

HOPE IS HARD WON: GENDER AND THE TRUTH AND RECONCILIATION
COMMISSION OF CANADA

by

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Abstract

The Canadian state's relationship to Indigenous peoples has been characterized by genocidal policy, societal marginalization, and, more recently, efforts towards reparation and reconciliation. Such efforts include the Truth and Reconciliation Commission of Canada (TRC) - tasked with establishing a comprehensive record of the Indian Residential School System and its legacy - which concluded in 2015. In Canada, the experiences of Indigenous women sit at the nexus of patriarchy and settler colonialism, each system of oppression facilitating attendant injustices. At the outset of the TRC, the Native Women's Association of Canada (NWAC) called for the implementation of culturally relevant gender-based reconciliation, rooted in Indigenous epistemologies. I respond to this call by asking how the TRC recognized Indigenous women's gender oppressions both in practice and in analysis. Informed by transitional justice and Indigenous studies literatures, I apply a transformative reconciliation lens to the TRC. Reconciliation is frequently invoked in the praxis and theory of transitional justice, but the term remains under-specified. I define transformative reconciliation as an ongoing process that centres collective responsibility, relationality, and disrupting both colonial and patriarchal relations of power. I analyze the TRC's setup and historical context, proceedings, and outputs using discourse analysis and NWAC's criteria for gender-responsive truth commissions. I find that while the TRC achieved and continues to achieve broad exposure of the truths of residential schools, the commission offered few avenues for furthering transformative reconciliation and gender justice. The TRC did not purposively incorporate gender equity in its programming and outputs. I identify a discourse of absence throughout the TRC in which the political agency of Indigenous women and the specifically gendered aspects of their experiences in and after residential school are underexplored. I conclude by theorizing an alternative discourse of survivance, arguing that by furthering elements of survivance, in particular revisiting the concept of witnessing in the longer-term; incorporating resistance and refusal; and understanding the experiences of intergenerational survivors, the academic field and practice of transitional justice could see greater possibilities for furthering gender justice and transformative reconciliation.

Lay Summary

The Truth and Reconciliation Commission of Canada (TRC) aimed to produce a complete history of the residential schools system. I focus on gender and the TRC, asking how the TRC addressed gender, and specifically the intersection of colonialism and patriarchy that specifically targets Indigenous women. I argue that disrupting patriarchal and colonial power relations is an essential part of transformative reconciliation, as is building in processes that centre relationality and collective responsibility. I collected data regarding and conducted analysis on the TRC's setup and historical context, proceedings, and outputs and conclude that The TRC was not attentive to gender across its programming and outputs, resulting in limited opportunities for understanding and addressing the effects the intersection of colonialism and patriarchy has on Indigenous women. I conclude by proposing new directions for truth commissions and transitional justice that could facilitate greater gender justice.

Preface

This dissertation is an original intellectual product of the author, A.L. James.

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List of Abbreviations

ADRP - Alternative Dispute Resolution Process

AFN – Assembly of First Nations

CEP – Common Experience Payment

CR-GAP – Culturally Relevant Gender Application Protocol

CRGBMR – Culturally Relevant Gender-Based Models of Reconciliation

IAP – Independent Assessment Process

IRSS - Indian Residential School System

IRSSA – Indian Residential Schools Settlement Agreement

MMIWG – Murdered and Missing Indigenous Women and Girls

NIMMIWG – National Inquiry into Murdered and Missing Indigenous Women and Girls

NCTR – National Centre for Truth and Reconciliation

NWAC – Native Women’s Association of Canada

RCAP – Royal Commission on Aboriginal Peoples

TRC – Truth and Reconciliation Commission of Canada

TRC-SA – Truth and Reconciliation Commission of South Africa

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples

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Dedication

To Mavis DeGirolamo (1939-2021).

1: Introduction

1.1 Genesis of study

In Canada, the burden of truth telling, campaigning for change, and the struggle for a more just Indigenous-state relationship has historically rested on the shoulders of Indigenous peoples. This has been a long struggle, fought in courts, parliaments, protest, and through everyday acts of resistance. At the British Columbia national event of the Truth and Reconciliation Commission of Canada (TRC), a body set up to address the legacy of the residential school system, a survivor had a message for settler Canadians: “The colonizers are just as enslaved as the colonized,” he said. He had come to the TRC, he said, to “lay my hurt and my sorrow on the table,” and that, he hoped, was what reconciliation was about - everyone laying their hurt and their sorrow on the table and figuring out how to move forward. He said his people had had their hands out to Canada for many years and it was up to Canada to now take those hands.¹ These remarks truly underscored to me that the labour of furthering reconciliation has historically been, and continues to be, woefully misplaced. ‘The work’ is truly settler Canadians’ to learn how to take up.

Prior to undertaking this dissertation, the questions of truth and reconciliation were paramount in my academic concerns for some time. My MA thesis focused on the Truth and Reconciliation Commission of South Africa (TRC-SA). The TRC-SA is a famous example of a way of reckoning with the past that is not new, but that came to public and international attention in an unprecedented way when it was launched in 1996

¹ This statement was made at a public Sharing Circle session at the TRC British Columbia national event on Thursday, September 19th, 2013 and captured by me.

as a transitional justice measure after regime change in South Africa. Transitional justice is both a field of practice and a field of academic study, and includes the practice and study of instruments such as truth commissions, official apologies, amnesties, and reparations to address past human rights abuses in an alternative fashion to criminal trials or other juridical methods (see Nagy, 2008; Teitel, 2000; Williams & Nagy, 2012). A truth commission, in which a populace is called to testify about a period of human rights abuses, upends widely held views of justice and punishment. In the South African case, the TRC-SA even included a possibility of criminal amnesty for perpetrators willing to testify about their crimes under apartheid. This was widely perceived as revolutionary: the idea that victim and perpetrator could come together, tell the truth, and arrive at some sort of understanding that would help the nation move forward was novel.

Verdoolaege (2008) argues that the concepts of truth and reconciliation were inspiring and inclusive in that they provided a “superstructure” (p. 182) of sorts for South African society to rally around. She argues that testifying before the TRC-SA helped ordinary South Africans contribute to nation building as an act of citizenship (p. 191). The discourse of reconciliation promoted through the TRC-SA was optimistic and rich with the vocabulary of nationhood, harmony, renewal, and the creation of the Rainbow Nation (see Fullard, 2004). It ushered in a new wave of truth commissions, setting “a new standard for the aspirations of transitional institutions as resources not only for redressing past injustices but also as laying the foundation for forward-looking or restorative justice in a renewed democratic community” (Williams & Nagy, 2012, p. 3). In other words, the TRC-SA signalled an era of proliferating truth commissions and other transitional justice instruments, each bearing the promise of a more just future.

Along with the promise of a more just future, the idea of closure on the past is often inherent in a discourse of transitional justice and of reconciliation (see Hamber & Wilson, 2002; Wakeham, 2012), metaphorically following a Judeo-Christian moral tradition of coming together through bloodletting then unburdening. For example, at the close of the TRC-SA, Chairperson Archbishop Desmond Tutu proclaimed that “having looked the beast of the past in the eye, having asked for and received forgiveness and having made amends, *let us shut the door on the past*” (Tutu cited in Moon, 2008, p. 118, emphasis mine). The narrative of closure that arises explicitly in the case of Tutu’s remarks, or implicitly within truth commissions in general, can imbue proceedings with an extra dimension of perceived responsibility. If a truth commission is to be the final word on the past, then the nature of that final word is deeply important. Closure is not an inherently problematic concept - it can bear positive psycho-social implications. However, in the context of a truth commission, a closure narrative can serve to disguise continuities in the injustice being addressed, imparting a contrived break between past and present.

One such area of continuities in injustice that came to my attention in my research on the TRC-SA was that of gender-based violence and discrimination. I watched numerous archived episodes of the South African Broadcasting Corporation’s nightly show that summed up the day’s events of the TRC-SA over the course of my research. One particular phrasing from a reporter’s introductory remarks was telling: “Today we hear from the wives, the mothers, *and the victims themselves*” (TRC: Episode 01, Part 01). By “the victims themselves,” the journalist referred to men specifically involved in acts of physical violence carried out for political purposes. The narrative seemed devoid

of recognition that women in South Africa experienced myriad types of violence through all the same instruments of apartheid as men. That South African women could be considered somehow lesser victims of apartheid - or that their testimonial value could not be understood outside of their relation to men - seemed a potent reminder that a truth commission can, either intentionally or unintentionally, subjugate, shape, and misinterpret victims due to gendered biases and assumptions.

Looking into the South African experience more deeply, I drew links between a truth commission not fully alive to the experiences of women under apartheid and the discourse of closure with the country's present-day epidemic of violence against women (A. James, 2013). That is to say, if the experiences of women under the apartheid regime had been more fully explored and understood *and* if the work of the TRC-SA had been treated less like a clean break between the past and the present, then perhaps there would be more room in political and social discourse to understand violence against women in South Africa as a collective social problem to be understood and addressed in the context of history.

1.2 The research project

During the course of my MA research, a truth commission was set up here in Canada specifically to address the Indian Residential School System (IRSS), which operated for more than 150 years across the country. It was a system that broke up Indigenous families, robbed children of their language and culture, and forced assimilation at the hands of churches and the state. At the outset of the TRC, the Native

Women's Association of Canada (NWAC)² released a paper (2010a) that advised on best practice for the implementation of culturally relevant gender-based reconciliation, rooted in Indigenous epistemologies. NWAC raised similar questions to those I had considered in the South African context regarding gender, and about a truth commission's potential to be "gender-responsive" (NWAC, 2010a, p. 17). Having decided to come home, so to speak, for my PhD work, I was motivated by the desire to more deeply investigate questions of gender and transitional justice in Canada, within a landscape of potential for transformative reconciliation, which, building on NWAC (2010a) and Borrows & Tully (2018), I define as a practice that is rooted in collective responsibility, relationality, and disrupting both colonial and patriarchal relations of power. In Canada, the experiences of Indigenous women sit at the nexus of patriarchy and settler colonialism, each system of oppression facilitating attendant injustices.

This dissertation is a direct response to NWAC's (2010a) call to more closely examine gender and reconciliation in the context of the TRC - I respond to the ideas raised in NWAC's paper by asking how the TRC recognized Indigenous women's gender oppressions both in practice and in analysis. I establish the gender regime of the TRC as one that largely neglected gender analysis. Connell (in Kuokkanen, 2019) defines a gender regime as "the historically produced state of play in gender relations within an institution, which can be analyzed by taking a structural inventory" (p. 143). Informed by the transitional justice and Indigenous studies literatures, I conduct my analysis of the TRC's gender regime through the prism of transformative reconciliation. Reconciliation

² NWAC was incorporated as a national organization for Indigenous women through aggregating thirteen Indigenous women's organizations across Canada in 1974. It is governed by a board and headquartered in Ottawa, with regional bodies in each province and territory (<https://www.nwac.ca/>).

is frequently invoked in the praxis and theory of transitional justice, but the term remains under-specified. I analyze the TRC's setup and historical context, proceedings, and outputs using content, framing, and discourse analyses and NWAC's criteria for gender-responsive truth commissions. I place in conversation the purpose of a truth commission, the role (both potential and actual) that it plays in affecting change (both discursive and material), and the ways that gender-based discrimination and gender-based violence are tied to state-Indigenous relations in Canada.

Through an analysis of the TRC's formation, proceedings, and outputs, I find that while the TRC achieved and continues to achieve broad exposure of the truths of residential schools, the commission offered few avenues for furthering transformative reconciliation and gender justice - which I define as the recognition that survivors have justice needs that are particular to their gendered experiences and an attendant commitment to addressing those needs - and operated with a gender regime where the TRC did not purposively incorporate an intersectional gender lens across its analysis, programming, and outputs. I also identify what I have termed a discourse of absence throughout the TRC in which the political agency of Indigenous women and the specifically gendered aspects of their experiences in and after residential school are underexplored. I conclude by theorizing an alternative politics of survivance³, arguing that by furthering elements of survivance, in particular revisiting the concept of witnessing in the longer-term; incorporating resistance and refusal; and understanding the experiences of intergenerational survivors, the academic field and practice of transitional

³ Vizenor (2010) defines survivance as a spirit of presence over absence.

justice could see greater possibilities for furthering gender equity and transformative reconciliation.

1.2.1 The context for the TRC

As the name suggests, transitional justice is indeed usually borne out of a clear and recent political transition of some kind, and may seem a curious fit for Canada. The model of the Canadian commission followed the South African commission in many ways, despite the country not undergoing the same type of transition. South Africa was undergoing a political regime change at the time of their commission, even if other aspects of the transition left much to be desired,⁴ while Canada was undergoing no such sudden rupture. However, elements of transition in the state-Indigenous relationship have happened over time, in hard-fought and slow-burning activism such as the 1970s and 1980s campaigns to amend the Indian Act and ensure that former Prime Minister (then Minister of Indian Affairs) Jean Chrétien's 1969 White Paper⁵ was not implemented (Manuel, 2015). Catalytic moments such as the 1990 standoff in Oka, Quebec, between the Royal Canadian Mounted Police (RCMP), and the Mohawk people⁶, and the landmark case *Delgamuukw v. British Columbia*, which clarified to an unprecedented extent the constitutional nature of Aboriginal⁷ title (*Delgamuukw v. British Columbia*, 1997), have also resulted in increased dialogue about Indigenous rights in Canada.

⁴ Much of South Africa's police and military apparatus remained largely unchanged, and deep racial social divisions persist (A. James, 2013).

⁵ The "Statement of the Government of Canada on Indian Policy, 1969," colloquially known as "The White Paper," was introduced into Canadian parliament by then Minister of Indian Affairs and Northern Development and later Prime Minister Jean Chretien, in 1969. The paper proposed abolishing The Indian Act and existing treaties and assimilating Indigenous Peoples into the Canadian state. Then Prime Minister Pierre Trudeau withdrew the White Paper in 1970.

⁶ This event is known as the Kanesatake Resistance, or the Oka Crisis.

⁷ Throughout this dissertation I use the term "Indigenous." "Aboriginal" is a term that was first formally used in the Constitution Act, 1982, and thus is often still used in a legal context to denote Indigenous peoples in Canada. For a comprehensive explanation of terminology, see Vowel (2016), pp. 7–13.

Although residential schools have been closed for some time, other more pernicious elements of settler colonialism such as deeply entrenched practices of dispossession and discrimination continue to operate in Canada.⁸

Despite Canada's historically strong humanitarian reputation, a greater acknowledgement and awareness amongst non-Indigenous Canadians - and even across the international community - of the country's treatment of Indigenous peoples has occurred in recent years. For example, Amnesty International has undertaken a human rights investigation into Canada on the matter of violence against Indigenous women and girls that labelled this violence a national human rights crisis (Amnesty International, 2009). In 2015, the United Nations Human Rights Committee raised a wide-ranging variety of complaints about Canada's human rights record (Vincent, 2015), and the same committee again spoke out in response to 2019's final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG), urging Canada to fully investigate the report's findings of genocide (Stefanovich, 2019). In his 2017 address to the United Nations General Assembly, Prime Minister Justin Trudeau⁹, acknowledged the dissonance between Canada's reputation and its relationship with Indigenous peoples, acknowledging that "Canada is not a wonderland." He went on to detail Canada's history of abuses against Indigenous peoples, the present-day inequities and fallout from these abuses, and the work of the state to repair these injustices (Government of Canada, 2017). The public acknowledgement of such longstanding dissonance by a Canadian prime minister was unprecedented, and in some ways suggests

⁸ The Government of Canada began phasing out the residential school system in the 1960s, but it was a slow process, and the last residential school did not close until 1996 (Milloy, 1999, p. xvii).

⁹ Henceforth, Prime Minister Trudeau.

that now is the time to seize on the opening of this conversation. In the wake of the TRC, reconciliation emerged as a significant issue in the 2015 federal election that first elected Trudeau as prime minister, in which he ran on a platform heavy with commitments to reset the state-Indigenous relationship (see “Aboriginal Canada and reconciliation: Four things to know before you vote,” 2015, and “A welcome push for native votes,” 2015). The true nature of Canada’s historical and present-day treatment of Indigenous peoples is still emerging, and demands deeper analysis and understanding.

Like South Africa’s, the Canadian truth commission was called a Truth and *Reconciliation* Commission. Placing reconciliation in the title signals a particular intention, and, since the close of the TRC in 2015, reconciliation has become the guiding framework for state–Indigenous relations in Canada, to the extent that some argue it has devolved into an empty signifier¹⁰ (see G. Starblanket & Green, 2020; Yesno, 2020). Given the centrality of reconciliation in state discourse around Indigenous peoples, a comprehensive analysis of the TRC and the role it played in specifying and furthering reconciliation is essential to understanding its impact on present day state–Indigenous relations. As M. James (2018) puts it, the present moment “demands... that Canadians assess the TRC’s contributions in order to proceed with a more informed understanding of the new discursive landscape that the TRC is at least partly responsible for bequeathing us” (p. 363). It is to this present moment that this dissertation contributes.

A truth commission cannot, on its own, solve societal inequalities and is generally

¹⁰ This critique became especially prominent in February of 2020 during protests over the BC government’s construction of a natural gas pipeline in Wet’suw’eten territory (see Yesno, 2020). For example, Yesno (2020) wrote: “In the same spirit of movements of years prior, such as Idle No More, Indigenous young people today see that the language Canada uses about reconciliation is not compatible with the actions it imposes; and have run out of patience for it.”

mandated primarily to create an accurate historical record about human rights abuses sustained during a specific period of time. However, even if the role of truth commissions is largely investigative and specific, such commissions are also more broadly recognized as having the potential to shape collective responsibility and the way a society understands and copes with a legacy of historical injustices by looking to the future. To this point, Hayner (1994) says that “the expressed intent of most truth commissions is to lessen the likelihood of human rights atrocities reoccurring in the future” (p. 609). Truth commissions tell a story that becomes part of the public record and, in the case of higher profile commissions like the TRC-SA, they can shape public and political discourse regarding the conflict or injustice that is the commission’s area of focus.

The concepts that I work with throughout this dissertation are broadly used, and in some cases heavily theorized and contested across disciplines. In the section that follows, I turn to clarification of the key concepts I employ, establishing the theoretical underpinnings of my analysis. I then continue to set up the structural framework of my analysis by explaining my methodology and personal standpoint, and by detailing the research methods I have employed in this study. I conclude with an outline of the dissertation’s chapters.

1.3 Transformative reconciliation

The foundation for my analysis of gender and the TRC is built upon the idea of transformative reconciliation. I introduce the conceptual terrain of transformative reconciliation in this section and expand upon the ideas therein in the chapters that come. First, I draw on Borrow and Tully’s (2018) exploration of transformative reconciliation. While recognizing that these are continually contested terms and that there need not be

definitional consensus in the literature, Borrows and Tully (2018) position transformative reconciliation as an alternate conceptualization to what they argue is a false dichotomy in Indigenous studies between resurgence¹¹ and reconciliation (p. 9). Transformative reconciliation, they argue, does not “reconcile... to the status quo” (p. 5), but rather transforms relationships and is accompanied by strong practices of resurgence. Picking up on their definition, I further define transformative reconciliation as including relationality, collective responsibility, and disrupting both colonial and patriarchal power relations.

My definition of transformative reconciliation is also informed by the transformative paradigm that has been introduced in the field of transitional justice as an emergent approach to questions of memory, justice, and responsibility (see Lambourne, 2014; Evans, 2018; Gready & Robins, 2018). Transformative justice, though perhaps a concept still undefined in its potential application, provides an important agenda for change within the field of transitional justice. Balasco (2018) defines the approach as “re-envisioning the goals of transitional justice mechanisms to account for long-term structural injustices that remain” (p. 368) after the ‘transition’ in question, while McGill (2019) raises the question of land rights to illustrate the purported difference between transitional and transformative justice. He defines traditional transitional justice as a practice that covers, “if at all... property restitution [that is] heavily dependent on political and financial constraints” (p. 11). He envisions instead a transformative justice that addresses “the wider structural problems of land rights and distribution patterns”

¹¹ The Indigenous resurgence school is explored in greater detail in chapter two. Hanson (2017) writes that Indigenous resurgence “acknowledges colonialism and domination through resistance but it does not focus solely on colonialism as the most important concern. Instead, resurgence insistently focuses on Indigenous communities as sites of power and regeneration” (p. 74).

(McGill, 2019, p. 11). In a sense, the emerging field of transformative justice reflects recent critiques of the field (see Mutua, 2015), namely that it is focused on event at the expense of understanding structure.

This critique also impacts my thinking on transformative reconciliation, particularly in chapter six when I think through witnessing and public engagement as an ongoing process rather than one that is time bound to a truth commission. Similarly, to date the transformative justice critique has largely been applied to matters of economic and social injustice, but I argue it could be more frequently and explicitly applied to the structure of patriarchy (for examples of a transformative justice approach to gender, see Boesten, 2014; Lambourne & Rodriguez-Carrion, 2017). In other words, I take from transformative justice the argument that addressing gender-based violence or gendered oppressions that occurred within a discrete period of time without committing to understanding and intervening in the structure that facilitated and fostered the oppressions in question is insufficient to make transformative change.

1.3.1 Relationality and collective responsibility

The relational aspect of Borrows and Tully's (2018) conceptualization of transformative reconciliation is particularly relevant to questions of gender. All relations involve power to a greater or lesser extent - certainly the state has historically exercised power over Indigenous peoples, just as patriarchal society has exercised power over women. In this vein, Borrows and Tully (2018) speak to power when they argue for a re-conceptualization of reconciliation as a *transformative* and *relational* process. They argue the "colonization/decolonization binary" of Fanonian theory, which resurgence theory draws from heavily, fails "to illuminate broader and more complex intersectional fields of

power” (p. 7).¹² I argue that a relational understanding of reconciliation indeed allows us to more clearly understand gendered dynamics of power, between both the state and Indigenous peoples and within Indigenous communities, and to advance the self-determination and justice articulations of Indigenous people marginalized due to gender. If the relational aspect of state-led institutional transitional justice processes is already lacking, this lack will be felt most keenly by those whose relations are already marred by gender discrimination.

NWAC (2010a) also highlights the importance of relationality and interdependence to Indigenous worldviews, writing that “Indigenous knowledge is the process of understanding these connections [interdependence and interconnectedness], and renewing and strengthening these relations” (p. 8). An essential part of moving towards transformative reconciliation is a transitional justice that compels non-Indigenous Canadians to participate in a deeply relational way, for example by designing aspects of the testimony and witnessing processes that are inherently interconnected. This process will require fundamentally rethinking what it means to witness testimony.

Interconnectedness is theoretically at the heart of the idea of reconciliation – generally it is the repairing of relationships that is implied. I argue that in order to advance transformative reconciliation, rethinking the nature of witnessing is the precursor to imbuing a collective sense of responsibility amongst non-Indigenous Canadians to not stop there, but to take the personal and political action that is required to further justice for Indigenous peoples and to learn how to be good relations. Within the witnessing part of a truth commission lies a landscape with unrealized potential for

¹² Borrows and Tully (2018) describe this binary as “insist[ing] the decolonizing resurgence of the colonized had to take place in separation from the colonizer” (p. 6).

collective responsibility for reconciliation – the taking up of which could foster transformative justice and reconciliation.

With a transformative lens, the assumptions inherent in truth commissions – that they contribute to the aims of reconciliation, and that the testimonial and witnessing experiences are essential pieces of that puzzle – must be considered more deeply. Such a consideration can provide insight into the mechanisms by which transitional justice purports to further reconciliation. For example, Laub (in Angel, 2012) speaks to the necessity of the witness:

Bearing witness to a trauma is, in fact, a process that includes the listener. For the testimonial process to take place, there needs to be a bonding, the intimate and total presence of an other – in the position of one who hears. (p. 209)

If settler Canadians are to take responsibility and come to understand, it will be through mutuality, dialogue, and commitment.

