relationship is needed, one built upon mutual respect and equality.

This research has shown that it is not Aboriginal peoples who need to conform to colonial attitudes and laws of non-Aboriginal peoples. Rather, it is non-Aboriginal peoples who need to conform to the Aboriginal perspective (Irlbacher-Fox, 2009). It is time that the colonial mindset that has formed Canada begins to change to fully embrace Aboriginal culture and values. Solving the “Indian problem” is an archaic and racist project that should be transformed into the need to solve the colonizer’s problem (Irlbacher-Fox, 2009). In order to change, the state needs to be proactive and address the issues rather than denying them and hiding behind the peacemaking myth (Regan, 2010). When denial ends and Aboriginal cultural norms are fully recognized by the

state, there will be reconciliation between Aboriginal and non-Aboriginal peoples (Irlbacher-Fox, 2009).

As already outlined, decolonization is a process that can lead to reconciliation. There can be two tiers of decolonization: decolonization of the self and decolonization of the state's political, economic, and social institutions. Irlbacher-Fox (2009) refers to the "resurgence paradigm" as successful self-decolonization wherein Indigenous peoples are "true to their Indigenous ways" (p. 4). A resurgence is taking place among Aboriginal peoples by which they are gaining a voice. Persistence and perseverance by Aboriginal peoples in claiming their rights is a key to creating change. But how can Aboriginal rights be fully recognized, when our political and social systems are defined by colonialism? Non-Aboriginal peoples cannot relate to decolonization. The term has little meaning to a society that has been colonized so deeply that it cannot visualize or accept that there is another way to live. In other words, it does not recognize, nor can it define what decolonization means. What does decolonization mean to Aboriginals? What does it mean to non-Aboriginals? Herein lies the problem. Each party interprets the term differently. Further research and understanding of the gap between the two is needed.

Decolonization is a means of reconciliation that consists of a new way of thinking and operating in Canada at the social and political levels. In this sense, decolonizing institutions entails incorporating difference to end denial. This move will be a step in the right direction that will eventually repair the relationship between Aboriginals, the Government of Canada, and other Canadians. Greater transparency and accountability in actions and intentions is necessary to bridge the divide that currently exists between the government and Aboriginal peoples.

Decolonizing institutions is a necessary step towards reconciliation and will involve Indigenous guidance and leadership. Considering the presence of ongoing intergenerational

effects from IRS, there may be an absence in leadership at the moment, since many Aboriginals are engaged in processes of coping and healing. At the same, there are Indigenous scholars, professionals, and youth who are ready for change, and are committed to rejuvenating Indigeneity in the Canadian landscape (Denizen & Lincoln, 2008). The question remains whether government organizations are ready for change and are committed to restructuring and redefining archaic Western systems. For now, there is only ongoing denial in the rhetoric and an endless cycle of paper with few results.

There has been progress in our social, political, and economic institutions over time. However, it is not enough. Aboriginal rights are progressing slowly in the courts and living conditions are improving at what can be described as a snail's pace. There is a need to radically change this mindset not only in Canada, but in the wider world. Colonial structures are endemic in Canadian culture. Corporations and the political economy are based on a colonial perspective, wherein decisions are made in an authoritarian manner to generate wealth, regardless of the cost to ordinary individuals. The result is that not only are Aboriginal peoples' rights in Canada undermined, but also those of Indigenous peoples around the world. As such, grappling with this issue in Canada has global repercussions. It is not just a struggle for Aboriginal rights, but for a new global system.