1.3.2 Disrupting patriarchal power relations

The third pillar of my definition of transformative reconciliation is the disruption of patriarchal power relations. Gendered discrimination - and gendered violence - is central to systems of settler colonialism, and this has certainly been the case in Canada. Writing on the staggering number of missing and murdered Indigenous women and girls in Canada (a crime so endemic it is known by an acronym: MMIWG), Million (2013) argues that MMIWG are the “epicenter of a deep-seated disrespect Canada holds for Aboriginal life made manifest” (p. 34). After a long history of Indigenous women campaigning for a national inquiry into MMIWG—and a long history of former Prime Minister Stephen Harper refusing the same—one was launched in 2016, following the

2015 election of Prime Minister Trudeau. The inquiry released its final report in 2019. The preface to that document explicitly states, “We are here now because of years and years of decisions and actions that built Canada, all while robbing Indigenous Peoples, and especially women, girls, and 2SLGBTQQIA¹³ peoples, of their humanity, dignity, and ultimately their lives. It is genocide” (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p. 16). Given the way that settler colonialism and patriarchy intertwine to particularly oppress Indigenous women, the way the Canadian TRC represented and analyzed survivors’ experiences as gendered matters deeply to the forward trajectory of reconciliation in Canada.

Patriarchy (see Hunnicutt, 2009) is a social and political system of organization in which power is concentrated with the male gender, or “the power and authority of masculinity” (Shepherd, 2010, p. xxiii). Hunnicutt (2009) says that the traditional definition of patriarchy is “systems of male domination and female subordination” (p. 553). She proposes instead moving towards a theory of patriarchy that allows for a wider variety of its expressions, one that retains “gender as a central organizing feature, maintaining a *hierarchical* emphasis and focusing on *social systems* and *social arrangements* that reinforce domination” (p. 554). Patriarchy traditionally disadvantages women and 2SLGBTQQIA people in terms of access to positions of power, and making them subjects of violence because they can both threaten patriarchal traditions and because subjugation of and violence against women and 2SLGBTQQIA people is built in to patriarchy as an ethos and a practice. Gender-based violence is central to patriarchy, and is both a fundamental part of patriarchal power relations and a specific tool used to

¹³ Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual.

maintain patriarchy. I find that the TRC lacked gender analysis, resulting in a gender-neutral approach in its planning and operations, as opposed to a gender-responsive approach more akin to one that NWAC describes, in which careful attention is given to understanding gendered experiences and facilitating gender equity in proceedings.

Gender neutrality is not an inherently harmful approach, but when it serves the social systems and arrangements that reinforce domination that Hunnicutt (2009) refers to, therein lies the operation of patriarchy. Moreover, an important clarification when considering gender neutrality in the context of the TRC is in the intentionality of the approach. An institution such as a truth commission could theoretically take an intentional gender-neutral approach to their operations, which would require the consideration of gender as an analytical factor and choosing a particular approach. To be clear, when I refer to the TRC operating with a dominant approach of gender neutrality I mean that the TRC arrived at gender neutrality in a much more passive fashion. A lack of gender analysis and gender-responsiveness resulted in a default approach of gender-neutrality.

In this context, gender neutrality has the potential to simply replicate existing inequalities and power relations. Furthermore, a *culturally* ‘neutral’ approach to gender analysis is not in fact neutral, but reflects a purported universality that is often steeped in white liberalism. It is at this intersection of colonialism and patriarchy that NWAC’s (2010a) intervention lies – an opportunity to attend to gendered power relations as a foundational consideration of the TRC. As NWAC (2010a) argued, “to miss this opportunity [to implement a culturally grounded and gender-responsive TRC] is to perpetuate injustice” (p. 30). Next, I turn to conceptual refinement within the realm of

gender analysis, and to clarifying the criteria by which I analyze the TRC's gender regime.

1.4 Gender

In assessing the gender regime of the TRC, I am both undertaking a gender analysis of the TRC using NWAC's criteria and assessing the extent to which the TRC incorporated gender analysis in its work. In this section I strive for conceptual clarity and the establishment of my theoretical underpinnings in the realm of gender analysis. While NWAC's CRGBMR (2010a) is the core guidance I use in my empirical analysis of the TRC, delineating the terms and concepts I use in the realm of gender analysis renders my analysis sharper and clarifies my theoretical contribution.

Gender is a social construct and an assigned category that interacts with patriarchy to mean that women have historically been both practically and discursively treated as lesser than men in the Western context. Gender as a binary is becoming an outdated way of conceptualizing gender in Western culture in favour of seeing gender as a construct, or a performance (see Butler, 1999; Tate et al., 2020). However, many Indigenous nations already recognized multiple genders prior to the imposition of settler colonialism's Western understandings of gender (see McNabb, 2018; Scudeler, 2016; Gilley, 2006). My analysis of the TRC revealed very little exploration of gender diversity and sexuality and how these factors may have interacted with colonialism and heteropatriarchy at residential school and afterwards. Gendered state discourse towards and about Indigenous peoples has largely invisibilized gender diversity.

Understanding the manner in which the TRC addressed - or failed to address - gender can provide insight into how transitional justice initiatives might influence the

nature of reconciliation. Kuokkanen (2019), in her work on gender and self-determination, characterizes this type of analysis as identifying the gender regime of a given subject area or institution. She works from Connell's (1990) definition of a gender regime: "The historically produced state of play in gender relations within an institution, which can be analyzed by taking a structural inventory" (Connell in Kuokkanen, 2019, p. 143), and interrogates the gender regimes of several Indigenous self-governance institutions. Her findings are of particular relevance to my work. For example, Kuokkanen (2019) found that while the Sami parliaments in Scandinavia as well as the self-governance institutions in Greenland "have in a varying degree addressed gender inequality, none have explicitly linked it with self-determination" (p. 176). Her premise is that self-determination, which she conceptualizes as a value, without gender equity, or gender justice, is incomplete. My analysis builds on this framework to conceptualize reconciliation as a value that is incomplete without gender justice, and I interrogate the gender regime of the TRC in order to assess its potential to contribute to transformative reconciliation.

My analysis is based on NWAC's criteria for gender responsive TRCs, and I approach this research from a belief in the importance of intersectional feminism. Intersectionality is the theory that multiple identities intersect to create a whole that is different from the component identities (See Crenshaw, 1991; Collins, 2019; Jordan-Zachery, 2019). Crenshaw (1991) writes:

Although racism and sexism readily intersect in the lives of real people, they seldom do in feminist and anti-racist practices. And so, when the practices

expound identity as woman or person of color as an either/or proposition, they relegate the identity of women of color to a location that resists telling (p. 1242).

While comprehending the experiences of Indigenous survivors of residential schools is, of course, the crux of the TRC's work, an intersectional approach would, for example, endeavour to understand survivors' experiences where Indigenous identity intersects with gender identity. A mainstream gender analysis runs the risk of missing the unique oppressions that occur where patriarchy meets colonialism. hooks (2014) writes that:

Under capitalism, patriarchy is structured so that sexism restricts women's behavior in some realms even as freedom from limitations is allowed in other spheres. The absence of extreme restrictions leads many women to ignore the areas in which they are exploited or discriminated against; it may even lead them to imagine that no women are oppressed" (p. 5)

In the context of the TRC, a mainstream feminist analysis that is not rooted in Indigenous epistemology risks a universalizing of the experience of 'women', when the experience of women is anything but universal.

Furthermore, Kuokkanen (2019) argues that rather than "gendering" a given topic as a practice, as has been common parlance in gender analysis, we should instead look at "queering" a topic in order to reveal the complex and multiple ways in which gender identity and sexuality intersect. Kuokkanen (2019) writes that:

Queering Indigenous self-determination... entails moving beyond analyzing it through the lens of the normalizing disciplines of political science or law to interrogate the normalizing logics of self-government or self-determination, and

thereby resist Indigenous nationhood and self-determination that holds up heteropatriarchy, white supremacy, and capitalism. (p. 16)

Kuokkanen (2019) also argues that part of queering Indigenous self-determination is the deep analysis and understanding of the heteropatriarchal tools and structures traditionally used by the state in its relations with Indigenous peoples. NWAC (2010a), in their framework for CRGBMR, write that “‘gender’ refers to gender roles and identities that people *live*, meaning that this term is inclusive of Two-Spirit people” (p. 27). They go on to argue that “respectful gender relations must also address how effectively Two-Spirit people are welcomed and treated in the process of reconciliation” (p. 27). While analysis of the state’s treatment of gender diversity and sexuality is an essential and hopefully growing aspect of the literature, there is a lack of data to draw on for the type of analysis I conducted. In other words, the TRC’s attention to gender diversity and sexuality in its programming and in the final report was so minimal that there was not enough material to analyze thoroughly. Thus, in this dissertation I see part of my task as taking up Kuokkanen’s (2019) call for such analysis and understanding of the state’s tools, and I largely draw on data that uses the categories of “man” and “woman” as I analyze the power relations that flow through these limited categories to create differential positions of marginalization or privilege.

Of course, the study and analysis of gender also includes men, and in the next chapter I speak to emerging foci on the study of men and masculinities in both transitional justice and Indigenous studies. However, an analytical focus on women is not without rationale. If gender as a concept is used as a lens on “power, exclusion, and marginalization” (p. 186), such is the nature of patriarchy that a gender analysis often

involves women as those disadvantaged due to gender. While I recognize and appreciate that the field of masculinities and men as a focus of gender analysis is an integral part of gender studies, it is not the focus of this dissertation. I take my cue from Björkdahl and Selimovic (2015), who analyze transitional justice initiatives in Bosnia-Herzegovina by identifying women's acts of agency that "challenge or negotiate patterns of gendered relations of domination" (p. 165). Methodologically, they describe their practice of gender analysis as such:

[we] employ gender as a concept that more broadly informs an understanding of power, exclusion, and marginalization. Gender analysis, then, is a way of exploring the various forms subordination takes in any particular space, a tool that we use to zoom in on transitional justice spaces and make visible women's agency. (p. 186)

A similar position is outlined by G. Starblanket and Stark (2018), who argue that an analysis of gender that focuses on women does not reify a gender binary but attempts, rather, to "understand the ways that gender emerges both within and in efforts to oppose conditions of colonialism" (p. 184). For G. Starblanket and Stark (2018), gender is used "as an analytical category to explore the precise ways that the rhetoric of relationship can function to simultaneously centre Indigenous womanhood and close off Indigenous women's voices" (p. 184). The category of Indigenous womanhood, G. Starblanket and Stark (2018) argue, is frequently valorized as holding responsibility for harmonious relationships within community while also excluding significant room for political agency (p. 184). Furthermore, they argue, when Indigenous women "invoke the discourse of relationship in the public sphere" (G. Starblanket and Stark, 2018, p. 185) they are not

taken as seriously as Indigenous men. (see also G. Starblanket, 2017). Following in this direction, I have framed the bulk of my gender analysis around Indigenous women's experiences and political agency.

1.5 Methodological Approach

Methodologically, my research is qualitative and interpretive. Given the nature of my research topic - specifically that it focuses on questions of discourse, narrative, and framing - a qualitative rather than quantitative analysis is the most appropriate methodological approach. Henn et al. (2009) explain that the purpose of qualitative as opposed to quantitative research is “not so much to test out given theories about what guides human behaviour, but instead to develop an appreciation of the underlying motivations that people have for doing what they do” (p. 175). As Creswell (2007) describes it, a qualitative approach “provides for the voices of participants, a reflexivity of the researchers, [and] a complex description and interpretation of the problem” (p. 51) to come through. This description is particularly apt when it comes to my research project. Defining and interpreting the “problem” in this dissertation in depth is an essential part of understanding the gender regime of the TRC.

Furthermore, a qualitative methodology is often, but not always, the choice of those who hold an interpretivist rather than a positivist epistemology. Marsh et al. (2010) describe a researcher's epistemology as being like “a skin not a sweater” (p. 177). In other words, they argue that an epistemology, the belief about what can be known, is not something that can be removed and replaced at will, but rather is inseparable from the researcher's outlook on the nature and definition of social science. I agree with this argument and situate myself within an interpretivist school of thought. Interpretivism

holds that the study of human behaviour is fundamentally different from the scientific study of objects and matter because of the need to take humans' interpretations into account. Thus, the objective positivist approach most often used in the natural sciences is frequently insufficient for answering research questions in many areas of the social sciences (see Henn et al., 2009). To this point, Moses and Knutsen (2007) write that an interpretive approach holds a "skepticism [that] takes aim at the core ontological, epistemological and methodological claims of the naturalist tradition" (p. 191). However, an interpretive approach is not simply anti-positivist, or positivist 'lite' but offers its own standpoint and way of interpreting the world. Given the nature of this project as one that is inherently critical and interested in nuance, I have taken an interpretive approach and employed a qualitative methodology. Shortly I will turn to the specific interpretivist methods employed in this project, but first I address another global research orientation – my subject positionality.

1.5.1 Orientation

In keeping with my interpretivist outlook, and drawing on feminist epistemologies, I generally believe that researchers come to their areas of study as people with histories, relations, privileges, and assumptions that both lead them there and can shape the research that follows. As Ahmed (2020) puts it, "what matters is itself an effect of proximities: we are touched by what comes near, just as what comes near is affected by directions we have already taken" (p. 234). To borrow from Jon Kabat-Zinn (2005), in research, as in life, wherever you go, there you are.¹⁴ In this brief section I address my

¹⁴ Kabat-Zinn is a professor of medicine and practitioner of mindfulness meditation. *Wherever you go, there you are* is the title of his landmark mindfulness book, originally published in 1994.

proximities and distances, how they have situated my personal orientation to my research topic, and in turn what responsibilities I have in conducting this research.

A starting point for considering positionality is usually identity and background. Like many family backgrounds, my ancestry is not entirely straightforward. I have Métis ancestry in Alberta and Saskatchewan on my mother's side. However, my mother never knew her biological father or his family, meaning that I too do not have connections to his family or community. As such, I identify primarily as a non-Indigenous Canadian, or a settler. Most of my family emigrated from England post-World War II, save for my paternal grandmother's family, who emigrated to Ontario and Quebec largely from Scotland and Ireland in the early 1800s.

My parents, maternal grandparents, and great-grandparents were foster parents for many decades, meaning that I grew up with a large and diverse extended family of aunties, uncles, and cousins, for which I am always grateful. This also means that when several Indigenous children joined my family in the 1960s through the child welfare system that this was a part of what is now called the Sixties Scoop.¹⁵ Their stories and these familial relationships have contributed to my proximity to, but more importantly my responsibility to this study. My family also includes my stepfather, who is a member and former Chief of Ts'il Kaz Koh, or the Burns Lake Band, in Northern British Columbia. Here too my proximity comes with a responsibility to honour these familial relationships and their stories and experiences.

My distances as well as my proximities have informed my responsibilities in this project. I had a responsibility to listen to and learn from Indigenous experiences, and to

¹⁵ The 1960s saw an intensified period of the government removing Indigenous children from their families and placing them in the foster care system.

always recognize that my perspective, while informed by this listening and learning, is still that of a non-Indigenous outsider. As Smith (2012) writes, “research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions” (p. 5). Political and social conditions related to this project loomed large over my work in many ways. As a graduate student researcher, I had a responsibility to achieve academic rigour and to conduct ethical research as deemed appropriate by my university’s ethics review board. As a non-Indigenous researcher, I had a responsibility to conduct my work in a way that minimized intrusiveness and harm and sought to contribute rather than extract. As a Canadian with an academic interest in transitional justice, I had a responsibility to reflect on the implications of its implementation at home. As a woman, a daughter, a granddaughter, a niece, a friend and an auntie, I had a responsibility to truly see women and their experiences and to thoughtfully address gender justice.

I have not fulfilled all of these responsibilities perfectly. A particular area of concern was whether or not to conduct interviews with survivors of residential schools. While it seems a major gap in this study to not have those voices directly incorporated, I (and my university ethics review team) was keenly aware that seeking out survivors to speak with about their experiences at the TRC would constitute yet another solicitation of testimony, and the potential for intrusion – a problem I discuss in chapter three.

There are many other factors that have influenced my orientations towards this work – academic and personal relationships, work for non-profits and for government bodies, and a deep interest in the big questions of overcoming, forgiveness, and restitution. Research is relational – it is shaped by relations far and wide and, I argue,

should be conducted with both responsibility to others and a responsibility to mobilize research in a way that is useful socially and politically. With that, I turn next to the methods I used to address my research question.

1.5.2 Methods

Under the umbrella of a qualitative methodology, I conducted an analysis of the gender regime of the TRC, employing specific forms of data collection and analysis: historical analysis, discourse and framing analysis, and interviews. In chapters three, four, and five I present the bulk of my original data analysis. In answering my research question, it was important to establish historical patterns of state treatment of the intersection of Indigeneity and gender. As Gardner (2006) argues, “the charting and assessment of currents of continuity, as well as change, is a major concern for the historical method” (p. 135). The historical analysis I employed is completely focused on written materials, both private and public. I cannot claim to have conducted the type of comprehensive analysis that would meet the standards of a historian; nevertheless, my analysis of reports, files, and government documents in the broad area of reconciliation was essential for establishing a pattern of gendered state-Indigenous relations.

I also conducted in-depth qualitative and quantitative analyses of the nine¹⁶ volumes of the TRC final report. As my subject matter is based in narrative and discourse, discourse analysis (see Fairclough, 1995) and framing analysis (see Goffman, 1974) provided significant insight into the topic above and beyond what historical analysis and interview data can provide. I draw on discourse analysis specifically to

¹⁶ The TRC Final Reports are sometimes described as eight volumes and sometimes as nine. This is because “Volume 2: The History” is divided into two separate books, equal in size to other volumes but “titled “Volume 2: The History Part 1” and “Volume 2: The History Part 2.”

uncover implicit assumptions and representations of Indigenous women in the TRC's final report. Foucault held that such analysis is not just about acknowledging what we may have already been aware of but is also about unmasking discourse—in other words, once a discourse is identified, a researcher is more able to see it in operation (Wedeen, 2016). Furthermore, discourse can refer to speech acts but may also mean embodied practices and the conveyance of norms. Framing analysis in turn is a particular form of discourse analysis. Entman (1993), describing the value of framing analysis, notes that “even a single unillustrated appearance of a notion in an obscure part of the text can be highly salient, if it comports with the existing schemata in a receiver's belief systems” (p. 53). I draw on framing analysis particularly in analyzing sections about gender in the TRC final report volumes. A systematic demographic analysis of gender and testimony in the TRC's final report illuminates my qualitative findings.

In the course of my analysis, I consulted a wide variety of primary and secondary sources, including scholarly sources, government and non-profit reports and communications, as well as copious media items discussing reconciliation initiatives in Canada. My starting point for assessing how successfully an institution (in this case the TRC) addressed gender is based in CRGBMR (NWAC, 2010a). NWAC (2010a) identifies a checklist of “promising practices” that they glean from past reconciliation initiatives (p. 27-28). The practices are:

- Restore and respect Indigenous women's agency, authority, leadership and decision-making capacity.

- Restore safety and the human right to security of the person of Indigenous women and girls – physically, mentally, emotionally, spiritually, politically and economically.
- Reclaim and revitalize Indigenous knowledge, worldviews, and traditions of gender balance in ways that are relevant to the contemporary context.
- Share the truth about the gendered impacts of colonization, human rights violations, and ethnocide/genocide.
- Promote personal and social responsibility for ending neocolonial attitudes and practices that devalue Indigenous women and create social conditions that put women and girls in harm's way.

In looking for evidence of these factors in the TRC, I consider such questions as: Did the TRC have a centralized gender strategy that guided statement-taking, events, and the creation of publications? Did the TRC look into how these experiences may have contributed to Indigenous peoples' gendered experiences today? Did the TRC explore how sexuality and gender identity influenced survivors' residential school experiences?

Furthermore, in November of 2018 I spent time in Ottawa with NWAC. Several staff members generously shared their time to speak with me, and I was also granted access to an electronic library with a shared drive of organizational documents. The library did not span the duration of NWAC's existence as an organization and contained mostly documents from recent years. Nevertheless, it provided valuable background information to several major initiatives, including the TRC and the NIMMIWG. Documents referenced from this library are marked as 'NWAC collection' in footnotes.

Finally, interviews provided important supplementary data, and I was able to make several key findings based on iterative research that relied on interviewee's insights. I conducted 11 interviews in total – 7 in person and 4 via telephone. Talking to people who work in, and fight for, Indigenous rights in the political, non-profit, and activist realms was an important step in understanding the workings of the TRC and in situating the TRC and the question of gender in a broader political context. I conducted semi-structured interviews, adopting Rubin and Rubin's (2005) "responsive interviewing" approach, which treats the interviewee as a "conversational partner" (p. 14) and each interview structure as unique. I identified lists of potential interviewees in several categories of interview populations¹⁷ and reached out broadly within each of these category lists, assuming – correctly - that many people would be unavailable for interview. Once I had secured interviewees in each category, conducted a reasonable cross-referencing of information, and had answers to all of my outstanding questions, I considered the interview process complete. As each interviewee varied in terms of their access to the information I sought, I drew on some interviews more than others in my analysis.

An anonymized breakdown of final interview partners by category is detailed below, in Table 1. While my main source of data for this dissertation was textual, interview partners offered an important perspective on gender and reconciliation in Canada and enriched my analysis. Interviewees who worked for the TRC in senior positions were able to fill in the gaps regarding TRC background and practices that weren't covered in the final report or other material. Interviewees from national

¹⁷ I identified lists of potential interviewees in the categories of: Former TRC employees, advocacy organizations, TRC commissioners, and political figures.

Indigenous organizations provided information that clarified the manner in which non-profits engaged with the TRC, and illuminated some aspects of state-Indigenous engagement as it pertained to their organizations post-TRC. Finally, conversations with federal government officials and youth activists provided additional perspectives on state-Indigenous relations and gender. I anonymized interview participants, and they are identified by category, below.

Table 1: List of Interviewees

Population group	Number of interviews
Individuals who worked for the TRC	3 (interviews A, B, and C)
Government of Canada officials	2 (interviews D and E)
National Indigenous organization employees and founders	4 (interviews F, G, H, and I)
Youth activists	2 (interviews J and K)

Originally, I envisioned that this project would involve archival research. The archives from the TRC are housed at the National Centre for Truth and Reconciliation (NCTR), based at the University of Manitoba. I had hoped that by reading original testimonial transcripts and then ‘following’ the testimony with a gender analysis lens, I could gain insight into the way testimony was curated into reports, media, and the public consciousness. A similar exercise was carried out by Krog, Mpolweni-Zantsi, and Ratele (2009), who investigated the TRC-SA testimony of Notrose Nobomvu Konile. However, at the time of my data collection, the testimony archives of the TRC were limited to select video from public events and were not searchable, rendering this plan unworkable. The availability issue with NCTR archives is starkly contrasted by the

publicly available archives of the NIMMIWG that followed. Full transcriptions of all testimony from public hearings are available on the Inquiry's website (<https://www.mmiwg-ffada.ca/transcripts-exhibits/>). While too late for my research purposes, the NCTR received funding from the federal government in March 2021 to transform the archives, with an emphasis on accessibility, narrative, and decolonial approaches (NCTR reimagines what its archives can be, and do, 2021), hopefully rendering archival research easier in the future.

In summary, much of my analysis of the TRC drew on discourse and framing analysis of primary and secondary documents from and about the TRC, supplemented by interview data and historical analysis of other initiatives pre- and post-TRC.

1.6 Conclusions and dissertation outline

My exploration of transformative reconciliation and analysis of the TRC's gender regime is organized as follows: In chapter two, having introduced the dissertation's topic and my methodology, I situate my inquiry in the current debates in the transitional justice and Indigenous studies literatures, and gender analysis in both. I aim to demonstrate that the nexus of these two literatures is underexplored, and bringing them together can inform an understanding of transformative reconciliation. Situating the Canadian TRC within the comparative context of truth commissions, globally, is crucial. The transitional justice literature illustrates some of the theoretical and comparative learning on addressing gender in truth commissions and I draw on this body of literature to support my argument that the Canadian TRC was largely inattentive to addressing gender. Furthermore, an analysis of the TRC can contribute to a greater understanding of the field of transitional justice itself. The intersection of transitional justice and Indigenous rights,

in the Anglosphere in particular, is a relatively new and underexplored research area, particularly regarding matters of gender. Moreover, there is both a strong body of literature that addresses gender and transitional justice (see Bell & O'Rourke, 2007; Baines, 2011; Ni Aolain, 2012; Hamber 2016), and a long history of Indigenous feminist scholarship (see Anderson, 2016; Arvin et al., 2013; J. A. Green, 2017; Hunt & Holmes, 2015; Lawrence, 2003; Kuokkanen, 2019; Maracle, 1996). Each of these bodies of literature brings a unique perspective to the question of the gender regime of the TRC, and I elaborate upon the transformative potential of bringing them together in chapter two. Finally, there is a significant gap in the literature when it comes to a comprehensive gender analysis of transitional justice in a settler colonial context in the Anglosphere¹⁸, which this dissertation directly addresses.

While much scholarship exists within the international relations literature that addresses truth commission mandates, structures, processes, and effects (see Hayner, 2011; Phelps, 2011; Bakiner, 2016), such scholarship is only more recently interrogating transitional justice in a settler colonial context (see Balint et al., 2014; Henry, 2015; Nagy, 2013; Winter, 2014). In 2011, the International Center for Transitional Justice held a conference on the topic of “Strengthening Indigenous Rights through Truth Commissions” (International Center for Transitional Justice, 2011). Truth commissions have been used to address harms against Indigenous peoples in countries such as Peru, Guatemala, and Chile (International Center for Transitional Justice, n.d.), but the Anglosphere of settler colonial countries is at various stages of reckoning with the past amidst rights claims from Indigenous peoples, and Canada is the first to have instituted a

¹⁸ In Indigenous studies, the Anglosphere usually refers to Australia, Canada, New Zealand, and the United States of America.

national truth commission.¹⁹ Furthermore, the Canadian TRC's treatment of gender - and its political implications specifically - have yet to be comprehensively analyzed. As such, this dissertation represents a timely and original contribution to the literature.

Where chapter two situates my inquiry in the academic context, chapter three situates it in the historical context. Chapter three explores the relationality aspect of transformative reconciliation, and I interrogate the aspects of relationality inherent in a truth commission - namely testimony and witnessing - through the lens of gender. Additionally, in order to establish a trajectory of gendered state-Indigenous relations and to understand where the TRC fits in to this trajectory, I introduce the gendered elements of settler colonialism and conduct a historical analysis of gender and previous landmarks in state-Indigenous relations in Canada, arguing that inattention to gender has been the norm.

In chapters four and five, I present my primary analysis of gender at the Canadian TRC. I consider the set-up, national events, and media coverage of the TRC through a gender lens in chapter four, and the final report and associated TRC outputs in chapter five. These chapters contribute a comprehensive analysis of the gender regime of the TRC, drawing on primary source documents, media sources, and interview data. Through framing and discourse analysis, I conclude that, in keeping with previous initiatives focused on state-Indigenous relations, the TRC was largely inattentive to gender in its planning, proceedings, and outputs. I identify a dominant discourse of absence, in which the agency of Indigenous women is frequently left unrecognized.

¹⁹ The state of Maine, however, has held a truth commission. The Maine-Wabanaki State Child Welfare Truth and Reconciliation Commission ran from 2012-2015 and was tasked with fact finding and making recommendations regarding the Wabanaki peoples' experiences in Maine's child welfare system. For more, see Burns, 2015.

In chapter six, I contrast the absence discourse with a politics of survivance that more clearly centres the agency of Indigenous women. Given that history is often told from the male perspective and highlights the roles and actions of men over women (see Teillet, 2019), a focus on the survivance of Indigenous women offers a new way of practicing transitional justice. Furthermore, as Leebaw (2011) argues, paying particular attention to histories of resistance and political agency can render outcomes for reconciliation that are more fulsome politically and “illuminate possibilities for solidarity and innovation” (p. 24). In short, I further detail what I have called the absence discourse, and then proceed to theorize an alternative model that incorporates a politics of survivance – one that includes a recognition of resistance and refusal, that re-considers the role of witnessing, and that centres the role of intergenerational survivance. I conclude with chapter seven, in which I consider new political developments, areas for future research, and offer final thoughts on my research contributions.

This introduction has identified my research question and parameters, including thoroughly detailing my orientation and methodology. My premise in this dissertation, building on Kuokkanen’s (2019) work on gender and self-determination, is that reconciliation must include gender justice. The TRC was a key political instrument of reconciliation. As such, interrogating the gender regime of the TRC is crucial to evaluating its effectiveness, and to ensuring that future truth commissions do not leave vital voices and experiences unheard and unwitnessed. Having offered conceptual clarification and a framework for my analysis, I next turn to the transitional justice and Indigenous studies literatures, in order to both situate this study within existing debates,

and to point to a gap in the academic literature at the intersection of transitional justice and settler colonialism, detailing how this dissertation speaks to that gap.

2: The Intersection of Transitional Justice and Indigenous Studies

2.1 Introduction

Perhaps the most visceral historical examples of how a society grapples with the dilemma of justice in the aftermath of war are the post-World Wars debates on how to hold Germany accountable for its crimes. After World War I, the Treaty of Versailles dictated massive political, military, cultural, and legal sanctions that left Germany decimated (see Graebner & Bennett, 2011). After World War II, the decision to hold Nazi officials to account via criminal trial, in the form of the Nuremberg trials, was a seemingly straightforward approach—subjecting offenders to the rule of law. However, even this process was fraught with accusations that using international law to which the Axis powers had not subscribed was ‘victor’s justice’. In some cases, a blanket amnesty on past crimes is instituted. Such was the case in Spain after Franco’s death, for example, when the “Pacto del olvido” (Pact of forgetting) was adopted (see Boyd, 2008). Every approach has unique implications.

In addressing justice post-conflict, Minow (1998) describes a continuum between the two poles of vengeance and forgiveness. Pumla Gobodo-Madikizela (2016), who worked on the TRC-SA, writes:

How do societies characterised by a history of mass violence work through their traumatic past? In the aftermath of gross violations of human rights and genocide, when people have suffered collective trauma, how does the trauma play out in subsequent generations? How might we map out the arc of historical trauma as a nexus for the interweaving of individual and collective traumatic memories?

These are not just rhetorical questions; answers to them are far from obvious.

(Gobodo-Madikizela, 2016, p. 1)

Gobodo-Madikizela's questions describe the concerns of a society coming out of a period of conflict or injustice. When states enter into this period of transition, the various pathways they take along this continuum of vengeance and forgiveness, and their respective efficacies in advancing justice and reconciliation, are the concerns of transitional justice.

In more recent years, some states have begun grappling with how to address injustices against Indigenous peoples – but academically this junction of transitional justice and Indigenous rights is underexplored in the literature. NWAC's CRGBMR (2010a) speaks directly to this junction by drawing on research from transitional justice and reframing it with attention to cultural relevancy and gender responsiveness. In particular, by adapting Hayner's (2011) six purposes of a TRC and localizing them with a gender lens, the purpose of a truth commission becomes more clearly specified and relevant to the Canadian context.

The idea that transitional justice must be homegrown and attuned to local context rather than replicated from on high and imposed in the same form each time is not new (see Shaw et al., 2010). However, what is new is the enrichment of transitional justice with insights from Indigenous studies, opening the landscape of transitional justice to new possibilities and transformative change. In turn, an analysis of the Canadian TRC is deepened by bringing in theoretical insights from transitional justice. There is a rich body of critique of reconciliation as Canadian state-practice (see Coulthard, 2014 and L. Simpson, 2011). However, this critique is usually rooted in domestic context and is seldom framed in the language and context of transitional justice. Matsunaga (2016) speaks to this discrepancy, arguing that there are “two faces of transitional justice” (p. 24)

in Canada, one internally focused on reconciliation politics within Canada and one externally focused on “providing peace and security advice to fragile states” (p. 24) undergoing transitions. In bridging these two bodies of literature in my analysis, I seek to both provide the transitional justice literature with a domestically grounded analysis of the treatment of gender at the Canadian TRC, and also to contribute to a conversation about the possibilities for furthering transformative reconciliation by analytically locating it within the structure of a truth commission.

I draw on transformative paradigms within both bodies of literature and place a focus on disrupting patriarchy within my operationalization of transformative reconciliation. This follows Kuokkanen’s (2019) argument that self-determination without gender justice is incomplete – the premise of this study is that reconciliation without gender justice is incomplete. Specifically, I look to Borrows and Tully’s (2018) definition of transformative reconciliation as a transformation of relationships accompanied by strong practices of Indigenous resurgence, and to the transformative justice critique of transitional justice, which focuses on the question of ongoing structural injustices and de-emphasizing transition (see Evans, 2016; Balasco, 2018; Sharp, 2019). I draw together elements of these arguments and put them in conversation with NWAC (2010a) and Kuokkanen (2019) to define transformative reconciliation as grounded in collective responsibility, relationality, and disrupting both colonial and patriarchal power relations.

In the remainder of this chapter, a review of both bodies of literature serves to more clearly articulate the need for a transformative paradigm. I proceed by first walking through some of the foundational literature in transitional justice and the study of truth

commissions, after which I introduce the body of literature focused on gender and transitional justice. Next, I turn to the small subset of the transitional justice literature which examines transitional justice in non-transitional societies. I then introduce the Indigenous studies literature – approaches to reconciliation; the Indigenous resurgence school, and approaches to gender and reconciliation.

2.2 Transitional Justice

Although the question of how to account for the past has been a concern throughout history, such accountings became particularly pronounced in the post-World War II period. The term ‘transitional justice’ is credited to Ruti Teitel (2000), who observed that moments of historical reckoning were increasing in Latin America and Eastern Europe. Teitel (2000) included such initiatives as criminal trials, truth commissions, reparations, official apologies, lustration (the purging of certain officials from positions of power), memorialization, and amnesties under the umbrella of the term transitional justice.

Because transitional justice is a relatively newly-consolidated area of study, the practice of transitional justice and its attendant academic literature have evolved along similar trajectories: highly optimistic and quick-moving at first, more reflective and self-critical as of late (See Mutua, 2015, and van der Merwe & Brinton Lykes, 2018). The transitional justice research community is also highly interdisciplinary (for examples of interdisciplinary treatment, see Hamber, 2002, and Phelps, 2011), based in political science, law, psychology, and other scholarly fields, and is in many ways practice driven (see Buckley-Zistel et al., 2014). Over forty truth commissions have now been implemented worldwide, as well as numerous official apologies, acts of memorialization, and reparations programs. In addition, a scholarly journal, numerous research institutes,

and an influential global non-profit organization (The International Center for Transitional Justice) have arisen in the field.²⁰

Transitional justice's reflective turn was highlighted in a 2015 special edition of the *International Journal of Transitional Justice* entitled "Transitional Justice: Does it have a future?" In the issue, Mutua (2015) names several major challenges in the field: an assumption of universality in its approaches; an over-focus on bodily harm at the expense of understanding economic and social harms; and a lack of "normative coherence" (p. 4). The critique of transitional justice's place within a liberal, legalist framework is well established (see Leebaw, 2011; Nagy, 2008). Writing on Leebaw, Baines (2017) succinctly characterizes her work as such: "Leebaw recognizes the limitations of human rights frameworks to usher in a deliberation of the political after violence – including the need to rethink questions of responsibility that move beyond static victim-perpetrator narratives" (p. 8). Baines (2017), Leebaw (2011), and others argue for a form of reckoning that makes room for questions of diffuse responsibility and political judgement.

The transformative justice school contributes to this reckoning. However, I would argue that in its current form it has yet to coalesce into a practice - or even praxis-based revisions to existing practice. While transformative justice has been described as the "fourth generation of transitional justice scholarship" (Sharp in Balasco, 2018), it is still largely in the realm of the theoretical. MacAuliffe (in Balasco, 2018) describes the state of transformative justice as "defined not by what it is but by what it is not" (p. 371). Furthermore, if transformative justice is focused on process rather than outcome (Evans,

²⁰ See the International Journal of Transitional Justice: <https://academic.oup.com/ijtj>; and the International Center for Transitional Justice: <https://www.ictj.org/>

2016), and if the process too is not entirely comprehensible, perhaps, as Skaar (in Evans, 2016) argues, transformative strategies can be incorporated into transitional justice processes rather than transformative justice existing as a field unto itself. Sharp (2019) advocates for a critique that makes effort to engage with the difficult practicalities of implementing transitional justice processes. He argues that critical theories such as transformative justice have “the potential to produce an unwarranted sense of pessimism, disillusion and failure, even as overall empirical assessments of the field suggest meaningful if modest impacts in many contexts” (p. 571). I would argue that transformative justice theory has valuable insight for building and improving transitional justice and need not represent an opposition to the latter.

I have endeavoured to speak directly to these current debates in my research. I do so by recognizing the multifaceted, heterogeneous nature of survivors of conflict or injustice (see Amony & Baines, 2015; Baines, 2017), and by delving more deeply into the nuanced gendered experiences and concerns of survivors of residential schools. Finally, as per Mutua’s (2015) critiques, I am particularly concerned with the field’s lack of normative coherence. If transitional justice is the means, reconciliation is often assumed to be the end, or at least as an ongoing process to which the practice of transitional justice contributes. However, when such assumptions are left uncontested and under-analyzed there is a danger that transitional justice processes that replicate ineffective patterns without cumulative improvements will persist.

Furthermore, as Wylie (2018) notes, there is “considerable disagreement” (p. 602) on reconciliation’s definition and operationalization. This is not to say that the definition of reconciliation has been overlooked in the literature. Hamber and Kelly (2009) identify

five strands of reconciliation: “developing a shared vision of an interdependent and fair society, acknowledging and dealing with the past, building positive relationships, significant cultural and attitudinal change, and substantial social, economic, and political change” (p. 291). Further, Crocker (2000) defined three types of reconciliation, ranging from thin to thick reconciliation: simple co-existence, liberal social solidarity, and the third model, a “shared comprehensive vision, mutual healing and restoration, and mutual forgiveness” (p. 108). Wyile (2018) argues that the current state of reconciliation discourse in Canada “has acknowledged the possibility of some form of accommodation of... difference, but has also required the reconciliation of those groups²¹ to *Canada*” (p. 603). To work towards a more comprehensive vision of reconciliation, all parties must take up a collective responsibility for change.

By both Hamber and Kelly’s standards and Crocker’s definitions, efforts toward reconciliation in Canada read as rather anaemic, in line with Wyile’s (2018) assessment. In turn, Cornthassel and Holder (2008) conceptualize Canada’s approach to reconciliation as putting the cart before the horse. They warn of “the dangers of promoting a discourse on reconciliation without having first achieved some sort of restitution” (p. 477). The question of what constitutes reconciliation is surely important to interrogate, given the prevalence of - and current political focus on - the term. I argue that any definition of reconciliation that does not acknowledge and incorporate gender justice – which I define as the recognition that survivors have justice needs that are particular to their gendered experiences and an attendant commitment to addressing those needs - into its formulation is fundamentally incomplete.

²¹ Wyile (2018) focused on both Quebecois and Indigenous peoples.

While I largely focus on the discursive arena - as that is the TRC's main sphere of influence - I recognize that the invocation of reconciliation as a sort of catch-all term for state-Indigenous relations, often leaves material rights behind. As Cornthassel and Holder's (2008) argument about reconciliation indicates, there is a tension inherent in Canadian reconciliation politics and discursive versus material rights, or as Lightfoot (2016) characterizes it, hard and soft rights. In terms of transitional justice, de Costa (2017) argues that the potential for a truth commission to actually transform relations is largely limited to the discursive arena, and he calls for "more careful explanations of how discourse might be related to change" (p. 185). Discursive change and material change are indeed iterative, and it is not always clear which must come first and how the work of a truth commission affects the process. In the chapters that follow, I offer suggestions as to how the TRC's discursive treatment of Indigenous women impacts their material reality.

Analytically, I treat the work done at the Canadian TRC as an ongoing process unbound by the official lifespan of the Commission, in keeping with Riaño-Alcalá and Baines's (2011) conceptualization of testimony as a "living archive" that is kept alive through ongoing acts of memory making (p. 1). Framing the work of a truth commission as an ongoing process places the focus on collective responsibility for justice and reconciliation, both now and into the future. It is also useful to consider alternate conceptualizations of reconciliation in order to work through a more nuanced theorizing of life during a historical period of conflict or injustice. For example, Aijazi (2015) uses the term "social repair," which, drawing on Freire (2000) and Das (2007), he defines as "the conceptual notions of re-humanization/re-constituting the self... and resumption of

everyday life” (p. 16). Such concepts, which allow for the tempering of rigid conceptual categories, can foster an understanding of how the past and present are less clearly delineated than they are often presented. In considering the implications of the TRC’s work, I argue that although the formal institution has completed disbanded, the work of the commission is not done, and is now a shared responsibility. A truth commission is not an end unto itself – at best, it represents an opportunity to carry forward a more nuanced and considered understanding of justice. In this way, a truth commission might not only address past injustice, but set the stage for a more just future.

2.2.1 Truth Commissions

Truth commissions are increasingly-used instruments of post-conflict transition. However, they vary in character or mandate. The minimal role of a truth commission is to create an accurate record of the past. For the Canadian TRC, this was described as a goal of creating “as complete an historical record as possible of the IRS (Indian Residential Schools) system and legacy” (Indian Residential Schools Settlement Agreement, 2006c, p. 1). However, some argue that even this basic goal is ambitious. Michael Ignatieff (1996) famously said that a truth commission’s most important function is “to narrow the range of permissible lies” (p. 113) that can be told about a period of conflict or injustice. In contrast, much of the literature of the TRC-SA era puts forward the idea that truth commissions can be a vehicle by which comprehensive understanding and official acknowledgement of past atrocities can be delivered. Verne Harris, a TRC-SA staff member, described the role of their commission as “an archival intervention; a work of memory” (Krog, Mpolweni-Zantsi & Ratele, 2009, p. 65). Hayner (2011) wrote that acknowledgement was a particular concern for the earlier truth commissions – in Argentina and Guatemala for example - in which campaigns of silence and

disappearances were common. However, truth commissions implicitly if not always explicitly have both forward- and backward-facing roles. The stated aim is usually to create an accurate history of the past, but a responsibility to the future is also implied - a commitment to change society in some way. This dual role of truth commissions highlights the importance of comprehensive gender analysis: specifically, understanding past gendered injustices brought to light by a truth commission undoubtedly assists in understanding and tackling gender injustice in the present-day and in the future.

2.2.2 Transitional justice and gender

A key area of theoretical development in the field of transitional justice has been the application of a gender lens to analysis of transitional justice initiatives. As Buckley-Zistel and Zolkos (2012) explain, the gendered dimensions of transitional justice were underexplored in the early years of the field. When such analysis existed, it focused almost exclusively on women as victims of sexual violence. More recent approaches have examined the ways in which both conflict and ensuing transitional justice processes are inherently subject to patriarchal power relations, and must be attentive to gender (see Ross, 2003; Bell & O'Rourke, 2007; Rimmer, 2010). Scholars such as O'Rourke (2015), Nagy (2012), and Koomen (2014) have critiqued mainstream feminist approaches to transitional justice. They argue that they have, to some extent, depoliticized the transformative potential of the project by prioritizing a focus on individualized and decontextualized human rights abuses rather than analysis of more systemic causes. In other words, there has been an emphasis on the 'incident', rather than the conditions that allowed the incident to happen.

Furthermore, the gender critique of transitional justice in some ways flows from aforementioned arguments that transitional justice is too deeply nested in liberalism and

legalism and thus prone to an un-nuanced treatment of local context. That is to say, if a transitional justice applied from ‘on high’ rather than one which arises from the grassroots is likely to miss the nuances of local context, it is likely to be similarly inattentive to the nuances of structured gender discrimination and violence. Without a comprehensive understanding of the socio-economic structures that facilitate gendered harms, the transformational potential of any accounting of the past is limited.

In more concrete terms, truth commissions have also come under criticism for a failure to consider gender in the planning and execution of the commission itself. Kent (2014) names common problems as “ongoing barriers to women’s participation” and the fact that “the imperative of truth commissions to tell a story of ‘national reconciliation’ and their reliance on a human rights violations framework” (p. 290) can render invisible other forms of structural violence that differentially affect different gender identities. While these common problems do not quite align with the reasons for the discourse of absence that permeated the voices of Indigenous women in the TRC’s proceedings, the originating problem is the same: A failure to consider gender in the planning and execution of the commission.

What is clear is that the gender analysis of transitional justice *matters*. For example, during the TRC-SA, a report written by South Africa’s Centre for Applied Legal Studies and submitted to the TRC-SA revealed, through analysis of testimony, that women providing testimony to the TRC-SA were largely providing information about the men in their lives rather than recounting their own experiences (Goldblatt & Meintjes, 1997). This report critiqued the commonly held understanding of who counts as a victim

that I referenced in chapter one. The International Center for Transitional Justice (n.d.) states:

Within the field of transitional justice, like many others, mainstreaming gender is now considered “best practice” and rhetoric around gender-sensitivity has become a relative norm. Too often, however, the promises and rhetoric do not translate into effective implementation. Much of this failure often comes from a lack of technical knowledge to implement transitional justice measures in a way that encourages women’s participation and adequately addresses the gendered nature of human rights violations. Without the engagement of women and others targeted because of their gender, transitional justice cannot successfully contribute to a more just society for all (Mudell & Hawkins, 2018, para. 1).

In-depth case work by a number of scholars suggests that, for the most part, an equitable and comprehensive treatment of gender in truth commissions has yet to be fully institutionalized despite the best intentions of a given commission (see Bueno-Hansen, 2015, on Peru) or has been considered as an afterthought (see Truth and Reconciliation Commission of South Africa, 1998, p. 284, for reflections on South Africa).²² Returning to the idea of the backwards- and forwards-facing roles of a truth commission, it is clear that consideration of gender must be incorporated in all stages of a commission, as a careful and intentional process. As a means of providing a truly comprehensive understanding of past injustices, and in order to safeguard against injustices in the future, a thorough consideration of gender in truth commissions is essential.

²² The ongoing truth commission in Colombia offers a promising example of embedding gender analysis into the work of a truth commission, highlighting the differential impact of armed and political violence on people in relationship to their gender, sexual orientation and gender identity. See <https://comisiondelaverdad.co/en-los-territorios/enfoques/de-genero>

In chapter one, I articulated my focus on the experiences of women in this dissertation. However, it is important to note that a growing body of analysis raises the importance of not neglecting to understand the experiences of men and boys as gendered, too. In the transitional justice literature, as in Indigenous studies, there has been a re-focus on masculinities and understanding the experiences of men as gendered (see Theidon, 2009; Dolan, 2014; Hamber, 2016). Schulz (2019), for example, holds that transitional justice in practice must address under-explored aspects of gender analysis by being attentive to masculinities. Toward this aim, he proposes that “micro-level” (p. 1) transitional justice processes could offer more potential for such foci within larger institutional initiatives. Hamber (2016), on the other hand, makes a more holistic macro-level argument that an analysis of “masculine power” (p. 30) is an under-explored domain of post-conflict reconstruction. In other words, Hamber (2016) argues that a greater analysis of the way masculinities interplay with structures of violence is required. Schulz (2019) does provide some cautions around the risks inherent in a masculinities-focused approach, namely that of indulging a “masculinity nostalgia” (MacKenzie & Foster, 2017) that has the potential to reify the gender binary and heteropatriarchal power structures. While I concur with these arguments which suggest transitional justice encompass a broader understanding of gender and a deeper analysis of the experiences of men and boys, in this dissertation my focus is largely the state’s framing of women and attendant implications.

2.3 Transitional Justice in a Non-Transitional Context

Several scholars have created typologies of truth commissions (see Wiebelhaus-Brahm, 2010, and Hayner, 2011). In Bakiner’s (2016) comprehensive treatment, he (2016) distinguishes between “first-generation transitional” (e.g. Argentina, Uganda, and

Chile), “second-generation transitional” (e.g. El Salvador, South Africa, and Guatemala), and “nontransitional” (e.g. Morocco, South Korea, and the Solomon Islands) commissions. At the time of Bakiner’s (2016) writing, Canada’s commission was categorized as “ongoing,” although by his criteria, it would now fall under the nontransitional category (pp. 39–42). He defines a nontransitional commissions as addressing “a period of human rights violations that... ended more than a decade earlier” (p. 37). The TRC was tasked with specifically examining the lifespan of the residential schools system, which ended more than ten years ago.