References

- Aboriginal Affairs and Northern Development Canada. (1964). *Copy of Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carleton, Fort Pitt and Battle River with Adhesions*. (Queens Printer and Controller of Stationery). Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1100100028710/1100100028783>
- Aboriginal Affairs and Northern Development Canada. (2008, January 10). *Update Paper: United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1100100014161/1100100014162>
- Aboriginal Affairs and Northern Development Canada. (2010). *Backgrounder: Canada's Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1292353979814/1292354016174>
- Aboriginal Affairs and Northern Development Canada. (2010, November 12). *Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>
- Aboriginal Affairs and Northern Development Canada. (2011, September 15). *Acts, Agreements and Land Claims*. Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1100100028568/1100100028572>
- Aboriginal Affairs and Northern Development Canada. (2011, December 24). *Update on Government of Canada's Response to Attawapiskat: Statement from Minister Duncan*. (Ref. #2-3593). Retrieved from <http://www.aadnc-aandc.gc.ca/eng/1324659425592/1324659607775>

- Abtahi, H., & Webb, P. (2008). *The Genocide Convention: The Travaux Preparatoires*. United Nations General Assembly, 178th Plenary meeting, U.N. Doc A/PV.178 (December 9, 1948), reprinted, Vol. 1 & 2, Martinus Nijhoff Publishers.
- Ahren, M. (2007). The UN Declaration on the Rights of Indigenous Peoples - How was it Adopted and Why is it Significant? "*Gladu Cala;*" *Journal of Indigenous Peoples Rights*. 4, 84-128. Retrieved from http://www.galdu.org/govat/doc/galdu_4_07_eng_web.pdf
- Andreychuk, The Honourable R., & Fraser, The Honourable J. (2007, May). *Canada and the United Nations Human Rights Council: At the Crossroads; Interim Report Standing Committee on Human Rights*. Retrieved from <http://www.parl.gc.ca/Content/SEN/Committee/391/huma/rep/rep12may07-e.pdf>
- ANTaR (2012, December). *Pre-budget submission: 2013-14*. Retrieved from http://antar.org.au/sites/default/files/pre_budget_submission_2013-14_final_21.12.12.pdf
- Armstrong, J. (2011). "Indigeneity: a necessary social ethic to take us beyond sustainability. In B. Hughes (Ed.), *Beyond sustainability: Contributions to TEDxOkanagan College*. (pp. 45-58). Kelowna, BC: Okanagan Institute.
- Assembly of First Nations (2006). *Royal Commission on Aboriginal People at 10 Years: A Report Card*. Retrieved from http://www.cbc.ca/news/background/aboriginals/pdf/afn_rcap.pdf
- Assembly of First Nations (2010, July). *First Nations Control of First Nations Education; It's Our Vision, It's Our Time*. Retrieved from http://www.afn.ca/uploads/files/education/3._2010_july_afn_first_nations_control_of_first_nations_education_final_eng.pdf

- Assembly of First Nations. (2012). *Federal Omnibus Legislation: Bill C-38: Jobs, Growth and Long-term Prosperity Act & Bill C-45: Jobs and Growth Act, 2012*. Retrieved from http://www.afn.ca/uploads/files/12-12-18_omnibus_summary_next_steps_fe.pdf
- Assembly of First Nations. (2012, June 12). Assembly of First Nations National Chief Welcomes Health Survey, Continue Calls to Close Health Gap. [Press Release]. *Assembly of First Nations*. Retrieved from <http://www.afn.ca/index.php/en/news-media/latest-news/assembly-of-first-nations-national-chief-welcomes-health-survey-contin>
- Atleo, S. (2012, January). *A communique from national chief Shawn Atleo*. Retrieved from <http://www.afn.ca/uploads/files/nc-bulletin-cfng.pdf>
- Auspoll Pty Ltd. (2013, January). *Australia reconciliation barometer 2012: An overview* prepared for Reconciliation Australia. Retrieved from http://www.reconciliation.org.au/getfile?id=1917&file=RA_Barometer_Report_2012_Overview_V17_low_res.pdf
- Australia. (2010). *Budget 2010-11: Closing the gap – building momentum*. Retrieved from http://www.budget.gov.au/2010-11/content/ministerial_statements/indigenous/html/ms_indigenous-01.htm
- Australia. (2013, January). *Reconciliation action plan: Impact measurement report 2012*. Reconciliation Australia. Retrieved from <http://www.reconciliation.org.au/getfile?id=1917&file=Final+RAP+Impact+Measurement+Report+2012.pdf>
- Barber, K., Fitzgerald, H., Howell, T., & Pontisso, R. (2005). *Oxford Canadian Dictionary of Current English*. Don Mills, ON: Oxford University Press.

- Belanger, Y.D. (2010). *Ways of Knowing: An Introduction to Native Studies in Canada*. Toronto, ON: Nelson Education Ltd.
- Bell, C., & Paterson, R. (2003). Aboriginal rights to repatriation of cultural property. In A. Walkem, & H. Bruce (Eds.), *Box of Treasures or Empty Box? Twenty Years of Section 35* (pp. 104-154). Penticton, BC: Theytus Books Ltd.
- Blackstock, C. (2008). Reconciliation means not saying sorry twice: lessons from child welfare in Canada. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 161-175). Ottawa, ON: Aboriginal Healing Foundation.
- Bond, J. (2008). Reconciliation: A non-Indigenous Australian perspective. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 259-278). Ottawa, ON: Aboriginal Healing Foundation.
- Borrows, J. (2002). *Recovering Canada: The Resurgence of Indigenous Law*. Toronto, ON: University of Toronto Press.
- Borrows, J. (2003). Measuring a work in progress: Canada, constitutionalism, citizenship and Aboriginal peoples. In A. Walkem, & H. Bruce (Eds.), *Box of Treasures or Empty Box? Twenty Years of Section 35* (pp. 222-262). Penticton, BC: Theytus Books Ltd.
- Borrows, J. (2010). *Canada's Indigenous Constitution*. Toronto, ON: University of Buffalo Press.
- Canada. (1996a). *Royal Commission on Aboriginal Peoples*. Report. 5 vols. Ottawa: Minister of Supply and Services Canada. Retrieved from

- http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html
- Canada. (1996b). *Royal Commission on Aboriginal Peoples. People to people, nation to nation: Highlights from the report of the Royal Commission on Aboriginal Peoples*. Retrieved from the Aboriginal Affairs and Northern Development Canada website:
<http://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637>
- Canada. (2007). *Government Response to the Interim Report on the Senate Standing Committee on Human Rights - Canada and the United Nations Human Rights Council: At the Crossroads* Retrieved from Foreign Affairs and International Trade Canada website:
http://www.international.gc.ca/rights-droits/assets/pdfs/govt_response-eng.pdf
- Canada. Parliament. House of Commons. (2012). *Debates*, 41st Parliament, 1st Session, 162, (037-A). Retrieved from
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=5755204>
- Castellano, M.B. (2008). A holistic approach to reconciliation: Insights from research of the Aboriginal Healing Foundation. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 383-400). Ottawa, ON: Aboriginal Healing Foundation.
- CBC. (2007, September 13). Canada votes 'no' as UN Native Rights Declaration passes. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/story/2007/09/13/canada-indigenous.html>
- CBC. (2013, January 24). Chief Theresa Spence to end hunger strike: Spence to wrap it up after NDPs, Liberals and Chiefs sign her declaration. *CBC News* with files from the *Canadian*