Many of the features of transitional justice are designed specifically to facilitate transition. Jung (2010) asserts that transitional justice is designed to “reinscribe a common national identity, legitimate the government, and to re-establish the moral authority of state sovereignty” (p. 241). All of these features can seem inherently problematic or irrelevant when imported to a setting like Canada, in which there has not been a regime change, and where sovereignty and state legitimacy are major questions up for debate in state–Indigenous relations. Short (2012), writing on Australia, summarized this kind of problem succinctly:

There may be many important symbolic and practical acts that go some way in addressing the injustices of the past for some Indigenous people, but if they do not confront the constitutional issue a fundamental aspect of Indigenous/settler relations will remain unaddressed and inherently colonial. (p. 301)

Australia’s constitutional landscape vis-à-vis Indigenous peoples is different in many ways from Canada’s, but Short’s (2012) comments describe some of the issues that could arise when transitional justice is practiced in what is often classified as a non-

transitional context²³. Furthermore, if, as Balint, Evans, and McMillan (2014) characterize it, transitional justice is an inherently state-building exercise, it seems particularly ill-fitting in settings where there has been no regime change. This mis-fit is evident in the difficulty of categorizing the Canadian TRC as a “transitional” or “non-transitional” commission. Transitional justice is relatively new to the Anglosphere of settler colonial states - as such, these questions are still being pondered. In their efforts to theorize a “new justice model for transitional justice” (p. 194), Balint, Evans, and McMillan (2014) argue that transitional justice has not yet adequately accounted for the types of harms perpetuated on an ongoing basis by settler colonialism, and they envision a broader conception of transitional justice that “may enable greater recognition of colonial harm” (p. 216) in order to facilitate structural change. My invocation of transformative reconciliation is a contribution to this project of envisioning.

A different approach is offered by Winter (2014), who has written on transitional justice in “established democracies” as a distinctive subset of transitional justice. Winter argues that what seems an incompatibility actually depends on us broadening our understanding of the transition. He argues that if the human rights abuses in question would no longer be considered legitimate by a current regime, there has been a transition in what he calls “regimes of legitimation” (p. 4). While Winter’s (2014) theory offers a more nuanced treatment of transition than some typologies, it does not account for the transformative change needed to address settler colonialism. I argue that one of the most significant problems arising from the ways transitional justice has been framed in Canada is a lack both of public engagement and a sense of collective responsibility for making

²³ In Australia, unlike in Canada and New Zealand, there are no state-Indigenous treaties.

change. Conceptualizing the end of the residential schools system as the transition in question only contributes to a sense that injustices against Indigenous peoples are in the past. A more effective way to frame the work of a truth commission in this sort of context would be to envision the commission itself as the beginning of a learning and reconciliation process with at least some level of ongoing programming and funding rather than as a time-bound, complete process. The Indigenous studies literature points to avenues for this transformative change, which I discuss in the next section.

A final distinction within Bakiner's (2016) nontransitional designation addresses the impetus for the commission's creation. This distinction highlights the importance of considering the motivations and power relations behind a truth commission, and a government's buy-in to the process. For example, Indonesia and Timor-Leste initiated a joint truth commission to "strengthen bilateral relations" (Bakiner, 2016, p. 37). In other cases, a truth commission may be created in line with a change of government and a judgment that the past had not been sufficiently addressed through previous processes (Bakiner, 2016, p. 37). In the case of Canada's commission, a unique part of its genesis not drawn out by Bakiner (2016) is that its creation was the result of a legal obligation - the Indian Residential Schools Settlement Agreement (IRSSA). The Canadian TRC was established by the federal government, but not of the government's own volition - it was a requirement of a major class action lawsuit, as discussed in greater detail in chapter three.²⁴

²⁴ Schedule N of the Indian Residential Schools Settlement Agreement (2006c) reads: "The Truth and Reconciliation Commission shall be established by the appointment of 'the Commissioners' by the Federal Government through an Order in Council, pursuant to special appointment regulations" (p. 2).

2.4 Indigenous studies

Analysis of reconciliation in the Indigenous studies literature is inherently linked to questions regarding the nuances between material and discursive rights. While settler states have more enthusiastically embraced the discursive symbolism of reconciliation in recent years, they are regularly more hesitant on issues relating to land and self-determination (see Lightfoot, 2016). Of course, material and discursive change are not dichotomous - they are iteratively intertwined. On the discursive front, as A. Simpson (2014) argues, an enduring question in settler colonial studies is: “How to stop a story that is always being told. Or, how to change a story that is always being told” (p. 177). Changing a discourse, or the act of restorying (see Lederach, 2005; Voyageur, Brearley, & Calliou, 2015) is a crucial part of addressing Canada’s injustices against Indigenous peoples. Regan (2006), for example, calls for a national “moral engagement” (p. 205) with settler colonialism. However, Indigenous resurgence political theorists such as L. Simpson (2011) and Coulthard (2014) critique Canada’s reconciliation project for making some changes in the discursive arena in the name of reconciliation, without also committing to more material decolonizing efforts. Addressing this problem, Coulthard (2014) argues that the TRC exhibited some elements of what he calls the politics of recognition (p. 127). He defines the politics of recognition as:

the now expansive base of recognition-based models of liberal pluralism that seek to ‘reconcile’ Indigenous assertions of nationhood with settler state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship with the Canadian state. (p. 3)

Such practices, he argues, constitute a continuation of the colonial project and, as such, will not only be ineffective in terms of structural change but also may prove

harmful to the possibility of material change by creating closure on the contestation of ongoing abuses and structural injustices. While my focus is largely on the discursive role of the TRC, I also endeavour to draw out the ways that changing the state's discursive treatment of gender impacts material change.

The Indigenous resurgence school (see Coulthard, 2014; L. Simpson, 2011; and Alfred, 2009) argues for a fundamental reconceptualization of state–Indigenous relations and settler–Indigenous relations. They argue it is unlikely, if not impossible, to achieve such a shift by engaging in state-led processes. Indigenous resurgence scholars are largely skeptical of the TRC and see the way the state uses the language of reconciliation to be a continuation of the colonial project. Coulthard (2014) cites the fundamental problem of the implementation of transitional justice in Canada as “the state’s rigid temporalization of the problem in need of reconciling (colonial injustice)” and such politics’ resulting “inability to adequately transform the structure of dispossession” (p. 120). In this sense, Coulthard’s (2014) critique of Canadian reconciliation bears similarities to some of the critique within the transitional justice literature - the language of closure and past-ness that often typifies truth commissions is audacious in the face of myriad ongoing injustices. However, where Coulthard and the Indigenous resurgence school depart with the transitional justice critique is in a theoretical insistence on the futility of engaging with the state on these matters. Further supporting the Indigenous resurgence perspective, George (2017) argues that:

What the state suggests is ‘reconciliation,’ and the expression of our self-determination, is an unambiguous inclusion in the capitalist structure of Canadian society – an inclusion that is nothing more than thinly veiled assimilation,

drawing us further into the colonial system and subjugation to the will and assumed sovereignty of the Canadian state. (p. 50)

There are other scholars, however - both Indigenous and non-Indigenous - who see the frame of reconciliation not as the impetus for a turn away from settler society but as a project of fundamental transformation in Indigenous-settler relations and a pathway to justice for Indigenous peoples. Asch, Borrows, and Tully (2018), for example, see a “combination of robust resurgence and transformative reconciliation as a continuation and renewal” of a long history of collectivist spirit and “interdependence in Indigenous-settler relationships,” and critique what they call “separate resurgents” (p. 8). Lightfoot (2020) also argues against the utility of the resurgence school’s direction, contending that it offers such a narrow vision of Indigenous authenticity and such an obstinate refusal to engage in any state process that it is caught in pessimism and divisiveness. She contends that the resurgence school does not reflect many long-standing struggles for Indigenous self-determination, arguing that resurgence scholarship fails to offer much of relevance to these movements beyond “a cautionary tale against state power, of which the organizational players are already keenly aware” (p. 170).

Ladner (2018) also speaks to these tensions and her struggle to consider reconciliation a project of transformation when it so frequently seems more a “settler project” rooted in denial (p. 246). Nevertheless, reflecting on the vision of transformative reconciliation put forward by Borrows and Tully (2018), she writes that she has begun to see reconciliation as having the “potential to be truly transformative, mutually beneficial, and mutually agreeable” (p. 246). She further writes: “I have often heard elders teach that it is impossible to begin again, or to understand the present and move forward in a good

way, without understanding the past” (p. 248). If the TRC can be seen as a first step in this beginning again that Ladner speaks of, rather than a completed process of reckoning with the past, then perhaps the idea of conceptualizing reconciliation as transformative is more palatable.

2.4.2 Indigenous politics and gender

While the Indigenous resurgence school has been critiqued for its lack of attention to gender (see G. Starblanket, 2017), many Indigenous political theorists and feminists²⁵ have placed gender squarely within the frame of their analyses (see Anderson, 2016, J. Green, 2017; Lawrence, 2003; and Maracle, 1996). L. Simpson (2017), for example, speaks to the inherently gendered nature of colonial erasure, specifying that Indigenous women’s bodies in particular “must be eradicated – disappeared and erased into Canadian society, outright murdered, or damaged to the point where we can no longer reproduce Indigeneity” (p. 41). Million (2000) - writing long before the TRC - argued that “raced, gendered, and sexualized narratives created and informed residential school space, and subsequently Canada’s national and Aboriginal societies entered into relationships inextricably formed by these old social narratives” (p. 94). In other words, gender was a foundational element of residential schools—and of settler colonialism in Canada more generally—and thus the way gender is understood, talked about, and ultimately situated within a national narrative has political implications for Indigenous peoples today.²⁶ In

²⁵ Regarding Indigenous feminisms, as J. Green (2017) wrote, “Indigenous feminism is similar to other feminist positions in its foregrounding of women’s experiences and advocacy for women’s rights and interests, in its recognition of the gendered and raced nature of social experiences, and in its identification of the oppressive nature of patriarchy. It is distinct from other feminisms in its fundamental familiarity with the oppressions enacted through colonialism and in its formulation of a feminist critique derived from the experience.” (p. 5)

²⁶ See Grey and James (2016).

short, settler colonialism uniquely targets Indigenous women by design, and a failure to understand this only perpetuates injustice for Indigenous women.

Kuokkanen (2019) also argues for the essential role of Indigenous feminisms. She asserts that Indigenous self-determination is stunted by two sets of relations—state relations and gender relations—both of which “are shaped by forms of violence, unequal social and material relations, and deeply held, sometimes unconscious beliefs” (p. 12). Her interview research with Indigenous activists in Canada furthermore revealed a widespread belief that “Indigenous women’s concerns are not part of the self-government agenda or institutions in Canada” (Kuokkanen, 2019, p. 155). She further theorizes self-determination as a value, or “a shared articulation of what a group considers indispensable for peoples’ lives, actions, choices, and decisions both collectively and individually” (Kuokkanen, 2019, p. 218), a value which her interviewees—76 Indigenous women across three parts of the world²⁷—tell her is hampered for women due to existing relations of colonial and patriarchal domination. She argues that “conventional nongendered research” serves to conceal and obscure patriarchal systems of power and “ultimately prevent[s] the realization of collective and individual self-determination” (p. 4). I extrapolate Kuokkanen’s (2019) assertions regarding self-determination to the question, indeed the *value* of reconciliation, and argue that reconciliation without gender justice is incomplete. NWAC’s (2010a) criteria for gender responsive truth commissions laid a path forward on the gender justice front. My analysis reveals that the TRC was inattentive to gender, thus providing limited opportunities to further a reconciliation that is transformative.

²⁷ Kuokkanen (2019) interviewed Indigenous women in Canada, Greenland, and Scandinavia.

Mainstream feminism has historically either outright excluded Indigenous women, or failed to recognize the importance of an intersectional approach. Coutoure-Grondin and Suzack (2013) speak to this position:

Indigenous women have to struggle on the symbolic and semantic level, because neither nationalist discourse nor feminist theory fit entirely with their experience of colonialism and sexism. In so struggling, they participate in the political—and legal—fields of making justice. (p. 108)

Looking at the residential schools system, it is clear that multiple facets of the gendered experience of survivors have been under-analyzed. For example, as Stout & Peters (2011) note, “Much of the research into mental health and inter-generational effects of residential schools has neglected to account for sex and gender differences” (p. 2). There are many facets of the residential school experience which have not been analyzed from a gender perspective. I return to this idea in chapter five.

Finally, another important aspect of the literature on gender in Indigenous studies is a focus on men and masculinities. The publication of Anderson and Innes’s (2015) edited volume on Indigenous masculinities marked the nadir of an Indigenous masculinities ‘moment’ (see also McKegney, 2014). In their introductory remarks, they argued “there is little activism or political will to address Indigenous men’s issues” (p. 1) in the same way as Indigenous women’s issues. As such, they sought to understand “the ways in which Indigenous men and those who assert an Indigenous male identity perform their masculine identities, why and how they perform them, and the consequences to them and others because of their attachment to those identities” (p. 3). While I concur that understanding the gendered experiences of men is an important part of gender studies

and addressing gender-based violence, its direction within Indigenous studies was not without issue. Notably, Taiaiake Alfred, founder of the University of Victoria Indigenous governance program and a proponent of the Indigenous masculinities field, resigned from his position at the University of Victoria in 2019, admitting that he “embodied toxic masculinity” (Wilson, 2019, para. 1). As discussed in chapter one, in this dissertation my focus is largely on the way women’s identities were represented by the TRC, in turn arguing that transformative reconciliation is only a fully realized concept if it services the disruption of patriarchal power relations.

2.5 Conclusions

In this chapter, I have sought to demonstrate that the nexus of the transitional justice and Indigenous studies literatures is an underexplored area that this dissertation speaks to directly. At this nexus lies the opportunity to bring together elements from transformative paradigms in each literature, which I have done in envisioning a transformative reconciliation that is grounded in collective responsibility, relationality, and disrupting colonial and patriarchal relations of power. I draw on both bodies of literature to imagine de-coupling transitional justice from a transition, or a time-bound process, and imbuing transformative reconciliation with greater opportunity for relationality.

Analysis of the Canadian TRC can further develop transitional justice’s understanding of truth commissions and state behaviour – First, the fact that the TRC arose out of a class action lawsuit is a new dimension to transitional justice’s categorization of truth commissions. Second, Indigenous studies offers a rich body of theory on state behaviour in a settler colonial context – both Coulthard’s (2014) politics of recognition and Lightfoot’s (2012) theory of selective endorsement can add nuance to

theorizing state motivation in transitional justice context. In the realm of gender, NWAC (2010a) drew on the expertise of truth commission scholars such as Hayner (2011) and adapted learning from the field of transitional justice to be culturally relevant and gender sensitive. Scholars such as Million (2000, 2013) and L. Simpson (2017) offer strong insights into the particular ways in which settler colonialism and patriarchy interact to target Indigenous women. In turn, scholars of reconciliation in settler colonial context can benefit from the collective learning and insight of the field of transitional justice, particularly as regards lessons learned about mainstreaming gender protocols at the outset of an institution like the TRC. Furthermore, this dissertation contributes a timely analysis of how gender was addressed at the first national truth commission to be held in the settler colonial context of the Anglosphere, drawing on insights from gender analysis in both transitional justice and Indigenous studies as the foundation for my research. Most specifically, my comprehensive analysis of gender at the Canadian TRC joins a rich body of gender analyses of other truth commissions (see Ross, 2003; Kent, 2016; Sarkin & Ackermann, 2019).

Next, in chapter three, I deconstruct the processes of giving testimony and witnessing as practiced at the TRC through the lens of transformative reconciliation, thereby considering the potential of the TRC's practices to further reconciliation. I then conduct a historical analysis of state-Indigenous relations leading up to the TRC by identifying elements of the gender regime of each institution or initiative, and developing a comprehensive picture of the pattern the TRC was poised to interrupt or perpetuate. In other words, I seek to establish the character of gendered state-Indigenous relations in historical trajectory. This historical analysis establishes a pattern of insufficient attention

to gender in state-Indigenous relations, setting the context for my analysis of the TRC. It also underscores the fact that settler colonialism has always been uniquely damaging for Indigenous women, and supports my argument that transformative reconciliation must actively disrupt patriarchal power relations.

3: Gender and Reconciliation in Historical Trajectory

3.1 Introduction

The TRC was part of a long history of settlers engaging in formal processes with Indigenous peoples. This began with the arrival of settlers and the imposition of settler colonial structures, laws, and ways of being in what is now Canada. In more recent years, processes of reparation and reconciliation have come to the forefront. In this chapter I am concerned first with the two practices that tend to dominate the programs and proceedings of truth commissions: Testimony, and witnessing. The assumption that these mechanisms further the cause of reconciliation, and the assumption that these mechanisms further the cause of reconciliation *in the way that they are currently operationalized* in transitional justice demand further interrogation - particularly in light of how they interact with gender. I then analyze these mechanisms in practice while establishing a historical trajectory of gendered state-Indigenous relations in Canada. This historical analysis illuminates my discussion in the previous chapter about the potential for drawing on theoretical insights from both Indigenous studies and transitional justice in order to apply a transformative lens to instruments of transitional justice in settler colonial context to further gender justice. A historical analysis of such institutions helps to reveal the landscape of state-Indigenous relations prior to the TRC – progress, failure, and patterns.

I begin my historical analysis by detailing the ways in which the practice of settler colonialism in Canada has been inherently based in gender discrimination. Subsequently, I interrogate the concept of reconciliation in significant institutional pre-cursors to the TRC, and establish a historical trajectory of gendered state-Indigenous relations. This helps to reveal the contextual landscape the TRC was borne into – specifically, I argue,

one in which Indigenous women were targeted by settler colonialism in particular ways due to the intersection of their gender and Indigeneity, and later were sidelined in reparatory processes.

3.2. Testimony

There has certainly been, in recent years, no shortage of calls for Indigenous peoples in Canada to submit testimony to inquiries and commissions. The introduction to the final report of the NIMMIWG (2019), under the subheading “Speaking Up... Again,” reflects this:

While some people spoke out about their loved ones for the first time at the National Inquiry, others had also shared their testimony with the Royal Commission on Aboriginal Peoples, the Aboriginal Justice Inquiry of Manitoba, Amnesty International for their 2004 *Stolen Sisters* report, and the Native Women’s Association of Canada’s “Sisters in Spirit” research, education, and policy initiative. (p. 54)

Government processes in Canada that have specifically solicited testimony from Indigenous peoples include the Royal Commission on Aboriginal Peoples (RCAP) 1991–1996; the Alternative Dispute Resolution Process (ADRP)²⁸ 2003–2006; the Oppal Inquiry²⁹ 2010–2012; the three aforementioned processes brought into being by the 2006 IRSSA – the TRC, the Common Experience Payment (CEP) process, and the Independent Assessment Process (IAP); and the NIMMIWG 2016–2019. The abundance

²⁸ In response to RCAP’s recommendations, in 1999 the federal government held a series of workshops with survivors and church representatives in order to create guiding principles for a new way to address increasing claims for compensation on the part of residential schools survivors. A protocol was agreed upon in which churches contributed to compensation, along with the government. However, the process was very slow moving and eventually abandoned (see Assembly of First Nations, 2004).

²⁹ The Oppal Inquiry specifically addressed missing and murdered Indigenous women in British Columbia.

of such initiatives can lead to testimony fatigue and skepticism when there is dissonance between the robust language of recommendations and plans and the reality of relatively weak take-up and follow-through. Reflecting this, the NIMMIWG Final Report (2019) cites family member Melanie D's statement:

My biggest question is what is the government planning to do after this Inquiry? Like, what is the action plan? Because I hope it's not like another RCAP report. I hope it's not 94 Calls to Action where we have roundabout circle talks about reconciliation.... And I'm not just placing that on to the government, but ... what is Canada, all of Canada going to do? (p. 66)

Melanie D.'s testimony speaks not only to the frustration of testimony fatigue but also to a sense of futility that can arise for survivors. The NIMMIWG Final Report (2019) also spoke more generally to the risks of a repeated lack of institutional follow-through in their identification of four pathways that maintain colonial violence:

These four pathways continue to enforce the historic and contemporary manifestations of colonialism that lead to additional violence. They are:

- historical, multigenerational, and intergenerational trauma;
- social and economic marginalization;
- maintaining the status quo and institutional lack of will; and
- ignoring the agency and expertise of Indigenous women, girls, and

2SLGBTQQIA people. (p. 111)

These pathways intersect in many ways that can render reconciliation initiatives problematic, or at least incomplete. In this chapter, I argue that maintaining the status quo

and ignoring the agency and expertise of Indigenous women is one such problematic intersection commonly found in institutional pre-cursors to the TRC.

I begin with testimony. Testimony, or telling one's story, is, at its heart, relational – It implies a listener, particularly if the act of giving testimony is assumed to spur action in some way. Implicit in the design of a truth commission is a purported causal link between truth and reconciliation. Whitlock (2007) argues it is through testimony, or life narratives, that we can “personalize and humanize categories of people whose experiences are frequently unseen and unheard” (p. 3). In personalizing national injustices through the process of listening to testimony, the ‘other’ can become less distant, less other. The injustice can seem more real. However, this basic conceptualization of active testimony and passive listening is not as straightforward as it seems. For example, the authenticity of testimony is complicated when a large volume of narratives (such as that provided to the TRC) is concretized in successive translation practices—transcription, then abbreviation, then selection into a final report—if the testimony in question even appears in a final report. Final reports themselves are, of course, documents that summarize hours of testimony into a comprehensible narrative thread, and this is often a process that is completed in relative haste, given the tight timelines and reporting requirements of truth commissions.³⁰ Ethically understanding testimony takes time and care, as well as reciprocity and relationship. Greenspan (2015) argues that we live in an age of testimony but not an age of survivors (p. 351). In other words, he argues that reports and other ways of summarizing testimony lead to engagement with survivors symbolically, rather than as individuals, which can result in

³⁰ For more on the translation of testimony into comprehensible forms, see Krog et al. (2009)

an exclusion and a form of erasure, once testimony is consolidated. I detail this process as it was practiced at the TRC in chapter five.

The numerous problems inherent in taking testimony are particularly salient when put in the context of institutional mistrust, based on a history of structural abuse. These problems can also directly impact the individuals sharing their stories. For example, Cooper and Driedger (2018), in partnership with the Manitoba Metis Federation Health and Wellness Department, designed a seven-week “decolonizing, participatory activity program” (p. 11) for mothers and girls to collectively address trauma, resilience, and positive steps forward, working with the premise that “as colonial trauma is relived, restorative healing processes and reconciliation need to be undertaken with individuals, families, and communities” (p. 1). Participants offered reflections on the program. Cooper and Driedger (2018) noted that many participants admitted comments made or stories told in the first few weeks were not entirely accurate or genuine until they became more comfortable with the group (p. 13). I raise Cooper and Driedger’s (2018) study not to call into question the veracity of testimony given in “one-off” testimonial processes, exactly, but to illustrate the challenges and complexities that come with telling one’s story. An ongoing relational process can enrich and strengthen participants’ sense of safety.

There are, of course, other more immediate and practical factors beyond institutional mediation that influence testimony. King and Meernik (2019) offer a consideration of the individual’s experience testifying to tribunals and commissions outside of, or controlling for, an institutional setting. Survey data from those who testified at the International Criminal Tribunal for the former Yugoslavia showed that:

Witnesses are... more positive about testifying if they rely on external professional support (which is also highly correlated with prescription/nonprescription drug usage), had strong motivations to testify, believed they contributed to justice, always testified openly and publicly... and are satisfied with their personal situation today. (p. 365)

Therefore, an individual's level of satisfaction or quality of experience in giving testimony in some cases may have little to do, in some cases, with the institutional setup and more to do with personal circumstance.

Regarding gender and testimony specifically, Porter (2016) raises the importance of gender analysis of testimony: "Paying attention to stories of gendered narratives... breathes life into narrow conceptual gender-neutral understandings of transitional justice" (p. 36). Porter's exploration of testimony emphasizes the need for an intersectional analysis of life narratives. Crosby and Lykes (2011), in their work on gender and truth telling in Guatemala, identify a key concern in the analysis of gender and testimony:

Gendering truth telling is challenging. It brings up questions of how to make visible but not reify or essentialize Indigenous women's experiences of violence; how to hear and respond to 'the pain of others' with a politics of accountability, not consumption; how to listen to the voices women have, rather than 'giving voice,' despite unequal relations of power; and how to affirm Indigenous meaning making, rather than impose feminist discourse. (p. 476).

Crosby and Lykes (2011) raise important concerns for the field of transitional justice, and for anyone conducting gender analysis more generally. I turn next to the relational aspect of testimony - listening and witnessing with, as they put it, a politics of accountability.