- Press*. Retrieved from <http://www.cbc.ca/news/politics/story/2013/01/23/attawapiskat-spence-hunger-strike.html>
- Chiefs in Treaty No 6, No.7 and No. 8. (2005, March 16-17). Declaration of treaty 6,7 and 8
- First Nations: Treaty right to health. Retrieved from http://www.treatycouncil.org/PDF/Treaty_Rights_and_Health_Resolution.pdf
- Chrisjohn, R.D., Wasacase, T., Nussey, L., Smith, A., Legault, M., Loiselle, P., & Bourgeois, M. (2002). Genocide and Indian residential schooling: The past is present. In R.D. Wiggers, & A.L. Griffiths (Eds.), *Canada and International Humanitarian Law: Peacekeeping and War Crimes in Modern Era*. Halifax: Dalhousie University Press. Retrieved from http://www.nativestudies.org/native_pdf/pastispresent.pdf
- Chrisjohn, R, Young, S., & Maraun, M. (2006). *The Circle Game*. Penticton, BC: Theytus Books Ltd.
- Churchill, W. (2004). *Kill the Indian, Save the Man. The Genocidal Impact of American Indian Residential Schools*. San Francisco, CA: City Lights Bookstore.
- Cohen, S. (2001). *States of Denial: Knowing about Atrocities and Suffering*. Cambridge: Polity Press.
- Constitution Act*. (1982). Retrieved from National Aboriginal Document Database website: <http://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/m-stat.htm>
- Council for Aboriginal Reconciliation. (2000). Reconciliation: Australia's challenge. Retrieved from <http://www.austlii.edu.au/au/orgs/car/finalreport/>
- Daes, E.A. (2008). *Indigenous Peoples. Keepers of our Past - Custodians of our Future*. Copenhagen, DK: International Work Group for Indigenous Affairs.

Dan1stEarlofBugerton. (2012, February 9). Queen's speech on the Canadian constitution [Video file]. Retrieved from <http://www.youtube.com/watch?v=0HYAabsHH0k&feature=related>

de Mestral, A. & Fox-Decent, E. (2008). Rethinking the relationship between international and domestic law. *McGill Law Journal*, vol. 53. Retrieved from http://lawjournal.mcgill.ca/documents/De_Mestral_and_FoxDecent.pdf

Delgamuukw v. British Columbia, (1997) 3 S.C.R. 1010. Retrieved from <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1569/index.do>

Denizen, N.K., & Lincoln, Y.S. (2008). Critical methodologies and Indigenous inquiry. In N.K. Denizen, Y.S. Lincoln, & L. T. Smith, *Critical and Indigenous Methodologies* (pp. 1-20). Thousand Oaks, CA: SAGE Publications Inc.

Diéne, D. (2011, March 1). Sharing truth - Creating a national research center -Truth and Reconciliation Commission conference. Vancouver, BC. [Webcast]. Retrieved from the Truth and Reconciliation of Canada website: <http://www.trc-nrc.ca/websites/NRC/index.php?p=122>

Fanon, F. (2004). *The Wretched of the Earth*. Trans. R. Philcox. New York, NY: Grove Press.

First Nations Information Governance Centre. (2012). *First Nations Regional Health Survey (RHS) 2008/10*. National Report on Adults, Youth and Children Living in First Nations Communities. Retrieved from http://www.fnigc.ca/sites/default/files/First_Nations_Regional_Health_Survey_2008-10_National_Report.pdf

Forbister, F. (2012). Attawapiskat students win new school (Shannen's dream), Ontario, 2007-2012. Retrieved from <http://nvdatabase.swarthmore.edu/content/attawapiskat-students-win-new-school-shannens-dream-ontario-2007-2012>

- Gaeta, P. (2009). *The UN Genocide Convention: A Commentary*. Oxford, UK: Oxford University Press Inc.
- Haida Nation v. British Columbia* (Minister of Forests). 3 S.C.R. 511, 2004 SCC 73. (2004). Retrieved from <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2189/index.do?r=AAAAAQAOaGFpZGEGbmF0aW9uIHIAAAAAAAQ>
- Hall, S. (2005). Cultural identity and diaspora in everyday theory. B. McLaughlin, & B. Coleman (Eds.). In J. Gustar, *ENGL502 & IGS501Y: Cultural Theory: Methods* (pp. 295-307). Toronto, ON: Canadian Scholars' Press Inc.
- Hanson, E., & Salomons, T. (2009). *Sparrow Case*. Retrieved from <http://indigenousfoundations.arts.ubc.ca/home/land-rights/sparrow-case.html>
- Harper, S. (2008, June 11). Prime Minister Harper offers a full apology on behalf of Canadians for the Indian residential schools system. Retrieved from <http://www.pm.gc.ca/eng/media.asp?id=2149>
- Harper, S. (2012, January 24). Statement by the Prime Minister of Canada at the Crown-First Nations Gathering. Retrieved from <http://www.pm.gc.ca/eng/media.asp?category=3&featureId=6&pageId=26&id=4597>.
- Henderson, J.Y. (2008). *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition*. Saskatoon, SK: Purich Publishing Ltd.
- Henderson, J., & Wakeham, P. (2009). Colonial reckoning, national reconciliation? Aboriginal peoples and the culture of redress in Canada. *English Studies in Canada: Special Issue: Aboriginal Redress*, 35(1), pp. 1-26. Retrieved October 19, 2010, from CBCA Education. (Document ID: 2067941461).