3.3 Witnessing

Public engagement with truth commissions varies. When a truth commission is held, members of the public are generally not required to attend, to listen, or even to pay attention to its existence. In the case of the TRC, if a non-Indigenous Canadian did choose to attend, to listen, and to pay attention, did doing so within the context of the model provided by the Canadian TRC compel meaningful change to their way of relating to the past, or their relationship to Indigenous people and their actions towards them? Perhaps in some cases. However, recall the TRC testimony with which I opened chapter one, wherein a survivor says that his people have had their hands out to Canada for many years and it was up to Canada to now take those hands. This powerful testimony points the way to what a truly meaningful process of reconciliation must include: significant reciprocity on the part of settlers. It is doubtful that passive listening is likely to engender this sort of engagement.

An act of witnessing that encompasses reciprocity or relationality can take different forms depending on the setting. For example, Laub (1992), in his work with Holocaust survivors, says the Holocaust “produced no witnesses” (p. 80), referring to both the totalizing nature of the atrocity and the attempts on the part of the Nazis at complete denial. In this case, Laub’s work in taking testimony from Holocaust survivors is, he argues, in the act of listening as bearing witness to the experience described in the face of all attempts to physically and psychologically deny survivors the truth. In settler colonial context, so too is there a denial of Indigenous experience, although not an outright denial of the existence of residential schools. However, the act of witnessing the truth of the Indigenous experience at residential schools comes with an opportunity to contribute to furthering political justice for Indigenous nations. Hunt argues that

witnessing “might be understood as a methodology in which we are obligated, through a set of relational responsibilities, to ensure frameworks of representation allow for the lives that we have witnessed to be made visible” (Hunt, 2018, p. 284). It is this sense of obligation, or responsibility, that I argue ties witnessing to justice.

Regan (2011) argues that through engaging in a process of unsettling, or personal decolonization, settlers may further transformative change in relationships with Indigenous peoples. If a critical facet of reconciliation is the forging of relationships, perhaps the venue of an institutional process such as a truth commission, which by design offers little opportunity for direct connection and engagement, is unsuitable for this purpose. I suspect that truth commissions, either implicitly or explicitly, promise to do too much of the work of reconciliation when, in reality, they are just one piece of a much larger puzzle. Nevertheless, I return again to the idea of witnessing in chapter six, where I propose that re-examining and making more robust the role of witnessing in transitional justice and, crucially, beyond the lifespan of a transitional justice institution, could contribute to greater gender equity.

The relationality inherent in witnessing has been explored in the literature. Oliver (2001) argues that “the inner witness is produced and sustained by dialogic interaction with other people... dialogue with others makes dialogue with oneself possible” (p. 87). In this way, Oliver envisions testimony as, if not dependent upon, then at least enriched by a “dialogic interaction” between or among testimony givers and witnesses. She contends that it is in testifying and being heard that the survivor or testifier opens their experience to a shifting relationship with the past, with the witness(es), and to themselves.

Of course, a counter-argument to imbuing this sort of relationality in state-instigated reconciliation processes in Canada could be made by drawing on the tenets of the Indigenous resurgence literature (see Coulthard, 2014; A. Simpson, 2014; L. Simpson, 2011). As discussed in chapter two, this body of literature generally holds that to engage with the state in any sort of reconciliation program is to engage in a colonial state's disingenuous politics of recognition designed to distract from genuine restitution (Coulthard, 2014). From this theoretical standpoint, a discursive approach to engaging with the state in this way is distraction-by-design from the Indigenous struggle for restitution and justice. George (2017) argues that this sort of distraction can harm Indigenous people by further victimizing them with yet another futile, state-serving process. Writing on truth commissions, she says: "In these forums, our victimization is the truth that is sought. That victimization becomes a spectacle for settler consumption, structured to allow settlers to progress quickly through guilt and shame" (p. 154). Narratives of resilience and resistance, George argues, are lost in a frame that "holds settler power as the fundamental reference and assumption" (p. 154). I concur that the type of listening opportunity provided through the TRC in concert with a lack of institutional buy-in is, in many ways, status-quo enforcing. Furthermore, in the chapters that follow, I argue that the victimization George (2017) speaks of is particularly pronounced for Indigenous women in the way that the state discursively relates to them. The intersection of colonialism and patriarchy has historically stripped Indigenous women of their political agency, and a focus on victimization fortifies this pattern.

Having introduced a deconstruction of testimony and witnessing, and having raised transformative reconciliation as a mode by which gender justice could be more

fully realized, I now establish a historical trajectory of gendered state-Indigenous relations through first a summary of the historically gendered nature of settler colonialism in Canada, and then a brief assessment of major institutional pre-cursors to the TRC. I reference RCAP, Canada's response to the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Government of Canada's 2008 Official Apology for residential schools, and the compensation processes that arose out of the IRSSA that also created the TRC – the CEP and the IAP.

3.4 The historical trajectory

The context for state-Indigenous relations in Canada is the system of settler colonialism, a “persistent social and political formation in which newcomers/colonizers/settlers come to a place, claim it as their own, and do whatever it takes to disappear the Indigenous people that are there” (Arvin et al., 2013, p. 12), through both overt and covert means. This concept of disappearance or erasure as the ultimate goal of settler colonialism is nuanced by G. Starblanket and Stark (2018), who reframe it as the “reductive” and “productive” (p. 183) goals of settler colonialism. That is to say, they argue that the processes of reducing Indigeneity and producing a settler society are rooted in relationality (p. 183). Their point helps further articulate why a gender lens is so crucial – just as gender is a critical aspect of relations between institutions and peoples outside of the context of reconciliation, a full investigation into the nuances of settler colonialism is hampered without a consideration of gender. As Wolfe (1999) puts it, settler colonialism - much like patriarchy - is a “structure rather than an event” (Wolfe, 1999, p. 96). How these two structures, settler colonialism and patriarchy, have historically interacted to prevent transformative change is my focus in the remainder of this chapter.

My endeavour here is not to offer a comprehensive history of settler colonialism in Canada.³¹ Suffice it to say that successive pieces of legislation, such as the British North America (BNA) Act (1867), the Gradual Civilization Act (1869), and the Indian Act (1876), constructed an architecture that governed - and in many respects continues to govern - the lives of Indigenous peoples in Canada (see MacDonald, 2019). The Indian residential school system was a central feature of Canada's program of colonialism, existing for over 100 years, from 1876 until the last school closed in 1996. As summarized by the TRC's Interim Report (2012), the residential school system was an "assault on Aboriginal children... Aboriginal families... Aboriginal culture... and on self-governing and self-sustaining Aboriginal nations" (p. 25). More than 150,000 Indigenous children attended residential schools, and approximately 80,000 survivors were still living at the time of the interim report's release in 2012 (TRC, 2012, p. 1). Children were kidnapped, and the many forms of coercive, abusive, and violent treatment which followed these kidnappings included physical and sexual abuse, as well as "replacing personal names with numbers, cutting hair, stealing personal possessions, forcing children to wear uniforms, and suppressing languages, spiritual practices, and worldviews" (MacDonald, 2019, p. 264) have had a devastating impact on generations of survivors.

Settler colonialism in Canada was a program of erasure, or reduction and production, with particular gendered impacts on Indigenous women. Women were generally more socially and politically powerful in nineteenth-century Indigenous societies than women in Western societies. Therefore, for a settler colonial project to be

³¹ For a fuller accounting of the history of settler colonialism in Canada, see Asch, 2014.

successful, it was crucial the power of Indigenous women be curtailed. In 1919, the so-called “marrying out” legislation came into effect. Women with “Indian status”³² who married non-status men lost their Indian status. Conversely, if a non-Indigenous woman married a man who held Indian status, she became a status-holder. To put it even more plainly, under the Indian Act, up until 1985, Status “Indians” were defined as “a male Indian, the wife of a male Indian or the child of a male Indian” (Anderson, 2016, p. 45). This constituted a particular and amplified disenfranchisement of Indigenous women within the program of disenfranchisement of Indigenous peoples itself. Moreover, this particular disenfranchisement sits within widespread overt and covert modes of discrimination.³³ To this point, in June of 2010, NWAC gave a statement to the TRC in which they emphasized that “we must recognize the ways in which Aboriginal women are marginalized and dispossessed within their communities *and* in the broader society as a result of colonization.”³⁴

Another example of settler colonialism’s disproportionate impact on Indigenous women is the aforementioned Sixties Scoop. The system revealed a fundamental unwillingness to recognize ways of being that were different from that of the dominant culture. For example, leaving children in the care of grandparents was seen as valid grounds for removal, as was not feeding children a Western-style diet (MacDonald, 2019). Often, women were coerced into giving up their babies (MacDonald, 2019). And it was Indigenous mothers who were the objects of hyper-focus in these interventions –

³² “Indian status” means a person is listed on the federal Indian Register and governed by the Indian Act. For further detail, see the Indigenous Services Canada website: <https://www.sac-isc.gc.ca/eng/1100100032463/1572459644986>

³³ ³³ For a more detailed trajectory of the history of legal discrimination against Indigenous women, see Eberts, 2017.

³⁴ NWAC Statement of reconciliation at the national gathering of the Truth and Reconciliation Commission, Winnipeg, Manitoba, June 17, 2010. NWAC collection.

cast as unfit and deserving of the burden of the guilt and loss brought about when families were split. Although the Sixties Scoop is often pointed to as a discrete period where Indigenous children were removed from their families and taken into care at very high rates, this is not a phenomenon that has ended. Indigenous children are still significantly overrepresented in Canada's child welfare system, which I will discuss in the coming chapters.

I asked several interviewees about their perspectives on the gendered impacts of colonialism. One interviewee said he wondered how traditional gender roles were broken differently during residential school. He told me that prior to going to residential school, he grew up in the bush. He wanted to be an excellent hunter, like his father, doing the heavier jobs like hunting moose. My interviewee suggested that perhaps residential school was a heavier burden on boys because of the loss of these highly prescribed roles, pointing to higher rates of suicide amongst Indigenous boys and men as possible evidence (Interview D). This comment reinforces the need to more fully understand all gendered experiences of residential schools. In order to implement effective redress and healing, there must be a collective understanding of the specific harms, and how these harms differed across gender and other intersections. An interviewee who worked on the TRC said that the Commission was cognizant of both differences and commonalities in experiences:

We know for example that the experience of women or girls and young women in residential schools was fundamentally different from that of men. Or boys, at that point, boys and young men. There's certainly a... strong sort of gendered perspective that one could bring to bear on the differences between those

experiences, the kinds of the abuse they suffered. It might have been different... I mean in some cases the abuses cut across all those lines. (Interview A)

This awareness of different gendered experiences in residential schools did not, however, result in significant gender analysis in the TRC's final report, as I will discuss in chapters four and five.

Two interviewees produced a significant list of the ways that colonialism has both impacted and continues to impact the lives of Indigenous women. They included: residential schools; sexual abuse; forced sterilization and other interventions in reproductive rights; taking away Indigenous children; and the Indian Act's marrying out clause (Interviews J and K). When asked the same question, two non-profit staffers added that birthing methods were disrupted, and that the land became sick, which then impacted breastfeeding (Interviews G and H). Without going on at length here, it is abundantly clear gender has been a constitutive element of settler colonialism. State recourse and reconciliation, then, simply *must* address gender if it has any hope of contributing to a comprehensive process of redress. Interviewees J and K see a clear role for the state in this process: "You created these gender norms, you have to fix this." In other words, the settler state's imposition of Western gender norms on Indigenous peoples – and the attendant devastations wrought – are the state's responsibility to address in some way.

The ongoing subjugation of Indigenous women under settler colonialism has been marked by horrific violence. Indigenous women are three times more likely to be the victim of violence than non-Indigenous women in Canada (Borrows, 2016). Furthermore, 2SLGBTQQIA Indigenous people are proportionately far overrepresented as victims of violence, a fact which starkly reflects the heteropatriarchal nature of colonialism. For

2SLGBTQQIA individuals and Indigenous women, the shadow of violence is something that many live with daily. One Indigenous interviewee told me that although she is “white coded,” meaning that people often assumed she is white because of her light skin, she “would be a statistic if something happened to me” (Interview H). She went on to reference Loretta Saunders, an Inuk woman who was working on a thesis about murdered and missing Indigenous women when she herself was murdered in Halifax in 2014; media reports assumed Saunders was white at first because she was not visibly Indigenous.

Interviewee H’s comments speak to the multiple layers of violence against Indigenous women. That is to say, Indigenous womanhood is of course not a monolith category, but, returning to Crenshaw (1991), is made up of multiple intersecting identities, some of which afford more relative privilege than others – colourism can lead to visibly Indigenous women and white-coded Indigenous women being treated very differently³⁵. However, Interviewee H’s point was that although she benefits from some layers of privilege, she is still categorized as Indigenous, which brings along with it an entire history and means by which the state relates to her. “The structure will find you, regardless,” she said plainly (Interview H). The words of Loretta Saunders’ mother Miriam Saunders, on her relationship to the RCMP during their investigation of her daughter’s murder, further illustrate this point:

When they said she was a white woman, I would call to the investigators and they would answer to me and I would talk personally to the investigators and after,

³⁵ See Xemi the Two-Spirit (2019) for further lived experience perspective on colourism.

when they started calling her Inuk, I had to start swearing and everything to get answers. (Barrera, 2017, para. 5)

It is clear, then, that along with the dispossession, violence, and discrimination which disproportionately impacts Indigenous women, there are additional nuanced layers within the population group of ‘Indigenous women’ itself. Next, I turn to a gendered historical trajectory of reconciliation in Canada.

3.4.1 The Royal Commission on Aboriginal Peoples

RCAP was launched in 1991 in the wake of increased tension in Canada over Indigenous rights. Canada’s constitution was repatriated in 1982, and due to sustained and organized activism and advocacy by Indigenous peoples the new Constitution Act recognized Indigenous rights. Section 35 reads:

35. (1) The existing Aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “Aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. (Constitution Act, 1982, section 35)

What this language has meant in practice is that the rights recognized but not defined in Section 35 have largely come to be defined by the legal system.³⁶ However, although

³⁶ Cases such as *Delgamuukw v British Columbia* (1997), *Tshilhqot’in Nation v British Columbia*, 2014, and *R. v Van der Peet*, 1996.

largely instigated to address divisions between French and English Canada, several failed rounds of proposed constitutional changes³⁷ in the 1980s and early 1990s also raised questions about Section 35 - amidst calls from Indigenous peoples to recognize section 35 rights more fulsomely and specifically. Concurrently, 1990 also witnessed a dramatic confrontation between the RCMP and the Kanehsatà:ke Mohawk peoples (often known as the Oka crisis) in Oka, Quebec. The stand-off occurred because of the proposed expansion of a golf course on Mohawk land. The dispute between the RCMP and Mohawk land-defenders was protracted and eventually grew violent, resulting in the death of a Quebecois police officer. The events at Oka, coupled with Indigenous activism around the definition of constitutional rights, contributed to a government-level discussion around the state of state-Indigenous relations in Canada, and to the establishment of RCAP in 1991:

RCAP, as an official federal government commission of inquiry, was asked to: ...investigate the evolution of the relationship between 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. (Royal Commission on Aboriginal Peoples, 1996c, p. 12)

RCAP was not the first time Canada had facilitated forums for discussion with Indigenous peoples, but it was unique in the breadth of the inquiry and in its ambitious program of receiving testimony. Over the duration of its operation, RCAP traveled to 96

³⁷ For more on the Meech Lake and Charlottetown accords, see Behiels (2002).

communities, heard 2,067 unique testimonies (from organizations and individuals), and produced 75,000 pages of transcribed testimony (Slotta, 2015, pp. 262-263). RCAP's documents are hosted on the Library and Archives Canada website. The outputs are report-heavy, culminating in the publication of a five-volume, 4000-page final report in 1996. Prior to that, RCAP released a summary report for each round of activity, as well as reports on specific subject areas.³⁸

The testimony-gathering work of RCAP was framed as a “great cleansing of the wounds of the past” (RCAP, 1996a, p. 17) – this elevated language calls to mind the critique raised in chapters one and two that truth commissions and inquiries are often imbued with a message of closure. The final reports presented recommendations for a “renewed [state-Indigenous] relationship” (p. ii), and detailed a twenty-year agenda for change (Troian, 2016), complete with extensive references to testimony given to RCAP. However, there was a lack of collective responsibility for carrying out the recommendations, or even tracking them. To my knowledge, there is no one publicly tracking progress on the 440 RCAP recommendations in the same way that some scholars and media outlets have begun to track the TRC's Calls to Action.³⁹ Twenty years after RCAP delivered the final report, those who participated spoke to a “lack of action” (Troian, 2016) on the recommendations.

RCAP co-chairs Georges Erasmus and Viola Robinson later also spoke out about “the lack of consultation with Indigenous representatives prior to the announcement” (Hughes, 2012, p. 105) of RCAP, proposing that a Canadian government and Indigenous

³⁸ For example, RCAP released reports on treaty-making, self-government, and criminal justice. For a full list of RCAP reports, see <http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/results.aspx?DocumentTypeEn=RCAP+publication&>

³⁹ See chapter six.

co-convening of RCAP would have been more appropriate. RCAP also drew criticism for soliciting massive amounts of testimony while, at the same time, neglecting the witnessing aspect of reconciliation. Hughes (2012) wrote that:

It would focus on its primary, Aboriginal audience in the first phase and shift its attention to its third, non-Aboriginal audience in the last phase of its mandate.

This plan was thwarted to a significant degree by the fact that the first phase consumed almost the entire budget. (p. 48)

Moreover, like the TRC that came later, RCAP's testimony-gathering culminated in a set of recommendations that are perhaps now the most referenced piece of work from the commission. However, the format divorces the recommendations from the testimony that informed them. Similar to Greenspan's (2015) characterization of the age of testimony but not the age of survivors, McCall (2011) argues the language of the RCAP recommendations creates a distance from testimony and disincentivizes the relational part of testimony and witnessing by removing a role for the "remaking of a shared history" (p. 14). RCAP was steeped in the language of resetting the relationship between Indigenous and non-Indigenous people in Canada, but offered a problematic lack of opportunity for relational witnessing. In other words, while the language of RCAP's final report may have in some cases sounded transformational, the initiative lacked the collective responsibility for follow-through and opportunity for relationality that could have furthered elements of transformative reconciliation.

Turning to gender specifically, RCAP's (1996d) *Volume 4 – Perspectives and Realities* contains a substantial section called "Women's Perspectives" (pp. 7–100). The section is wide ranging, covering the gender-based impacts of colonialism and including

summaries of what RCAP heard from Indigenous women and Indigenous women's organizations. Furthermore, the section speaks to the difficulty some women had in testifying before RCAP: "Some Aboriginal women spoke to us during private sessions because they feared repercussions from their disclosure" (Royal Commission on Aboriginal Peoples, 1996d, p. 59). However, McCall (2011) argues that this section represented Indigenous women's voices being siloed. She cites the example of women's critiques of existing self-government programs being placed in the 'Women's Perspectives' section rather than the section on self-government. To be sure, there is a difference between understanding women's experiences as gendered and tokenizing women by separating their testimony out from mainstream sections and lumping it together. The latter erases women's agency as political actors, while the former recognizes the way that gender impacts an individual's experiences.

The 'Women's Perspectives' section also contains three recommendations specifically relating to Indigenous women. Recommendation 4.2.1 is that

The government of Canada provide funding to Aboriginal women's organizations, including urban-based groups, to a) improve their research capacity and facilitate their participation in all stages of discussion leading to the design and development of self-government processes; and b) enable them to participate fully in all aspects of nation building, including developing criteria for citizenship and related appeal processes." (Royal Commission on Aboriginal Peoples, 1996d, p. 482)

This particular RCAP recommendation was taken up in a fashion, with some initiatives being funded and later defunded by the Harper government (see Grey & James, 2016).

This example is representative of how Canada's relationship with Indigenous peoples is certainly not always a linear story of progress. Recommendation 4.2.2 is that "Aboriginal governments and organizations provide for the full and fair participation of Aboriginal women in the governing bodies of all Aboriginal health and healing institutions" (Royal Commission on Aboriginal Peoples, 1996d, p. 56), and Recommendation 4.2.3 is that

Aboriginal governments and planning bodies with a mandate to develop new structures for human services to undertake, in collaboration with women's organizations, an inventory of existing services, organizations and networks with a view to building on existing strengths and ensuring continuity of effort. (Royal Commission on Aboriginal Peoples, 1996d, p. 87)

Recommendations 4.2.2 and 4.2.3 are worded vaguely enough that measuring progress would be difficult. Women are referenced in only a further 9 out of 440 recommendations, mostly in the form of stating gender inclusion, i.e. 'including women'.⁴⁰ This tally is not representative of a Commission that fully understood the particular justice needs of Indigenous women.

It is notable that RCAP seems to have been the catalyst for Canada's use of "reconciliation" as the dominant frame for state-Indigenous relations and indeed any state policy addressing Indigenous peoples going forward. Wylie (2018) notes that the government of Canada response to RCAP, *Gathering Strength: Canada's Aboriginal Action Plan* (Indian and Northern Affairs Canada, 1997) relies heavily on the language of reconciliation. In her analysis, she found that "every subsequent report on plans and priorities" of the then-Department of Indian Affairs and Northern Development and all of

⁴⁰ A full list of RCAP recommendations that reference women is included in Appendix 1.

its subsequent incarnations uses the language of reconciliation (p. 621). *Gathering Strength* (Indian and Northern Affairs Canada, 1997) begins with a “Statement of Reconciliation.” The document, while acknowledging that “reconciliation is an ongoing process” (p. 3), framed the government response to RCAP as consisting of two parts: “A statement of Reconciliation that acknowledges the mistakes and injustices of the past... [and] a Statement of Renewal that expresses a vision of a shared future for Aboriginal and non-Aboriginal people” (Indian and Northern Affairs Canada, 1997, p. 1).

However, though the invocation of the language of reconciliation in *Gathering Strength* was perhaps inspired by RCAP, it appears to interpret the concept in a different fashion. RCAP’s references to reconciliation are of a more fulsome nature; for example, Volume 1 (RCAP, 1996) of the report contains the following paragraph:

As Aboriginal people have told us, the past might be forgiven but it cannot be forgotten. It infuses the present and gives shape to Canadian institutions, attitudes and practices that seriously impede their aspirations to assume their rightful place in a renewed Canadian federation. Only if Canada admits to the fundamental contradiction of continued colonialism, they assert, can true healing and reconciliation take place. (p. 581)

This is a fairly robust, political interpretation of reconciliation - one example of many in the mammoth RCAP report. This is then taken up in a more muted, apolitical fashion in *Gathering Strength* (Indian and Northern Affairs Canada, 1997). Furthermore, the government response is similarly thin on the concerns of Indigenous women. There is one small section that reads “Indigenous women and self-government,” which reads:

Capacity development also means ensuring that Aboriginal women are involved

in the consultations and decision-making surrounding self-government processes.

This is particularly relevant for women at the community level. Consistent with the approach recommended by the Royal Commission, the federal government will consider additional funding for this purpose (p. 10).

This paragraph gestures toward a commitment to Indigenous women, but it does not speak to any of the recommendations or major findings of RCAP.

The treatments of gender in the RCAP final reports (1996a-1996e) and in *Gathering Strength* (Indian and Northern Affairs Canada, 1997), represent important benchmarks in establishing the gendered trajectory of state-Indigenous relations that informs my analysis of the TRC. Specifically, while RCAP did in some ways recognize the need for gender-specific justice for Indigenous peoples, the government response was willing to take up reconciliation and justice in only a partial way that is vague on gender justice. In other words, while RCAP's recommendations were strong and specific, the government response was watered down. I return to this pattern of partial recognition in discussion of UNDRIP, in the next section.

3.4.2 Canada's response to The United Nations Declaration on the Rights of Indigenous Peoples

While not an instrument of transitional justice, nor an initiative of the Canadian government, UNDRIP is a significant precursor to the TRC, a major development in global Indigenous rights, and is particularly relevant to the notion of transformative reconciliation and the TRC where Canada's response is considered. While UNDRIP was finalized at the United Nations in 2007 (see Lightfoot, 2016 for a thorough exploration of UNDRIP), what its implementation in Canada looks like is an ongoing matter.