- Harper, S. (2012, January 24). PM addresses the Crown – First Nations gathering. Retrieved from
<http://www.pm.gc.ca/eng/media.asp?category=2&featureId=6&pageId=46&id=4608>
- Herman, E.S., & Chomsky, N. (1988). *Manufacturing Consent: the Political Economy of the Mass Media*. New York, NY: Pantheon Books.
- Hodgson, M. (2008). Reconciliation: A spiritual process. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 361-379). Ottawa, ON: Aboriginal Healing Foundation.
- Hoffman, E.A. (2007). Open-ended interviews, power, and emotional labor. *Journal of Contemporary Ethnography*, 36(3), pp. 318-346. doi: 10.1177/0891241606293134.
- House of Commons Debate (2012, October 25). (Honourable Marjory LeBreton). House of Commons Debates Hansard. Retrieved from
http://www.parl.gc.ca/Content/Sen/Chamber/411/Debates/112db_2012-10-25-e.htm#21
- House of Commons Debate 146 (2011, March 22). 1450 (Honorable John Duncan). House of Commons Debates Hansard. Retrieved from
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=3&DocId=5059729>
- Hui, S. (2009, October 2). Shawn Atleo criticizes Stephen Harper over ‘no history of colonialism’ remark. *The Georgia Straight*. Retrieved from
<http://www.straight.com/article-261089/shawn-atleo-criticizes-stephen-harper-over-no-history-colonialism-remark>
- Hurley, M.C. (1998). Aboriginal title: The Supreme Court of Canada decision in *Delgamuukw v. British Columbia*. Background Paper. Library of Parliament Parliamentary Research

- Branch. Retrieved from <http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp459-e.htm>
- International Labour Organization. (1989). Convention No. 169. Indigenous and tribal peoples convention. Retrieved from <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>
- Irlbacher-Fox, S. (2009). *Finding Dahshaa: Self Government, Social Suffering, and Aboriginal Policy in Canada*. Vancouver, BC: UBC Press.
- Isaac, T. (2008). Striking a balance: The rights of Aboriginal Peoples and the rule of law in Canada. In J.D. Whyte (Ed.), *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (pp. 88-106). Saskatoon, SK: Purich Publishing Ltd.
- Joffe, P. (2010, March). UN Declaration on the Rights of Indigenous Peoples: Canadian government positions incompatible with genuine reconciliation. *National Journal of Constitutional Law*, 26. Retrieved from <http://www.reconciliationmovement.org/docs/UN-Declaration-Indigenous-Peoples-Cdn-Gov.pdf>
- Joffe, P. (2012, September 13). United Nations Declaration on the Rights of Indigenous Peoples. Webinar from the Assembly of First Nations. Retrieved from <http://download.isiglobal.ca/afn/2012-09-13/live-en-direct.html>
- Joseph, R.A. (2008). A jade door: Reconciliatory justice as a way forward - citing New Zealand experience. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 205-229). Ottawa, ON: Aboriginal Healing Foundation.

- Knockwood, C. (2003). The Mi'kmaq-Canadian treaty relationship: A 277 year journey of rediscovery. In A. Walkem, & H. Bruce (Eds.), *Box of Treasures or Empty Box? Twenty Years of Section 35* (pp. 43-61). Penticton, BC: Theytus Books Ltd.
- Land Claims Agreement between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty the Queen in Right of Canada.* (2005). Retrieved from Aboriginal Affairs and Northern Development Canada website: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/al_ldc_ccl_fagr_labi_labi_1307037470583_eng.pdf
- Lemkin, R. (2008). *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (2nd Ed.). W.A. Schabas (Ed.). Clark, NJ: The Lawbook Exchange Ltd.
- Ljunggren, D. (2009, September 25). Every G20 nation wants to be Canada, insists PM. *Reuters*. Retrieved from <http://www.reuters.com/article/2009/09/26/columns-us-g20-canada-advantages-idUSTRE58P05Z20090926>
- Llewellyn, J. (2008). Bridging the gap between truth and reconciliation: Restorative justice and the Indian residential schools Truth and Reconciliation Commission. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 183-201). Ottawa, ON: Aboriginal Healing Foundation.
- MacDonald, D.B. (2012, June). *Reconciliation after genocide? Reinterpreting the UNGC through Indian residential schools*. Paper presented at the Canadian Political Science Association Annual Conference, Edmonton, AB.

- Mainville, R. (2001). *An Overview of Aboriginal and Treaty Rights and Compensation for their Breach*. Saskatoon, SK: Purich Publishing Ltd.
- Mallea, P. (1994). *Aboriginal Law: Apartheid in Canada?* Brandon, MB: Bearpaw Publishing.
- McCaslin, W.D., & Breton, D.C. (2008). Justice as healing: Going outside the colonizers' cage. In N.K. Denzin, Y.S. Lincoln, & L.T. Smith (Eds.), *Handbook of Critical and Indigenous Methodologies* (pp. 511-529). Thousand Oaks, CA: SAGE Publications, Inc.
- Milloy, J. S. (1999). *A National Crime. The Canadian Government and the Residential Schools System 1879 to 1986*. Winnipeg, MB: The University of Manitoba Press.
- Morse, B. (2008). Reconciliation possible? Reparations essential. In M.B. Castellano, L. Archibald, & M. DeGagne (Eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (pp. 233-251). Ottawa, ON: Aboriginal Healing Foundation.
- Mulroney, M.B. (1985, April). Opening statement at the First Ministers' Conference on the rights of Aboriginal peoples. Retrieved from <http://www.collectionscanada.gc.ca/2/4/h4-4021-e.html>
- National Film Board of Canada (Producer). (1987). *Dancing Around the Table, Part One* [DVD].
- Obomsawin, A. (Producer). (2012). *The People of the Kattawapiskak River* [Documentary]. Retrieved from http://www.nfb.ca/film/people_of_kattawapiskak_river
- Office of the Auditor General of Canada. (2008). *2011 June Status Report of the Auditor General of Canada*. Retrieved from http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html

- Patterson, L.L. (2006). Aboriginal roundtable to Kelowna Accord: Aboriginal policy negotiations, 2004-2005. Retrieved from Parliament of Canada website
<http://www.parl.gc.ca/Content/LOP/researchpublications/prb0604-e.htm>
- Poplar, M.C. (2003). We are Fighting for Nationhood not Section 35. In A. Walkem & H. Bruce (Eds.). *Box of Treasures or Empty Box? Twenty Years of Section 35* (pp. 23-28). Penticton, BC: Theytus Books Ltd.
- R. v. Sparrow* (1990) 1 S.C.R. 1075. Retrieved from <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/609/index.do>
- R. v. Van der Peet* (1996) 2 S.C.R. 507. Retrieved from <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1407/index.do?r=AAAAAQAQciB2IHZhbiBkZXIgcGVldAAAAAAB>
- Reconciliation Australia (2012). *Reconciliation Action Plan 2009-2012*. Retrieved from http://www.reconciliation.org.au/getfile?id=562&file=Rec+Aus+RAP_v5.pdf
- Regan, P. (2010). *Unsettling the Settler Within*. Vancouver, BC: UBC Press.
- Rolfesen, C. (2008, June 12). Apology ‘bittersweet’ for B.C. survivors. *Vancouver Sun*. Retrieved from <http://www2.canada.com/vancouver/features/apology/story.html?id=706fb29f-c41a-456c-8510-de67d860ed63>
- Rosen, P. (2000, January 24). Hate propaganda. 85-6E. Parliamentary Research Branch. Library of Parliament. Retrieved from <http://www.publications.gc.ca/collections/Collection-R/LoPBdP/CIR/856-e.htm>
- Rudd, K. (2008, February 13). former Australian Prime Minister Kevin Rudd statement of apology to the indigenous peoples of Australia. Retrieved from <http://pa-pa.ca/Rudd,%20Kevin%20apology.html>