The result of decades of advocacy and organizing on the part of Indigenous peoples around the world, UNDRIP is “technically not legally binding under either international or domestic law. However, it does join other important human rights declarations... in articulating a global standard that states are morally and politically obligated to respect and promote” (Lightfoot, 2017, p. 441). At the United Nations, Canada, along with Australia, New Zealand, and the USA, initially voted against the UNDRIP, with Chuck Strahl, former Conservative Minister of Indian Affairs, claiming that Canada’s endorsement was not needed because the Charter of Rights and Freedoms already encompassed UNDRIP’s content (Parsons, 2008).⁴¹ The Canadian government subsequently reversed its position in 2010 and officially endorsed the Declaration while still describing it as aspirational. In the 2015 federal election, now-Prime Minister Trudeau, with the Liberal Party, campaigned on a platform of implementing UNDRIP. In his second term, legislation to fully harmonize Canadian law with the declaration was passed, in June of 2021. While it is not entirely clear what the gender implications will be when UNDRIP is implemented in Canada, women are mentioned in 4 of 48 UNDRIP articles: 21.2, 22.1, 22.2, and 44 as follows:

- 21.22: States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities
- 22.1: Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the

⁴¹ Canada, Australia, New Zealand and the United States were in fact the only four countries that voted against UNDRIP. 144 countries voted in favour, and 11 abstained.

implementation of this Declaration

- 22.2: States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination
- 44: All the rights and freedoms recognized herein are equally guaranteed to male and female Indigenous individuals (United Nations, 2007).

The work that led to the creation of UNDRIP, and the international Indigenous rights movement more broadly, has been lauded for being led largely by Indigenous women (see Lightfoot, 2016). However, Article 44, the equal application to men and women, has been critiqued. Kuokkanen (2016) argues that UNDRIP could have been more explicitly attentive to gender, and contends that the assumption of equal application to men and women has contributed to a dearth of gender analysis on what the implementation of the Declaration could look like (p. 130). In other words, she argues that Article 44 serves an escape clause of sorts that precludes further attention to gender. I would argue that we cannot yet fully understand the gender implications of UNDRIP. In 2019, British Columbia passed legislation directing the harmonization of provincial law with UNDRIP, so this could be a venue for future research in this area. The proof in many ways will be in how initiatives like British Columbia's - and now Canada's - are rolled out⁴². In simplified terms, it seems gender and UNDRIP could play out operationally in one of two ways – An assumption that that gender does not need particular attention because Article 44 says the rights detailed in UNDRIP apply equally

⁴² British Columbia's draft action plan on implementation of the Declaration on the Rights of Indigenous People's Act is currently under consultation. See https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan_for_consultation.pdf

to men and women, or, a concentrated attempt to ensure the implementation of UNDRIP rights apply equally between men and women in practice because Article 44 insists upon it.

Lightfoot (2012) uses selective endorsement theory to illuminate the Anglosphere's initial response to UNDRIP. I go into selective endorsement theory in some detail here, arguing we can also gender selective endorsement theory to glean further insights about Canada's gendered approach to reconciliation more broadly. Selective endorsement, as conceptualized by Lightfoot (2012) is the means by which states endorse a norm or a full "rights regime" (p. 101) that does not fit with their prevailing policy direction while still maintaining their moral position in a given community of states. In undertaking selective endorsement, states reinterpret norms such that "compliance occurs automatically" (p. 102), thus under-committing to a human rights norm while appearing to commit. Lightfoot (2012) argues that selective endorsement allows settler states to sustain a rhetoric of humanitarianism and self-promotion as champions of Indigenous rights without implementation that would significantly trouble the existing domestic status quo. Illustrating this theory with the words used by former prime minister Stephen Harper to endorse UNDRIP - namely that it was 'aspirational' - Lightfoot (2017) argues that "the Harper government was confident it could endorse the Declaration as long as implementation of Indigenous rights could be interpreted as being in line with existing domestic law and practice" (p. 445). In this way, the Harper government was able to endorse UNDRIP without commitment to its implementation, while at the same time pointing to this empty endorsement as evidence for its support of Indigenous rights. While Lightfoot (2012) applied her theory to a more

concrete instrument, specifically to UNDRIP and its adoption, I argue that by treating “reconciliation” as it is instrumentalized politically as a norm, selective endorsement theory can provide a useful language for framing Canadian state behaviour such as the incomplete take-up of much of RCAP’s work or the TRC’s work. Furthermore, gendering Lightfoot’s (2012) theory supports the contention that the Canadian state, uninterrupted by the TRC, has embraced the language of reconciliation while leaving unattended more inconvenient problems like gender justice. In other words, the Canadian government has selectively endorsed reconciliation without taking on the pieces of the work that would involve upsetting the status quo. This echoes the issue with RCAP in some ways – UNDRIP is an initiative with transformational potential. However, its potential for change in Canada will be dependent on collective responsibility for its implementation.

3.4.3 The Official Apology

Another significant development in Canada’s relationship with Indigenous peoples was the official apology for residential schools offered by former Prime Minister Stephen Harper in the House of Commons in 2008. There have been other public apologies in regards to residential schools that pre-date the 2008 apology. Specifically, a number of churches have apologized for their roles in the residential school system, to mixed effect and reception (see M. James, 2008). The Government of Canada’s road to the delivery of the 2008 apology, on the other hand, has been a journey of progressively more robust apologies offered by increasingly-senior officials.

The first government apology came in 1991, when then-Assistant Deputy Minister of Indian Affairs Bill Van Iterson “expressed on behalf of all public servants in the Department a sincere regret over the negative impacts of the residential schools and the pain they have caused to many people” (Milloy, 1999, p. 203). In 1994, the AFN

published *Breaking the Silence*, which detailed the stories of survivors, and contained an explicit demand for a full government apology for residential schools (Morse, 2008). In 1998, the Government of Canada offered another apology, this time delivered by then-Minister of Indian Affairs, Jane Stewart. It was called a Statement of Reconciliation, and was offered at a lunchtime meeting between Indigenous leaders and government officials (see Corntassel and Holder, 2008). The Statement of Reconciliation was part of the aforementioned *Gathering Strength* document (Indian and Northern Affairs Canada, 1997), the government's response to RCAP.

These were, as it turned out, minor precursors to the 2008 apology, which was undoubtedly the most robust government apology in Canada to date. It was read by former Prime Minister Stephen Harper in the House of Commons,⁴³ responded to by then party leaders Stephane Dion, Gilles Duceppe, and Jack Layton, and subsequently responded to by invited Indigenous leaders on the floor of the House of Commons: Phil Fontaine, then National Chief of the Assembly of First Nations; Patrick Brazeau, then of the Congress of Aboriginal Peoples; Mary Simon, then President of Inuit Tapiriit Kanatami;⁴⁴ Clem Chartier, then President of the Metis National Council; and Beverly Jacobs, then President of NWAC all offered reflections. In terms of the ability to imbue an official apology with an element of relationality, this was actually a remarkable set-up within the strict confines of House of Commons regulations.

Each Indigenous respondent thanked the government for the apology, but Jacobs in particular delivered a more overtly challenging message. Speaking of the ways in

⁴³ The full text of the apology can be found at the following link: <https://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655>

⁴⁴ The Inuit Tapiriit Kanatami is the national Inuit organization in Canada. Mary Simon was appointed Governor General of Canada in July of 2021.

which language and ceremony are passed down and referencing her grandmother, who was a residential school survivor, Jacobs said: “She did not pass that on. She did not pass it on to my mother and her siblings, and so that matriarchal system that we have was directly affected” (Canada, 2008). She further stated, “Women have taken the brunt of it all,” and finally: “What is it that this government is going to do in the future to help our people?” (Canada, 2008, pp. 6856-6857). Jacobs’s remarks were not only forward-looking - they were the only remarks from the floor on that day to mention women specifically⁴⁵. The text of the official apology itself does not mention women at all.

The study of official apologies is a central element of the field of transitional justice (see Gibney, 2008; Nobles, 2008; A. D. Moses, 2011). However, it is one that has curiously lacked attention to gender analysis. MacLachlan (2013) argues that “gendering theories of public apology” (p. 130) is necessary. The fact that the harms being apologized for most often have a gendered dimension demands that the gendered aspects of “public responsibility” usually inherent in official apologies be further illuminated (p. 130). The element of public responsibility inherent in official apologies is a question that has been debated in the literature. Writing on official apologies in the settler colonial context, Lightfoot (2015) argues that apologies have the potential to:

... play a meaningful role within a larger program of Indigenous–state reconciliation only if such apologies are employed in a way that moves beyond rhetoric and helps reset the relationship between the state and Indigenous peoples away from hierarchical and colonial power relations and toward one grounded in mutual respect. (p. 17)

⁴⁵ For Jacobs’ reflections on her remarks in Parliament, see Jacobs, 2008.

Key to Lightfoot's (2015) argument here is the point that an official apology is not enough on its own to effect a transformative change in state-Indigenous relations. While an apology is an important gesture, it does not contain a galvanizing agenda for change.

Whether an apology should be evaluated as a "living deed,"⁴⁶ as Lightfoot has argued, or as a single act of "narrative adequacy,"⁴⁷ as M. James has argued, a recognition and inclusion of gender is vital. When read through a gender lens, the 2008 apology does not offer significant progress either from a narrative adequacy or living deed standpoint. Beverly Jacobs' response to the apology stood out so starkly in the House of Commons precisely because of her attention to Indigenous women within a context that was otherwise devoid of any recognition of gender (Canada, 2008, pp. 6856-6857). Next, I turn to the various elements of the IRSSA.

3.4.4 The Indian Residential Schools Settlement Agreement

In the years leading up to the 2008 official apology, there were a growing number of lawsuits brought against the federal government by residential school survivors (McGrath, 2000). In response to these lawsuits, in 2003, the Chretien government brought in the aforementioned ADRP – designed to address the backlog of litigation by offering an alternative compensation program outside of the legal system. The ADRP involved an extremely onerous process for claimants, requiring the production of records that "support their claim of physical or psychological injury and loss of opportunity" (Oshynko, 2006, p. 6). Importantly, as MacDonald (2019) notes, "the system compensated only physical and sexual abuse and unlawful confinement; it failed to deal

⁴⁶ Remarks made at Canadian Political Science Association panel, 'Reconciliation, Redress, and Rights: Indigenous Politics in Comparative Perspective' in Calgary, Alberta, 2016.

⁴⁷ Remarks made at Canadian Political Science Association panel, 'Reconciliation, Redress, and Rights: Indigenous Politics in Comparative Perspective' in Calgary, Alberta, 2016.

with collective harms such as the destruction of self-esteem, language, spirituality, culture, and ties to family members, traditional territory, and testimony” (pp. 110–111). The ADRP was a time-consuming and ultimately unsustainable approach to addressing ever-increasing lawsuits, which eventually led in part to the settlement of such claims through the IRSSA.

The IRSSA was broad-reaching, with multiple components, but the most public-facing piece of the agreement’s stipulations was the TRC.⁴⁸ The TRC was poised to gather testimony in a focused manner in the way that its closest predecessor, RCAP, had found it difficult to accommodate, with its broader mandate. Viola Robinson, Mi’kmaq and co-chair of RCAP, spoke to the challenge of the volume of testimony about residential schools in particular:

[The] most alarming thing to me was almost every community that we went to, the issue of residential schools was brought up... The stories and the presentations were so heart wrenching and moving ... we knew that there was no way that we as a Royal Commission could deal with it. (Troian, 2016, para. 10)

The TRC, in contrast, had the residential school system as its sole mandated focus. As such, the vision put forward by the TRC was more ambitious than the “cleansing of the wounds” described by RCAP. The TRC envisioned a national conversation and a process of Canadians listening to and learning from those providing testimony.

However, the TRC was not the only part of the suite of IRSSA initiatives that asked for testimony from Indigenous peoples. In fact, the TRC was one of *three* bodies compelling testimony - the other two required survivors to provide testimony in order to

⁴⁸ For the full text of the IRSSA, see Indian Residential Schools Settlement Agreement. (2006a, May 8).

meet eligibility for reparations. The CEP program distributed a lump-sum payment available to those who attended residential school, and the IAP fund was available for those submitting specific claims of abuse. Applications to the CEP fund asked survivors to prove that they had attended residential school and for how long, which could be extremely difficult to ascertain given the poor state of government records on this matter. If an adjudicator was not able to verify a survivor's attendance at a residential school, the applicant was required to answer questions about their time at a residential school, essentially proving their case to the adjudicator's satisfaction (see Crown-Indigenous Relations and Northern Affairs Canada, 2013 for a full description of the process). While it makes sense that claims be verified, it arguably sets a problematic tone for the IRSSA's three testimonial processes when the first of these requires survivors to prove to the government that they aren't lying about being subject to a genocidal government program.

The IAP process was similarly complex and fraught - it involved a points system by which the dollar amounts assigned to survivors were determined by the individual types of physical, sexual, and psychological abuse they endured. The Indian Residential Schools Adjudication Secretariat, the federal agency responsible for handling claims, received 38,257 applications, 30,882 of which were resolved, and 7,075 of which were denied or withdrawn (Crown-Indigenous Relations and Northern Affairs Canada, 2019). Unless the applicant was working with a lawyer, the process required a hearing, at which the applicant would be required to describe the abuse suffered. Of the 38,257 applications received by the time the IAP closed,⁴⁹ only 4,165 claims were processed by negotiated

⁴⁹ The deadline to apply for IAP funds was September 19, 2012.

settlement, the lawyer-involved option. The remaining applicants again gave testimony to adjudicators. 31,103 applicants were granted payments, and 7,075 were denied or withdrawn (Crown-Indigenous Relations and Northern Affairs Canada, 2019).

Decisions about IAP claims were made available to the claimant in writing 30–45 days after the hearing. Similar to the CEP process, survivors were left in the position of relating the details of abuses they suffered in such a way as to be given points based on the perceived veracity of their telling. Niezen (2017), writing on his observations about the TRC’s Saskatchewan event, noticed that multiple lawyers had booths set up at the venue, soliciting IAP clients:

This brings us to another selection process at work before IAP hearings take place, in which lawyers gave priority to claims likely to be successful and lucrative. If a case was complex or likely to be only for a small amount, claimants were less apt to be taken on by a lawyer.” (p. 48)

He also quotes a survivor at the same event speaking about his experience with the IAP: “I found it abusive. ‘How many times did you get raped? That’s another \$5,000.’ It’s demeaning. It didn’t work” (p. 47). This statement underscores how the process of quantifying trauma with dollar amounts could be deeply invasive – and, as this survivor said, abusive.

Moreover, the three-pronged approach to testimony created by the IRSSA caused significant administrative problems. First, as Logan (2018) notes, the concurrent processes were confusing and it was often assumed that giving testimony to the TRC was part of the compensation processes. Additionally, records were not shared among these three bodies, which led to serious legal issues later on. Following a 2017 Supreme Court

of Canada decision,⁵⁰ TRC testimony remains part of the public record, while more than 37,000 IAP testimonies will be destroyed after a fifteen-year holding period during which individuals may choose to preserve their personal testimony (Marder, 2017). The Supreme Court ruling read:

While this order may be inconsistent with the wishes of deceased claimants who were never given the option to preserve their records, the destruction of records that some claimants would have preferred to have preserved works a lesser injustice than the disclosure of records that most expected never to be shared. (Marder, 2017, para. 5)

Records from the ADRP are also covered by this ruling. In the wake of the Supreme Court decision, the Adjudication Secretariat launched a new website, *My Records, My Choice*, offering survivors advice and information on making decisions around the fate of their testimonies (*My Records, My Choice* news release, 2019). The home page of the site lists four options for those who submitted IAP and ADRP claims (What are my choices for my IAP and ADR records?, 2019):

- DO NOTHING: Your records will remain CONFIDENTIAL and will be DESTROYED on September 19, 2027
- GET YOUR RECORDS: Get a copy for yourself to keep or share with others
- PRESERVE YOUR RECORDS: Preserve your records for history, public education, and research at the NCTR
- DO BOTH: Get a copy for yourself and preserve them at the NCTR

⁵⁰ Canada (Attorney General) v. Fontaine, 2017.

In chapter five, I consider what can be gleaned about gender and the IAP by looking at how the TRC reported on the initiative, but for now, suffice to say that the numerous testimonial requirements to participate in the IRSSA initiatives were taxing for survivors in many different ways, some of which were deeply problematic and even retraumatizing.

3.5 Conclusions

In this chapter, I have considered the nature of testimony and witnessing in institutional precursors to the TRC. Through also conducting a historical analysis of the way that these institutions addressed the intersection of settler colonialism and patriarchy, I have cast this history in the light of transformative reconciliation. In doing so, I have found the opportunities to advance a nuanced practice of transformative reconciliation have been limited across the board. A significant problem in state-led consultations and compensation programs is testimony fatigue. I have detailed some of the trust issues inherent in asking survivors to repeatedly present testimony on their experiences without significant reciprocity in the form of witnessing, sacrifice, and follow-through. Borrows and Tully (2018) make the distinction between a reconciliation that is transformative and one that asks survivors to reconcile to the status quo. A long history of initiatives that have involved recommendations made without clear means to actualize them, and government promises that have yet to be implemented, has thus far placed reconciliation in Canada in the status quo category. I have furthermore gendered Lightfoot's (2012) theory of selective endorsement to show that while Canada has embraced the language of reconciliation, implementation on policies and programs that would further a more fulsome actualization of transformative reconciliation - one that is relational and imbued

with collective responsibility for follow-through - has been absent. This more fulsome actualization would also include addressing the justice needs of Indigenous women.

In analyzing RCAP, Canada's response to UNDRIP, the 2008 official apology, and the IRSSA through a transformative reconciliation lens, I have argued that significant pre-cursors to the TRC did not offer substantial opportunity for relationality within testimony-witnessing activity, and government responses have not significantly addressed the gendered findings or recommendations of such initiatives, where they existed. This inaction is in keeping with the reality fact that settler colonialism, since its introduction in what is now Canada, has intersected with patriarchy to particularly target Indigenous women in numerous ways - biologically, legally, and socially. In the next chapter, I move to assessing the gender regime of the TRC, beginning with the commission's set-up and proceedings.

4: The TRC – Set-up and Proceedings

4.1 Introduction

The IRSSA was a long time in the making - tragically many survivors did not live to see the fruition of the settlement. According to TRC Commissioner Marie Wilson, the decision to settle the residential schools class action lawsuit out of court was largely driven by time. The advanced age of many residential school survivors was a major motivator to avoid lengthy litigation (Wilson, 2013). and the often-lengthy nature of such litigation. Time was also a factor when considering how robust to make the powers of the TRC, Nagy (2014) says. The recent example of Ireland's public inquiry into Bloody Sunday in which the churches essentially blocked subpoenas with lengthy litigation was top of mind.

This chapter addresses the set-up and proceedings of the TRC, explicitly reading for gender, or analyzing aspects of the gender regime. I introduce several examples of best practice on gender and truth commissions, and present interview and primary source data, offering conclusions regarding the TRC's treatment of gender in its setup and proceedings, before moving on to the final report and other outputs in chapter five. Overall, I find that the TRC did not make gender analysis a priority in its planning, which led to attention to and consideration of survivors' experiences as gendered being sidelined throughout the proceedings. A short, tumultuous, over-budget process fraught with disagreements, where other issues were prioritized, resulted in continuities with the status quo gendered trajectory of state-Indigenous relations that I identified in chapter three.

To recap, the TRC was part of a suite of programs resulting from the largest class action lawsuit in Canada's history, the IRSSA. Lawsuits brought by survivors against the government had been increasing steadily for many years by the time of the class action. Government efforts to deal with multiplying lawsuits in a coordinated fashion led to the federal government creating the Office of Indian Residential Schools Resolution Canada in 2001, a department specifically tasked with addressing growing legal challenges (Truth and Reconciliation Commission of Canada, 2009, p. 2). In 2004, the AFN released the *Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools*, which envisioned a multi-pronged path forward for residential schools compensation (Assembly of First Nations, 2004). Specifically, the AFN argued that the ADRP was ineffective and could be "causing additional harms" to survivors (Assembly of First Nations, 2004, p. 1). Instead, they recommended a lump sum payment to survivors and a truth telling process – this proposed model formed two of the pillars of the IRSSA. The IRSSA encompassed the CEP, for all survivors (\$10,000 for the first year of schooling; \$3000 for each subsequent year), the IAP (for specific claims of sexual, physical, and psychological abuse), measures to support healing (\$125 million allocated to the Aboriginal Healing Foundation for the Indian Residential Schools Resolution Health Support Program⁵¹), commemorative activities (\$20 million for commemoration projects)⁵², and the establishment of the TRC.

Throughout the process of negotiating the IRSSA, and long before, many residential school survivors pushed for a truth commission (see "Ottawa ponders truth

⁵¹ The Aboriginal Healing Foundation was established in 1998 and ceased operation in 2014 after being defunded by the Harper government (see "Head of defunct Aboriginal Healing Foundation laments loss of mental-health programs," 2016).

⁵² The TRC reviewed and allocated funding for these projects.

commission' on residential schools: Canada might copy an idea that worked in South Africa", 2000; "'Truth commissions' may come to Canada", 2000; "A healing commission for Canada's natives", 2001). The recent example of the TRC-SA loomed large. The AFN was an early proponent of the truth commission model, arguing that "the majority of the Canadian public did not understand the story of the Indian Residential Schools system or appreciate its impact" ("Indian Residential Schools," n.d. para. 9), and thus a national platform for speaking openly about the truth of residential schools would be of great benefit. Furthermore, the AFN (2004) argued that a truth commission should not focus solely on public awareness. They detailed the proposed purposes of what they referred to as a "comprehensive truth telling mechanism" (p. 36):

1. To create a space for the survivors to tell their stories and have them understood.
2. To create public awareness and a public record of what happened and the consequences.
3. To create a plan or recommendations for future for the restoration and healing of relationships.
4. To ensure that another state-committed atrocity does not take place again.
5. To acknowledge and support the need for the healing of relationships between families and communities, survivors and their families and communities, and all other people who were adversely affected by residential schools.

(Assembly of First Nations, 2004, p. 36)

Thus, there was an intention that a truth telling process be both a space of healing and connection for survivors as well as a catalyst for change – one that would raise awareness

of the past and help shape the future relationship between Indigenous peoples and settlers.

The eventual structure of the Canadian TRC had no power of perpetrator subpoena, as a “post-judicial” (MacDonald, 2019, p. 107) body. As such, and given that the TRC largely found its genesis in the needs of survivors rather than operating as an elite-driven process, M. James (2012) categorized the TRC as “victim-centred” (p. 183). He raised concerns about this type of model for Canada, arguing that:

Official obstinacy, self-interested majoritarian complacency and a sharply delimited investigative mandate make it difficult for the Commission to uncover and convey in appropriately detailed ways the individual and institutional acts of Canadian decision making responsible for the innumerable injustices associated with the schools. (p. 184)

By not sufficiently compelling stronger political judgement, M. James (2012) argued, the Commission would be missing an opportunity for a broader impact.⁵³ I agree that the model of the TRC masked the concept of collective responsibility for redress and justice for Indigenous peoples - it made it possible for high level government officials – and the general public - to essentially disengage from the TRC entirely if they so wished.

TRC Commissioner Marie Wilson confirmed the lack of political buy-in to the TRC process. At a public lecture at the University of British Columbia in 2013, Wilson noted that then-Prime Minister Stephen Harper had not yet attended a TRC event. Nor had he met with TRC commissioners, despite repeated invitations to do so. These facts

⁵³ For more on the role of political judgment in transitional justice, see Leebaw (2011) and chapter two of this dissertation.

together signalled at best, indifference to the process.⁵⁴ The TRC also encountered significant difficulties in accessing records and resources from the federal government (see Alamenciak, 2014). For example, historian John Milloy, who worked for the TRC, said that he had better access to archives when he worked for RCAP (Milloy, 2013, p. 14) twenty years earlier. All of these factors added up to a commission that was limited in its reach from the outset. Along with the above-mentioned limitations, considerations of gender suffered scant attention. In the next section, I draw on interview and historical analysis to detail the genesis and early stages of the TRC, finding that considerations of gender were sidelined in the TRC from the outset.