- Sagan, A. (2012, December). Hunger-striking chief calls for action amidst health concerns. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/story/2012/12/30/can-theresa-spence-politicians-solidarity-protests.html>
- Sam, M. (2012, March). revitalizing Ktunaxa knowledge relationships – a methodological approach to a hermeneutic phenomenology of Ktunaxa peoples’ research ethics and accountabilities. Paper presented at UBC Indigenous Graduate Symposium, Vancouver, BC.
- Samson, C. (2012, September 20-22). social transformation for indigenous peoples and ‘release’ for Canada: an essay on the ethnocidal effects of the Innu Nation Land Claims Agreement. Paper presented at Colonial Genocide and Indigenous North America Conference, Winnipeg, MB.
- Saul, J.R. (2008). *A Fair Country: Telling Truths About Canada*. New York, NY: Penguin Group.
- Saul, J.R. (2009). Reconciliation: Four Barriers to Paradigm Shifting. In G. Younging, J. Dewar, & M. DeGagne (Eds.), *Response, Responsibility, and Renewal. Canada’s Truth and Reconciliation Journey* (pp. 309-320). Ottawa, ON: Aboriginal Healing Foundation.
- Shannen’s Dream Takes a Step Forward in Attawapiskat. (2012, June 22). *Net News Ledger*. Retrieved from <http://netnewsledger.com/2012/06/22/shannens-dream-takes-step-forward-attawapiskat>
- Short, D. (2008). *Reconciliation and Colonial Power: Indigenous Rights in Australia*. Burlington, VT: Ashgate Publishing Company.

- Slattery, B. (2008). the generative structure of Aboriginal rights. In J.D. Whyte (Ed.), *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (pp. 20-48). Saskatoon, SK: Purich Publishing Ltd.
- Smith, L.T. (1999). *Decolonizing Methodologies: Research and Indigenous Peoples*. London, ENG: Zed Books.
- Spence, Chief T. (2012, May 11). *Untitled*. [Press Release]. Retrieved from <http://www.attawapiskat.org/wp-content/uploads/20120511ChiefSpenceQMI.pdf>
- Statistics Canada. (2006). *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*. [Data File]. Retrieved from http://epe.lac-bac.gc.ca/100/200/301/statcan/aboriginal_peoples_2006_census-e/97-558-XIE2006001.pdf
- Statistics Canada. (2010a). *Aboriginal Statistics at a Glance. Statistics Canada Catalogue No. 89-645-XWE*. Retrieved from <http://www.statcan.gc.ca/pub/89-645-x/2010001/education-eng.htm>
- Statistics Canada. (2010b). *Aboriginal Statistics at a Glance. Statistics Canada Catalogue No. 89-645-XWE*. Retrieved from <http://www.statcan.gc.ca/pub/89-645-x/2010001/housing-logement-eng.htm>
- Stavenhagen, R. (2004). *indigenous issues: human rights and indigenous issues: report of the special rapporteur on the situation of human rights and fundamental freedoms of indigenous people*. Addendum. Retrieved from <http://www.gcc.ca/pdf/INT0000000012.pdf>

Trudeau, P.E. (1982). *remarks by the Prime Minister at the proclamation ceremony on April 17,*

1982. Ottawa: Office of the Prime Minister. Retrieved from

<http://www.collectionscanada.gc.ca/primeministers/h4-4024-e.html>

Truth and Reconciliation Commission. (2011). Retrieved from

<http://www.trc.ca/websites/trcinstitution/index.php?p=7>

United Nations. (1949, July). *the crime of Genocide: a United Nations convention – is aimed at*

preventing destruction of groups and at punishing those responsible. United Nations

Office of Public Information.