4.2 The setup

The TRC was governed by Schedule N of the IRSSA, which served as the TRC's mandate and terms of reference. Schedule N specifies personnel requirements for the TRC (three Commissioners, an Executive Director, a Secretariat, a ten-person Indian Residential School Survivor Committee, and regional liaisons). However, there is no suggestion that gender balance should be taken into account, although it does specify that “[c]onsideration should be given to at least one of the three members [Commissioners] being an Aboriginal person” (Schedule “N,” in Stanton, 2010, p. 89). The absence of any intentionality or structure designed to build gender balance into the composition of the TRC administration was a significant oversight. Recall that NWAC, in their recommendations for CRGBMR, argued that the inclusion of a gender framework and planning for gender at the very outset of any process is essential if such a process is to comprehensively address “the ongoing violation of Indigenous women through systemic

⁵⁴ Wilson (2013) spoke at “Exploring Reconciliation: What does it mean to me? What could it mean to Canada?,” the 7th annual Dr. Richard B. Splane lecture. Notes were captured by me.

subjugation, marginalization and violence” (p. 3). The remainder of Schedule N is also gender-neutral, making no reference to specific gendered considerations of survivors. The TRC’s foundational document does not address gender, and this trend would continue, limiting its effectiveness in addressing the full scope of the impacts of the residential schools system in Canada.

4.2.1 Personnel

The federal government appointed the three original TRC commissioners through an Order in Council. Schedule N required that the Commissioner appointments “be made out of a pool of candidates nominated by former students, Aboriginal organizations, churches and government” (IRSSA, 2006c, p. 5) and that the AFN be consulted in making the final decision. The selection committee was chaired by Tom Berger, a former Supreme Court Judge and former chair of the Mackenzie Valley Pipeline Inquiry among other such bodies, and former Co-director of Research for RCAP, Dr. Marlene Brant Castellano of the Mohawk nation (Stanton, 2010, p. 90). Then-Indian Affairs Minister Chuck Strahl announced the appointment of Chairperson Justice Harry LaForme, Anishinabe and a member of the Mississaugas of the New Credit Nation in late April of 2008 (“LaForme to lead residential schools commission,” 2008). Laforme was then charged with helping to select the other two commissioners (Sison, 2008). On May 13, 2008, Chuck Strahl announced that Claudette Dumont-Smith, an Algonquin health care professional from Kitigan Zibi, Quebec, and Jane Morley, a non-Indigenous lawyer from Victoria, B.C., would be appointed as the other two Commissioners (“Truth and Reconciliation Commission to begin work on June 1: Canada announces final appointments,” 2008).

The TRC officially began operations on June 2, 2008, and as early as July, LaForme was signalling problems, indicating that the TRC was not as independent from the federal government as he had anticipated. Specifically, the TRC was created as a “government department staffed by civil servants reporting to the Minister of Indian Affairs” (Perkel, 2008) rather than as a fully independent body, as he had believed. Furthermore, LaForme said he was surprised to learn that the federal government was to appoint the TRC’s Executive Director rather than he himself appointing the position. In this vein, an interviewee also spoke to her surprise, after accepting a position with the IAP, that her paycheques were issued by the Department of Indian Affairs rather than by a body independent of the government (Interview E).

The initial Commissioner appointments would amount to what was a false start for the TRC. Before even a year had gone by, the original three Commissioners resigned and were replaced by the three Commissioners who would take the TRC to completion. LaForme resigned first, in October, 2008, stating that he could not continue in his role when the two women commissioners “regularly overruled his plans for the commission” (Curry, 2019, para. 3). He said that he found himself in a situation where “the two commissioners were under the impression their role was equal to his as chairman” (“New job descriptions for residential schools commissioners,” 2009). In media coverage, LaForme’s commentary on his resignation focused largely on his fellow Commissioners behaving in a disrespectful manner to him as Chair (see “Iacobucci to help residential school commission negotiations,” 2008). He further specified that his fellow Commissioners were, he believed, overly influenced by “certain parties to the Settlement Agreement” (Stanton, 2010, p. 92). LaForme was believed to have been referring to the

AFN (p. 92), which, recalling Nagy's (2014) account of there being an AFN-driven model and a TRC roundtable-driven model, likely meant LaForme favoured a focus on the reconciliation half of the equation, whereas Dumont-Smith and Morley were more focused on the truth element.

After LaForme's resignation, remarks made by Chuck Strahl on the topic of choosing a replacement suggested that representation – whether based on gender or Indigeneity - was not a primary concern, stating that “The steps being taken to appoint a new chairperson to the Truth and Reconciliation Commission are based solely on finding the best person for this demanding job” (Greenaway, 2008b, A.8). At this point, questions were raised by some about the appropriateness of Dumont-Smith and Morley continuing on as Commissioners. Chief John Beaucage of the Anishinibek Nation Grand Council deemed the women responsible for the breakdown of LaForme's chairship (Greenaway, 2008a, A.4).⁵⁵ Others blamed the federal government for miscommunications regarding the role of the Chair versus those of the Commissioners, as well as the Commission's degree of independence from the federal government (Bailey, 2008). Commissioner Dumont-Smith said that she believed the Commissioners should operate by consensus, “the Indigenous way,” but that the Chair did not share this view (Interview B). After much debate on replacing LaForme and significant delay in the Commission's operations, there were rumblings that the process had become “dysfunctional” (“Time to start over,” 2008, para. 4), along with calls to renew the commission's work by “begin[ning] fresh” (Curry, 2009, para. 6), as Michael Cachagee of the National Residential Schools Survivors' Society put it. Dumont-Smith and Morley resigned in 2009, saying in a joint

⁵⁵ See also “New commission, Minister needed,” (2008).

statement that “the time has come for [them] to step aside” (“Remaining 2 members resign from residential schools commission,” 2009, para. 3) and that “the best way forward for a successful commission process is with a new slate of commissioners” (Diebel, 2009, para. 2).

In order to replace the suite of Commissioners, a selection committee was again struck, this time co-chaired by Frank Iacobucci and Phil Fontaine, along with representatives from the other parties to the Settlement Agreement (“Residential schools commission delays may need to be addressed: Iacobucci,” 2009). Iacobucci was a litigant for the Government of Canada during the IRSSA negotiations but switched to a neutral third-party role for the re-appointment process (Hughes, 2012). Fontaine was, at that time, National Chief of the AFN. It is notable that the seven-person committee was made up of six men and only one woman—Mary Simon, then-president of the Inuit Tapiriit Kanatami (Indian and Northern Affairs Canada, 2009). To recap, two women and one man resigned from leading the TRC, and six men and one woman were nominated to work on replacing them.

Justice (later Senator) Murray Sinclair, Ojibway from Manitoba, was named as the TRC’s new Chairperson in June of 2009 amidst continued debate about representation—former Commissioner of Nunavut and former member of the Northwest Territories Legislature Peter Irniq said many Inuit would boycott the Commission if an Inuit Commissioner was not chosen (Weber, 2009). Two weeks later, the remaining Commissioner slots were appointed to Wilton Littlechild, a Cree lawyer and former MP from Alberta; and Marie Wilson, a non-Indigenous journalist from the Northwest Territories, and the sole woman Commissioner. Wilson worked with South African

journalists to cover their Truth and Reconciliation Commission and is a former APTN (Aboriginal Peoples Television Network) board member. Her husband, former Northwest Territories Premier Stephen Kakfwi, is a residential school survivor. Thus, the demographics of the replacement Commissioners maintained the Indigenous to non-Indigenous ratio of the original panel but not the gender ratio. While I am not suggesting that identity is the only consideration for such roles, it is significant that the bulk of the TRC's work was carried out without an Indigenous woman in one of the Commissioner positions – the public faces of the TRC.

Lore (2016) delineates the concept of representation in a way that is useful in understanding why this is an important consideration. Drawing on Pitkin (1967), Lore (2016) distinguishes between descriptive representation (the percentage of women) and substantive representation (the behaviour of women) in a setting and investigates the mediating effects of the institution in question⁵⁶. While I have not conducted the same type of institutional analysis as Lore (2016), I consider both descriptive and substantive representation at the TRC. I continue my analysis of representation at the leadership level then move to the participatory level in chapter five. Continuing with this investigation into descriptive representation, the gender breakdown of other TRC personnel groups reveals a further lack of descriptive representation of Indigenous women. For example, the TRC appointed 60 honorary witnesses trusted with “bearing witness to the truths of residential school survivors, and of contributing to the goal of ongoing reconciliation between the Indigenous and non-Indigenous peoples of Canada, beginning with sharing

⁵⁶ Lore's (2016) research focused on political institutions, and found that institutions affect policy outcomes, not only by affecting individual behaviour but also by determining how those actions are aggregated (p. ii).

what they have heard and learned” (TRC, 2015b, p. 397). Of the 60 honorary witnesses appointed, 21 were women, 9 of whom are Indigenous; 39 honorary witnesses were men, 11 of whom are Indigenous.⁵⁷ The Commission also appointed 4 Spiritual Advisors. All were men.

Table 2: Honorary witnesses by gender

	Women	Men	Total
Honorary witnesses	21	39	60

Table 3: Honorary witnesses by gender and Indigeneity

	Indigenous women	Non-Indigenous women	Indigenous men	Non-Indigenous men	Total
Honorary witnesses	9	12	11	28	60

4.2.2 Operations

The planning of a truth commission most often sets the tone for the proceedings that follow. In the CRGBMR report, NWAC (2010) argued that a “gender responsive framework” implemented across the entire institution from the very outset is best practice for a truth commission (p. 16). There are examples of truth commissions that have mainstreamed gender protocols in their operations from the outset, such as the Peru Comisión de la Verdad y Reconciliación (CVR) and Timor-Leste’s Comissão de Acolhimento, Verdade e Reconciliação (CAVR), both established in 2001 (see Bueno-

⁵⁷ I gathered this data from TRC Final Report vol 1: Summary; <http://www.trc.ca/reconciliation/honorary-witness.html> and constructed an original demographic dossier of honorary witnesses. Of course, this is a rough estimate; however, the honorary witnesses were public figures and I was able to find significant biographical detail for them all.

Hansen, 2015, on Peru; Kent, 2012, on Timor-Leste). Peru's CVR was formed with a Gender Unit as a key department, the goals of which were:

Discovering the issues relevant to women in the context of the political violence and their causes, processes and consequences; placing human rights violations against women in the scope of the internal armed conflict; illuminating the role of women in subversive organizations; incorporating women leaders and women victims into the investigations; and raising the consciousness of the population regarding equality (Bueno-Hansen, 2015, p. 65).

In Timor-Leste, the Commission made special efforts to recruit women survivors, held special hearings for women, recruited support staff with a gender lens, and commissioned specific research on the experiences of women in the conflict, publishing a book titled *Women and the Conflict* (Kent, 2012, p. 101).

I asked two interviewees, both former senior staff members of the TRC, whether the TRC had been set up with similar planning for gender. One interviewee spoke to the call for research proposals that was made at the outset of the TRC as the first "missed opportunity" on gender analysis. She said that the TRC could have specified demand for certain kinds of research proposals such as gender-based research. Instead, the call for proposals was general, and according to my interviewee some of the research that came back was useful and some was not (Interview C).

When asked the same question, the other interviewee surmised:

I actually kind of want to say it was never an issue because you know women survivors are strong. They are vocal. They've been at the forefront of this work for many, many years and that's not to discount all of the work that men have

done, all survivors have done a tremendous amount of work in this, but women, I think, were not particularly not vocal or silenced. (Interview A)

This observation speaks to important questions: Can a process further gender-justice on its own, without purposive intervention? Is it condescending to women in some way to suggest that planning for gender is necessary? To this point, NWAC (2010a) affirms the importance of the strong leadership role of women survivors but argues that because “ongoing colonialism continues to be expressed through gender relations at all levels, personally, socially and politically” (p. 8), a formal gender framework to guide proceedings is essential to furthering a reconciliation that is gender-just. To be clear, this did not happen at the TRC, to its detriment.

NWAC (2010a) cite three indicators of CRGBR in practice: “1) Indigenous women play strong roles in the process; 2) the process should derive from Indigenous knowledge, values and ways of relating; and 3) truth and reconciliation is a personal, profoundly relational process” (p. 25). Furthermore, NWAC (2010a) adapts Hayner’s (2011) six purposes of truth commissions to create six indicators of gender responsive TRCs (p. 26), reproduced as Figure 1, below:

PURPOSE OF TRCs	GENDER RESPONSIVE TRCs
Clarify and acknowledge truth.	Clarify and acknowledge the gendered impacts of colonialism and residential schooling.
Respond to the needs and interests of victims/survivors.	Create an enabling environment for truth telling through inclusion of ceremony, gendered safety protocols; adequately trained staff; engagement of community supports; and the promotion of healing.
Contribute to justice and accountability.	Recognize ways in which women are marginalized and dispossessed within their communities <i>and</i> in the broader society as a result of colonialism while also recognizing their achievements and gender-specific approach to cultural continuity, healing, leadership, community development, and legislative reform.
Outline institutional responsibility and recommend reforms.	Recommendations for culturally relevant institutional and systemic change must address gendered impacts especially in governance and justice.
Promote reconciliation and reduce tensions resulting from past violence.	Prioritize ending violence against Indigenous women and girls as a key element in healing and reconciliation; recognize the leadership role of women in politicizing this issue and their expertise in addressing it.
Meet the rights of victims/survivors and society to the truth.	Education and communications strategies must promote mass public engagement in reconciliation.

Figure 1: Indicators of a Gender Responsive TRC Process Aligned with Hayner's Six Purposes of TRCs

NWAC (2010b) argues the need for culturally relevant gender analysis because “applying mainstream gender-based analysis tools in an Indigenous context runs the risk of simply reinforcing and advancing neo-colonial structures to the continued detriment of Indigenous women and their families, communities and Nations” (p. 5). The indicators described in Figure 1 are illustrative of a simple framework an institution such as the TRC could have used.

NWAC held to the position that the TRC needed a gender framework throughout the lifespan of the commission. In early June of 2010, in advance of the first national event, Karen Green, former Executive Director of NWAC, wrote to the TRC commissioners requesting an increased role for NWAC in TRC planning and proceedings⁵⁸. The letter proposed several potential avenues for increased involvement. First, Green noted that the AFN, the Métis National Council, and the Inuit Tapiriit Kanatami all sat on the planning committee for the TRC's community and national events. Green stated that NWAC should be on the committee, and would bring "expertise and perspectives related to applying a culturally relevant gender-based analysis."⁵⁹ Given that there was no Indigenous women's organization on the committee and that the AFN has been criticized for not being attentive enough to gender (see Barker, 2008), NWAC's presence surely would have contributed a hitherto missing element.

Second, Green proposed working with the research team in order to integrat[e] an Indigenous women's perspective into the healing and reconciliation mandate" using the CRGBMR model. Finally, she suggested that "experiences that are unique to Aboriginal women survivors and their descendants" may emerge, such as reproductive health issues, that could "lead to the particular requirement of a national forum specific to Aboriginal women,"⁶⁰ that NWAC could assist with. While I was unable to confirm whether the first request was granted, the second and third were not. An interviewee who joined the TRC as a senior staff member in the summer of 2010 observed that the TRC–NWAC

⁵⁸ Private communication, shared by NWAC.

⁵⁹ Private communication, shared by NWAC.

⁶⁰ Private communication, shared by NWAC.

relationship was at times “difficult” and that the TRC had made efforts to engage more with NWAC, not always successfully (Interview C).

At the first national event in Winnipeg, NWAC made a statement advising the TRC “prioritize ending violence against Indigenous women and girls as an essential component of reconciliation.”⁶¹ In a proposal to Indian and Northern Affairs Canada’s Advocacy and Public Information Projects funding program,⁶² NWAC argued that “much less attention has been paid to the gendered impacts of Indian Residential Schools despite the fact that it is generally recognized that men and women are affected differently by their life experiences.”⁶³ The NWAC proposal, in cooperation with the University of Saskatchewan, was to “complete a culturally relevant gender-based analysis of structure, documents and government reports central to the Indian residential schools claims process; complete a literature review of women and their residential school experience; [and] develop a research program that addresses the gaps in our knowledge.”⁶⁴ This analysis would have been a very strong addition to the TRC’s work.

According to the Advocacy and Public Information Projects website, an NWAC project was funded in 2010–2011, but in a different form entirely. The description of the funded project reads:

⁶¹ Private communication, shared by NWAC.

⁶² The Advocacy and public information program was run through INAC (Indigenous and Northern Affairs Canada – the reimagined Ministry of Indian Affairs and precursor to Crown-Indigenous Relations and Northern Affairs) “to support the sharing of information and to ensure that Indigenous communities, particularly former Indian Residential School students and their families, are aware of all aspects of the Settlement Agreement” and later expanded to include promoting healing and reconciliation among youth and inter-generational survivors; helping Canadians, particularly Indigenous and non-Indigenous youth, to understand the impacts that the legacy of Indian residential schools has had on Indigenous people and their communities in order to promote the goal of developing new partnerships for the future; and support for former students to attend Truth and Reconciliation Commission national events” (<https://www.aadnc-aandc.gc.ca/eng/1100100015576/1100100015577>).

⁶³ Private communication, shared by NWAC.

⁶⁴ Private communication, shared by NWAC.

Funding will help to reach the large number of Aboriginal women incarcerated in federal and provincial institutions to advise them of their potential benefits under the Indian Residential School Settlement Agreement and to attempt a modest scale reconciliation that could be used as a model or could be a best practice that would influence change in the correctional system and to provide better outcomes for Aboriginal women⁶⁵.

I was unable to ascertain why the original project proposal was not carried out. NWAC also received an award from the same fund for a later project in the 2011–2012 funding tranche, *Gender Matters: Building Strength in Reconciliation*, which produced the “Arrest the Legacy: from Residential Schools to Prisons” report.⁶⁶ It is worth noting that for the duration of this fund’s existence (2010–2014), of the 67 projects funded, NWAC’s two projects were the only explicitly gender-focused projects.⁶⁷

My analysis of the setup of the TRC has led me to conclude that there was a failure to address gender in two key areas. First, as NWAC recommended on multiple occasions (in NWAC, 2010a, and in communication provided by NWAC as referenced in the above section), and as truth commissions such as Peru’s and Timor-Leste’s demonstrated, planning for and mainstreaming gender considerations from the outset of a truth commission is a strong indicator that a commission’s gender equity measures will be successful. Two senior TRC staff I interviewed advised that there was no centralized plan or directive for incorporating gender equity (Interviews A & C). This pattern began

⁶⁵ Retrieved from: <https://www.rcaanc-cirnac.gc.ca/eng/1340043202039/1571587529669#p17>

⁶⁶ See <https://www.aadnc-aandc.gc.ca/eng/1340042945809/1340043055974#p16a> and <https://firstcallbc.org/news/gender-matters-building-strength-in-reconciliation/>

⁶⁷ Original data gathered from archived sites within Indian and Northern Affairs Canada: <https://www.aadnc-aandc.gc.ca/eng/1100100015576/1100100015577>

with Schedule N of the IRSSA (Indian Residential Schools Settlement Agreement, 2006c), which stipulated personnel requirements for the commission, but no requirement for gender equity. The lack of such stipulation leads directly to the second area in which the TRC did not address gender equity at its setup - in several key areas, including amongst Commissioners, honorary witnesses, and the Survivor's Committee, representation of Indigenous women was lacking. Next, I turn to assessing the gender regime of the national events.

4.3 The National Events

The TRC held eight national events, four major regional events, and many more community hearings. M. James (2018) noted that “over 9,000 survivors registered to participate in the seven national events, roughly 155,000 persons attended, and the event livestreams attracted an additional estimated 93,350 concurrent views” (p. 365). At national events, the mix of programming included a wide variety of opportunities to provide testimony—through Commissioner's sharing circles, sharing panels, and the option to provide private testimony either accredited or anonymously. A distinction was not made between “victim” testimony and “perpetrator” testimony. Because of the long duration between some of the earlier residential schools and the TRC, many survivors had died, not to mention former teachers, and there was little perpetrator testimony. There was, however, a strong church presence at national events. Confirming M. James's (2012) concern regarding the lack of political judgement that could occur through a victim-centred model, Hughes (2017) argues that while churches participated heavily in the TRC, their role in the narrative landscape was framed less as perpetrators and more as fellow survivors of the residential schools era. If, as Hughes (2017) argues, the dominant

frame of the TRC was one in which survivors and churches suffered alongside one another, this story of residential schools is one of abuse without abusers, of pain and trauma without perpetrators of pain and trauma. Surely this then means that it is even easier for bystanders/beneficiaries to distance themselves from the history. In other words, in a Commission that didn't name perpetrator names and in which church groups were framed as part of the experience rather than as the offenders, who indeed is culpable for the crimes of residential schools? This framing issue is of course exacerbated by the duration of time between the residential schools⁶⁸ and the Commission. In some truth commissions – such as South Africa's - perpetrator and victim are face to face. The Canadian TRC was not granted the power to compel perpetrator testimony. Even if it had been, the architects of the residential school system are long gone, as are many teachers and other officials.

Those wishing to give testimony to the TRC could do so in private or in public. Numerous scholars attended national events and wrote about their interpretations of the proceedings (see Angel, 2012; Brady, 2013; James, 2018; Niezen, 2017). Brady (2013) undertook an exploration of the TRC's statement-gathering process in order to understand how structure can guide testimony. She found that in the case of the TRC events she attended, "mediation does not just capture the testimonial: it is both central to and constitutive of it" (p. 131). For example, she references the different venues for providing testimony, like the Commissioner's sharing panels and sharing circles. A former employee of the TRC further spoke to the distinction between public statements such as the Panels and Sharing Circles, and private statements:

⁶⁸ The last residential school closed in the late 1990s, although the bulk of them closed by the 1980s (Truth and Reconciliation Commission of Canada, 2015b, p. 3).

So many private statements... you're there one on one and with elders or other support people or family members... and it's a private setting. So that's a whole different dynamic then the public settings like at national events and various forums. (Interview A)

Regarding the content of the testimony itself, Brady (2013) spoke to the ways that survivors in some cases subverted the guidelines to take their testimony in a number of different directions: "Many had difficulty with testimonials, critiqued and resisted some aspects of the statement-gathering process, and adapted testimonials for their own purposes. For example, testimonials critiqued current government policies and even the TRC itself" (p. 137). This contradicts Niezen's (2017) assessment of a more heavily mediated process. He spoke to "the surprisingly direct way that legal structures can shape conceptions of history, identity, and boundaries of social membership" (p. 43). For example, he argued that the audience setup meant that those with "ordinary" or "positive" stories were inhibited from appearing (p. 86), and that if a speaker strayed from the Commission's "prevailing narrative," there was a significant negative reaction from the room (p. 94).

While I would contend that a lack of 'positive' testimony about residential schools may have been because of a lack of positive experiences rather than because of the TRC's mediation, the written and unwritten rules of the TRC certainly both explicitly and implicitly influenced the type of narratives that were heard. The TRC (n.d.) gave the following guidance regarding statement-giving at national events:

You are welcome and encouraged to share any aspect of your life with the TRC.

You may wish to share what your life was like before, during and after attending

residential school. You can tell the TRC about your direct experiences as a student, as the relative of a student, as someone who worked in the schools or of any other experience related to residential schools.

While you are free to discuss anything you wish, please note that if you tell the TRC that a child is in need of protection – meaning that you have told us that a child is being physically, sexually, emotionally abused or is being neglected – the TRC may be obligated to report this information to the appropriate authorities. The TRC may also be obligated to report if you tell us that you are planning to harm yourself or someone else. (para. 18-19)

This is a fairly standard warning regarding the involvement of authorities in the case of a child being in danger. Although standard, it is nevertheless an ever-present reminder to those about to provide testimony that these personal stories are under surveillance, and recorded and witnessed. A clarifying of emphasis in the above wording - making more explicit that testimony regarding historical abuses and injuries would not result in present-day reporting, but only revelations of current or ongoing abuses – would likely have been helpful. The messaging seems to lack consideration that survivors – many of whom have had deeply negative intersection with the child welfare system long after residential schools – may be particularly wary when faced with the spectre of mandatory reporting and law enforcement.

Many similar guidelines around confidentiality governed the space of TRC events. Niezen (2017) reports large signs that read:

- The media or someone with a cell camera or recording equipment may record what you say and they may use the recording as they choose.