United Nations. (1990). *Human Development Report*. Retrieved from

http://hdr.undp.org/en/media/hdr_1990_en_overview.pdf

United Nations. (2008, March). *United Nations Declaration on the Rights of Indigenous Peoples*.

Retrieved from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

United Nations Association in Canada. (1998). *Questions and answers about the Universal*

Declaration of Human Rights. Retrieved from <http://www.unac.org/rights/question.html>

United Nations General Assembly. (1948). Resolution 260 (III) A. *Convention on the Prevention*

and Punishment of the Crime of Genocide. Retrieved from

<http://www.hrweb.org/legal/genocide.html>

United Nations General Assembly. (1948). Resolution 217 (III) A. *UN Universal Declaration of*

Human Rights. Retrieved from <http://www.un.org/en/documents/udhr/>

United Nations General Assembly. (1965). Resolution 2106. *International Convention on the*

Elimination of All Forms of Racial Discrimination. Retrieved from United Nations Treaty

Collection http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-

[2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)

- United Nations General Assembly. (2007, September 13). General Assembly adopts Declaration on Rights of Indigenous Peoples. Retrieved from <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>
- United Nations Human Rights Committee. (2006). 85th Session. *International Covenant on Civil and Political Rights*. Retrieved from [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)
- Union of British Columbia Indian Chiefs. (2012). certainty: Canada's struggle to extinguish Aboriginal title. Retrieved from <http://www.ubcic.bc.ca/Resources/certainty.htm#axzz2H8wmzJjd>
- Verdeja, E. (2004). institutional responses to Genocide and mass atrocity. In A. Jones (Ed.), *Genocide, War Crimes and the West: History and Complicity* (pp. 327-345). New York, NY: Zed Books Ltd.
- Walkem, A. (2003). constructing the Constitutional Box: the Supreme Court's section 35(1) Reasoning. In A. Walkem, & H. Bruce (Eds.). *Box of Treasures or Empty Box? Twenty Years of Section 35* (pp. 196-221). Penticton, BC: Theytus Books Ltd.
- Walkem, A., & Bruce H. (2003). *Box of Treasures or Empty Box? Twenty Years of Section 35*. Penticton, BC: Theytus Books Ltd.
- Walkem, A., & Bruce H. (2003). bringing our living Constitutions home. In A. Walkem, & H. Bruce (Eds.). *Box of Treasures or Empty Box? Twenty Years of Section 35* (pp. 344-362). Penticton, BC: Theytus Books Ltd.
- Warry, W. (2007). *Ending Denial: Understanding Aboriginal Issues*. Toronto, ON: University of Toronto Press.

- Wiersema, J. (2011, October 19). programs for First Nations on reserves. Retrieved from the Office of the Auditor General of Canada website: http://www.oag-bvg.gc.ca/internet/English/osh_20111019_e_35790.html
- Wilson, S. (2008). *Research is Ceremony: Indigenous Research Methods*. Blackpoint, NS: Fernwood Publishing.
- Young, R. (2003). *Postcolonialism: A Very Short Introduction*. New York, NY: Oxford University Press.
- Younging, G. (2001). Talking Terminology: What's in a Word and What's Not. *Prairie Fire*, 22, 3, pp. 130-140. Winnipeg, MB: Prairie Fire Press Inc.
- Younging, G. (2009). Inherited History, International Law, and the UN Declaration. In G. Younging, J. Dewar, & M. DeGagne (Eds.), *Response, Responsibility, and Renewal. Canada's Truth and Reconciliation Journey* (pp. 323-338). Ottawa, ON: Aboriginal Healing Foundation.