- Your personal information, including your image, is not confidential if you choose to participate in this public forum.
- What you say publicly during these events, along with a photograph or video of you, may be used in books, films, videos and audio clips or in any other multi-media presentations.
- The TRC itself may record the event. The TRC may use parts of the recording for public education purposes, on the TRC website, in the TRC reports and research, in short videos, and may make it available to documentary film-makers, and others. (p. 87)

While it is important those who shared information with the TRC be made aware of rules and regulations about confidentiality, it is again striking that - in what is supposed to be a space in which it is safe for survivors to share their experiences - this heavy-handed tone was used to deliver the message. Furthermore, I am struck by how carefully testimony was governed and monitored without such attendant guidelines around how testimony should be witnessed. Perhaps a more structured form of witnessing could lead to more opportunities to further transformative reconciliation.

A former senior TRC staff member I interviewed told me about a practice that exemplifies the subtle ways that structure can mediate testimony. The interviewee told me that statement-takers submitted each package of statement-notes with a cover sheet that listed tick-boxes of topics (Interviewee C). For example, if someone giving testimony spoke about experiences with the RCMP, the statement-taker would mark the RCMP box on the cover sheet. Statement packages were then uploaded to a searchable online database. Interviewee C said that then if a report writer was working on a section

about the RCMP, the writer could search for all statements coded as RCMP and draw quotes and information from there.

Interviewee C noted that this sheet could have been more attentive to gender. After speaking with her, I requested a copy of this cover sheet from the NCTR, and it is attached as Appendix 2. The sheet is divided into three sections, Pre IRS, During IRS, and Post IRS, with boxes of checklists under each section. Interviewee C explained that the checklists did not guide the conversation. However, I would argue that if there had been categories on the sheet that for example specifically pertained to gendered experiences (e.g., “being a girl at residential school” and “being a boy at residential school”), then perhaps it would have led statement-takers to interpret and code testimony in a way that lent itself to gender analysis – particularly if this was accompanied by robust training in gender protocols. However, such analysis could still be undertaken in some form. As my interviewee noted, there is no one who has listened to all 7000+ testimonies. There is undoubtedly further work to be done in understanding the archive of the TRC not only as it relates to gender but to a whole host of other topics as well.

Further examples of structure mediating testimony have been noted by other scholars. For example, Woolford (2011) reports that, at least at the first national event, survivors were asked to limit their statements to five minutes within the public healing circles (p. 26). Beyond these overt limitations, Gaertner (2016) finds that the TRC discursively steered testimony through its emphasis on forgiveness, a Judeo-Christian model of reconciliation, and regulations like the prohibition of naming perpetrators (p. 150). However, a former TRC employee characterized the tone as “survivor led,” contrasting the Commission to the TRC-SA: “No one was pressured [in the Canadian

TRC], I don't think, to forgive" (Interview A). However, the mediation of testimony is not always explicit or verbal. Writing on photography and the TRC, Angel and Wakeham (2016) referenced large reproductions of photographs taken at residential schools that were displayed prominently at national events. They argued that repetition of familiar images "artificially limits the geographical and historical diversity of the schools" creating a "semiotics of pastness" throughout the TRC (p. 98). These familiar repeated images achieve "iconic" (p. 98) status, and in a way come to represent the story of the TRC.

This pattern of drawing on familiar narratives can also be seen with testimony. Angel and Wakeham (2016) referred to "well-known survivors" participating in invitation-only, high profile panels about various themes of reconciliation—thus promoting certain types of narratives over others (p. 111). An interviewee also spoke to a phenomenon where the same individuals are called to testify, to tell their story, or to participate in consultations over and over:

It boils down to a specific narrative because it's like they're going to get a phone call. Who is going to be able to come, who is going to be willing to be so vulnerable publicly, it just... narrows and narrows and narrows. (Interview G)

The ease of calling on well-known survivors can interact with a desire to render history comprehensible with a neatly packaged narrative.⁶⁹ This over-reliance on a handful of voices can create a path dependency as regards gender, too. If the same people are invoked over and over, there is potential that an implicit standard is produced by which survivors might judge the validity of their experiences. If one of the prevailing narratives

⁶⁹ See Simon, 2013.

does not reflect one's experience, this may influence one's decision on whether or not to take part and share. If a concerted effort is not made to first notice whose voices are missing and then to make every effort to solicit a diversity of voices, part of the story will always be missing, most often leaving out those who have historically been silenced, including women.

Finally, the national events were structured to include built-in components for dealing with what were of course often traumatic recountings, ranging from the practical (trauma counsellors on site) to the symbolic. One such symbolic measure was the use of a paper bag to collect tissue-stained tears at each event (D. Robinson, 2016). The paper was burned in the sacred fire at the end of each national event and its ashes were sent to the next event. D. Robinson (2016) speaks to the ways in which these types of practices set unspoken guidelines for the acceptability of various ways of engaging with the past:

The lack of parallel symbolic forms for dealing with other emotions, including anger and shame, demonstrates a hierarchy for acceptable and 'productive' ways to process grief. Moreover, unlike sadness, anger and shame have no material 'product' such as tears that might be 'gathered' and then transformed. (p. 53)

It seems clear that the numerous ways that people could provide testimony to the TRC were thus subtly guided and interpreted. However, giving testimony was not the only component of the national events, and I next turn to the other programming.

4.3.1 Event programming

Locating the official programs for each of the TRC's national events was surprisingly difficult. It required deep and creative web searches and use of cached websites because there was no centralized location in which to find them on either the

TRC or NCTR websites. Nevertheless, I eventually found and collected the programs for seven of the eight national events,⁷⁰ and then read each of those programs looking for any planned sessions that were to specifically focus on gendered experiences. Each national event's programming was slightly different.

Four out of the seven national event programs that I was able to access listed no programming that specifically referenced a focus on gendered experiences. Only the British Columbia, Alberta, and the closing ceremonies in Ottawa listed programming that suggested a focus on women, although only so much can be gleaned from the titles. The Vancouver program lists a session held on September 21, 2013 called "Honouring Women's Wisdom: Pathways of Truth, Resilience, and Reconciliation." I have not been able to find any information about what this session entailed, beyond a brief mention in the Reconciliation volume of the TRC final report (Truth and Reconciliation Commission of Canada, 2015j) in reference to remarks made by one of the session's panelists regarding the importance of reclaiming traditional women's healing ceremonies (p. 161). The Edmonton event program lists a session on March 30, 2014 called "A Musta-be: Maskihkiy Maskwa Iskwew: A play about incarcerated Indigenous women and their daughters." The session was a "partial reading" of a play by University of Alberta playwright Jane Heather, and Old Earth Productions, an Indigenous drama collective. Also in Edmonton, the program lists a session also to be held on March 30, 2014 called "Pearls of Wisdom: Recovering Indigenous Women's Honour" by KAIROS - an ecumenical program led by the United Church of Canada. The Ottawa closing event program in May 2015 included a listing for 'Walking with our Sisters Memorial for

⁷⁰ I was not able to locate the official program for the first national event in Winnipeg.

Survivors of Residential School exhibit,' a multi-year travelling exhibit created by artist Christi Belcourt that featured children's and babies' vamps (moccasin tops) in memory of the children who never returned from residential school. Unfortunately, as far as I have been able to ascertain, very little information exists about these sessions, in media coverage or in publicly available documents from the TRC archives.

This limited data suggests that gender programming was not included in national events systematically, a conclusion confirmed by a former TRC employee (Interviewee C). This meant that although some events, as described above, had gender programming, there was no centralized approach that ensured gender-specific programming was incorporated in all events, and instead rather driven by local planning. As previously noted, NWAC emphasized in their report on CRGBMR (NWAC, 2010) that having a gender strategy from the outset is most likely to lead to a gender-just process and outcomes. They cite Dal Secco's (2007) work on gender and truth commissions: "Where a gender perspective was established from the onset in the mandate, the process and outcomes especially related to sexual violence were more effective [and] favoured more sensitive reparation and reform proposals" (Dal Secco in NWAC, 2010, p. 16).

The data on the TRC events is limited, and only so much can be gleaned from official programs. Impromptu programming surely arose, and side events related to but not run by the TRC happened. Nevertheless, a thinking-through of how testimony was mediated from the outset of the TRC - through the commission's mandate, guidelines, settings, programming, and transcription - has revealed a lack of centralized planning for gender at the TRC. Of course, as previously discussed, public engagement with the TRC was relatively low. Attending the TRC's events themselves was not necessarily how

people were learning about the commission's work. Still, the national events largely generated the media coverage of the TRC, as well as informing what is usually the most significant legacy of a truth commission – the final report, which is the focus of chapter five.

Another important dimension of the way the events of the TRC diffused into the public imagination was via media. Although not led or facilitated by the TRC itself, media coverage is often the way that the general public understands a process many will not attend. As such, looking at gendered media coverage of the TRC is an important part of understanding the gender regime of the TRC presented to the public. As Anderson and Robinson (in Nagy & Gillespie, 2015) argue, media coverage often acts as a “national curriculum” (p. 8) on any given topic. While several studies have conducted framing analyses of media coverage leading up to the IRSSA (Henderson, 2015) and over the beginning of the TRC (Nagy & Gillespie, 2015), as well as content analysis of media coverage of the course of the TRC (M. James, 2018), none of these studies focused specifically on representations of gender – this is an area for future research.

4.5 Conclusions

In this chapter, I have presented my analysis of gender over the course of the TRC's genesis, planning stages, and national events, and have found that gender was not institutionalized as a foundational consideration from the commission's outset. This contributed to gender representation in the TRC's leadership that was uneven, favouring Indigenous men, national events with very little gender specific programming, and a

number of missed opportunities to mainstream gender throughout other parts of the commission such as the call for research proposals that Interviewee C cited⁷¹.

Furthermore, I also hold that thinking through the mechanisms and environment of a truth commission, including procedures and norms for providing testimony, can contribute to the gender regime of the institution. As discussed in chapter three, and as others such as Krog, Mpolweni-Zantsi and Ratele (2009) have argued, testimony that is easily comprehensible, that fits neatly into established narratives, or that is of a familiar nature, is more likely to be privileged. The statement takers tick-box cover sheet (Provided in Appendix 2), while designed for practical considerations (namely, rendering the mammoth task of writing the final report more efficient), likely contributed to this issue. The implications of this are numerous, however, for my concerns in this dissertation, the fact that the testimony cover sheet did not provide a category for discussion of gendered experiences is a key finding in my analysis of the TRC's treatment of gender and my argument that the TRC was inattentive to gender.

In the next chapter, I proceed to analysis of the TRC's major output – the multi-volume final report. This chapter has largely focused on the demographic, or descriptive element of Lore's (2016) descriptive/substantive conceptualization of representation. In chapter five I consider both descriptive and substantive representation in the TRC final report, presenting original data on gender-based representation as well as an analysis of

⁷¹ U.N. Women (n.d.) defines gender mainstreaming as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality” (para. 3).

both explicitly gendered material in the report and more implicit patterns of gendered representation through critical discourse analysis.

5: The TRC – Outputs and Implications

5.1 Introduction

Having analyzed the historical context and the setup of the TRC in chapter three, and the commission's proceedings in chapter four, in this chapter I turn to the TRC's outputs, the most significant of which is the multi-volume final report. In the last chapter, I found that specific measures to further a gender-just process, such as employing the principles of NWAC's (2010a) CRGBMR were not applied as part of the commission's set-up, and furthermore that gender representation was uneven. Given that the TRC was a process that had the potential to influence the discourse of reconciliation in Canada, I analytically treat the institution as one with the potential to catalyze change - if not directly, then certainly indirectly - through influencing a national narrative about Indigenous peoples and reconciliation in the post-TRC era. Similar to its setup and proceedings, the TRC largely sidelined gender in its outputs. In this chapter, I present content, framing, and critical discourse analyses of the final report, and corroborating interview data. First, I give an overview of the final report and present my data on representation of Indigenous women by final report volume. I then move on to presenting my framing analysis, in which I analyzed sections of each volume dedicated to gender issues. Finally, I detail my critical discourse analysis of the TRC report titled "What we have learned: Principles of truth and reconciliation (Truth and Reconciliation Commission of Canada, 2015k). This particular report is a holistic volume in that it aims to put forward the commission's vision of truth and reconciliation, which is why I singled it out for more in-depth analysis.

My analysis speaks to the importance of data by referencing statistics either presented in the final report or absent from the final report, or data that is presented but not contextualized or analyzed. Research and data have historically been weaponized against Indigenous peoples, and thus there is a complicated history when it comes to the state collecting data about Indigenous peoples. But a lack of disaggregated⁷² demographic data – such as only collecting statistical information about men and women rather than disaggregating these categories into other identity categories - can mask inequalities and discrimination. A recent report from British Columbia’s Office of the Human Rights Commissioner (2020) speaks to this particular tension. The report offers a reframing of the process and purpose for collecting data to emphasize the importance of collecting data in relationship with the communities in question and keeping a focus on relationship and on the purpose of reducing inequity throughout the process. I reference the above-named report simply to acknowledge that talking about residential schools in terms of data is inherently problematic and can seem profoundly objectionable when what is being analyzed is the lives and the experiences of children. I recognize the inherent tension in this exercise and have attempted to address it as sensitively as possible.

5.2 The documents - overview

In this section, I address the final report volumes of the TRC, providing a gender breakdown of direct quotations from survivor testimony by final report volume. My

⁷² British Columbia’s Office of the Human Rights Commissioner (2020) defines disaggregated data as “data that provides sub-categories of information, for example by ethnic group, gender, occupation or educational status” (p. 8). They expand: “This information is then usually anonymized or de-identified — stripped of personal information like name or date of birth — and used in statistical analysis. Unlike aggregated data, which groups information together, disaggregated data can reveal inequalities and relationships between categories” (British Columbia’s Office of the Human Rights Commissioner, 2020, p. 8).

analysis of the mandate, structure, and national events presented in chapter four indicates how the TRC was planned for and executed, and the final report reveals what was learned at the commission and the version of what was learned that was presented to the public. The TRC mandate's terms of reference specified under Section 1f of Schedule N states that one of the goals of the commission shall be to:

Produce and submit to the Parties of the Agreement a report including recommendations to the Government of Canada concerning the IRS system and experience including: the history, purpose, operation and supervision of the IRS system, the effect and consequences of IRS (including systemic harms, intergenerational consequences and the impact on human dignity) and the ongoing legacy of the residential schools. (IRSSA Schedule N, 2006, p. 2)

As I noted, there is no specific attention to gender in the TRC mandate.

The first of the TRC's outputs came in 2012, when the commission released an interim report detailing progress to date, coupled with a volume titled "They Came for the Children," which covered the "history, purpose, operation, and supervision of the residential school system, the effect and consequences of the system, and its ongoing legacy" (Truth and Reconciliation Commission of Canada, 2012, p. iii). I have not included the interim reports in my analysis.⁷³ Subsequently, the TRC released four standalone reports in 2015 along with the six-volume final report, as detailed in Table 6, below.

Table 6: Final documents published by the TRC

The Calls to Action (Truth and Reconciliation Commission of Canada, 2015a)
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⁷³ For reflections on gender and the TRC's interim reports, see Grey and James, 2016.

Honouring the truth, reconciling for the future (Summary of the final report). (Truth and Reconciliation Commission of Canada, 2015b)
The survivors speak: A report of the Truth and Reconciliation Commission of Canada. (Truth and Reconciliation Commission of Canada, 2015c)
Vol. 1: Canada's residential schools: The history, part 1, origins to 1939 (Truth and Reconciliation Commission of Canada, 2015d)
Vol. 1: Canada's residential schools: The history part 2, 1939 to 2000. (Truth and Reconciliation Commission of Canada, 2015e)
Vol. 2: Canada's residential schools: The Inuit and Northern Experience. (Truth and Reconciliation Commission of Canada, 2015f)
Vol 3: Canada's residential schools: The Métis Experience. (Truth and Reconciliation Commission of Canada, 2015g)
Vol 4: Canada's residential schools: Missing children and unmarked burials. (Truth and Reconciliation Commission of Canada, 2015h)
Vol 5: Canada's residential schools: The Legacy. (Truth and Reconciliation Commission of Canada, 2015i)
Vol 6: Canada's residential schools: Reconciliation. (Truth and Reconciliation Commission of Canada, 2015j)
What we have learned: Principles of truth and reconciliation. (Truth and Reconciliation Commission of Canada, 2015k)

Starting with descriptive representation, I investigated the gender balance of survivors directly quoted in all volumes of the final report. Over the entirety of the final report volumes, by my original count, female survivors are directly quoted 707 times, and male survivors are directly quoted 608 times. Ten directly quoted survivors were not identified by gender⁷⁴. Most survivors are quoted more than once across and within volumes, so my final numbers do not refer to numbers of individuals but rather the number of total direct quotations from testimony. This data demonstrates that relatively equitable representation of Indigenous women was achieved in the final report: over half of the direct quotations are from women.

⁷⁴ Across all volumes, some survivors are quoted by name. Others are described as 'a woman,' 'a man,' or 'a survivor'. In many cases, a name is coupled with a gender pronoun which I used to categorize by gender. In other cases, gender was clear based on the name (although as mentioned, this is a crude and not always accurate measurement and does not account for gender diversity). In cases where gender was not clear based on name, a Google search for the individual in question almost always led me to accurate categorization.

This data was gleaned from a manual count and categorization of each direct quotation in three of the standalone volumes (the Calls to Action document does not cite any survivor testimony) and all volumes of the final report. Most survivors were identified by name, but some quotations are anonymized. Categorizing by gender is a crude measurement. For one, it does not account for gender diversity. In a sense, the gender of each individual quoted is unknown. Furthermore, as Kuokkanen (2019) argues, “adding women does not itself transform or restructure the masculinist political institutions or discourses” (p. 139). Kuokkanen’s (2019) argument is one for transformation over inclusion, or indeed, substantive representation over descriptive representation (Lore, 2016). Yet, despite this limitation, tabulating direct quotations by gender reveals an estimate of the level of descriptive representation achieved in the final report. While descriptive representation is certainly not enough for a truth commission to be considered gender responsive as per NWAC’s (2010a) criteria, it is difficult to achieve substantive representation without first achieving descriptive representation. Table 7 below presents the gender breakdown of survivors directly quoted by volume.

Table 7: Gender breakdown of survivor direct quotations by volume

Volume	Women	Men	Not specified
Honouring the truth, reconciling for the future (Summary of the final report)	108	110	2
The survivors speak	383	309	6
Vol. 1: Canada's residential schools: The history, part 1, origins to 1939	3	0	0
Vol. 1: Canada's residential schools: The history part 2, 1939 to 2000	4	8	0
Vol. 2: Canada's residential schools: The Inuit and Northern Experience	54	37	2
Vol 3: Canada's residential schools: The Métis Experience	0	4	0

Vol 4: Canada's residential schools: Missing children and unmarked burials	5	6	0
Vol 5: Canada's residential schools: The Legacy	86	43	0
Vol 6: Canada's residential schools: Reconciliation	2	2	0
What we have learned: Principles of truth and reconciliation	82	87	0
Total	707	608	10

While the TRC final report achieved equitable descriptive representation, this was not, however, the result of an official policy of the TRC. When asked if TRC staff were required to achieve gender parity in final report quotations, a former senior staff member said that there was not an explicit directive; however, in the process of writing final report volumes, “gender balance, regional balance, [and] First Nations, Inuit, Métis balance” (Interview A) were all diversity factors to consider in choosing testimony to use in the reports. She said that similar to national event gender programming, descriptive representation in the final report was not an explicit plan put in place by the TRC but was at the behest of the authors of the individual volumes.

The “Survivors speak” volume, as indicated in the title, contained the most direct testimony, and indeed is described as a “volume of excerpts” (Truth and Reconciliation Commission of Canada, 2015c, p. XII) from testimony given to the TRC. The gender breakdown in “Survivors Speak” is broadly consistent with the overall numbers: There are more instances of women being quoted than men. There are only two volumes in which more men are cited than women - “Honouring the truth, reconciling for the future” (Truth and Reconciliation Commission of Canada, 2015b), and “What we have learned” (Truth and Reconciliation Commission of Canada, 2015k) - and both of these just barely, as can be seen in the Table 7.

To summarize, this data, coupled with the data presented in the previous chapter on gender and TRC leadership, reveals a mixed record on descriptive representation of Indigenous women at the TRC. Pitkin (1967) explains that with descriptive representation, the “representative does not act for others; [s]he ‘stands for’ them, by virtue of a correspondence or connection between them, a resemblance or reflection” (p. 61). Specifically, in terms of survivor testimony in the final reports, equitable descriptive gender representation was reached. However, in other areas, such as the TRC’s leadership, honorary witnesses, events, and media coverage, representation tended towards a male default. Of course, descriptive and substantive representations are not mutually exclusive. In the next section, I address substantive representation at the TRC through a framing analysis of the final report.

5.3 Framing Analysis

After looking at the statistical breakdown of direct quotations in the final report, I conducted a qualitative analysis of gender in the final reports, asking if survivors’ experiences were framed in a gendered way. What I discovered across all volumes of the final report tells a similar story to that of Grey and James’s (2016) analysis of the TRC’s interim report (Truth and Reconciliation Commission of Canada, 2012a). Grey and James (2016) found that:

Like the mandate, the TRC-C’s (2012a) 40-page interim report... made no mention of gender. An accompanying 124-page report, *They Came for the Children*, referenced women only in discussing staff at the schools, gender not at all, and girls appeared only as a gendered pronoun (i.e., as a narrative identifier for individual Indigenous children or groups of children whose gender was not

directly relevant to the stories being told and describing an institutional atmosphere that was merely factually sex-segregated). It failed to include the experiences of Indigenous women and girls as women and girls, either at residential schools or as intergenerational survivors, bar two brief mentions of institutional gender segregation as a simple fact. (p. 312)

Similar to Grey and James's (2016) findings that the inclusion of the "experiences of Indigenous women and girls *as women and girls*" (p. 315, italics mine) in the interim publications was extremely limited, my analysis of the final report and associated volumes reveals a similarly gender-neutral approach. In terms of sections devoted specifically to gender analysis, there are three across all volumes of the report. "Gender relations," in the "Survivors speak" volume (Truth and Reconciliation Commission of Canada, 2015c), is four pages long (pp. 95–98). The section draws on two stories that illustrate how girls were shamed for being interested in boys and boys were punished for being interested in girls. Lena McKay remembers a nun calling her "boy crazy" and being angry at her for not having her shirt buttoned all the way up to the neck (p. 95), while Andy Norwegian remembers boys being subject to a leather strap "across the buttocks" (p. 95) for talking to girls. The section also briefly references two aspects of life at residential schools unique to girls—getting a first period and getting pregnant. Pregnancy in particular—how it was handled at school and what the ongoing implications and legacy of pregnancy in residential school—seems a topic unique to women that could have warranted much further exploration, especially given the hyper-focus on surveilling Indigenous motherhood that is a feature of gendered state-Indigenous relations, as I will discuss in the following chapter.

In the volume “The legacy” (Truth and Reconciliation Commission of Canada, 2015j), there is a half-page section called “Gender Roles” (p. 147). The extent of the analysis in this section is to first note that “Aboriginal girls were trained to perform domestic work. These enforced gender roles undermined the role of women in many Aboriginal communities and broke extended family relationships that had been central to the organization of many Aboriginal communities” (p. 147). Subsequently, the section briefly touches on the discourses of masculinity that residential schools impressed upon men:

Charles Cardinal told the Commission how he and his brother became exceptionally close in residential school when they realized that ‘nobody else is gonna help us, so we’ll have to stick together’. He recalled how in 1992 his brother killed himself after saying ‘he wanted to escape’. Cardinal stated that he had been told, you’re not a man, men don’t cry. ‘I’m crying for him right now. But I’ll see him, I’ll see him. And I’ll be the one who’s crying now. I sure do miss him.’ (Truth and Reconciliation Commission of Canada, 2015i, p. 148)

This brief section in particular offers a glimpse of what a more comprehensive gender analysis in the final report could have looked like. The section states that both boys and girls received messages about gender roles but only offers two examples of this history. These examples could have been unpacked in ways that would have revealed a more comprehensive understanding of the longer-term impacts of residential schools. There is also no exploration of the intergenerational impacts of these messages. The specificities of the intersection of colonialism and patriarchy in Canada have yet to be fully understood, and without recognizing the full extent of the injustices wrought at this

intersection, possibilities for disrupting existing patterns and furthering transformative reconciliation are limited.

The Reconciliation volume (Truth and Reconciliation Commission of Canada, 2015j) contains what I would argue is the strongest gender analysis across the volumes, a two-page section titled ‘Gender, power, and Indigenous law’ (pp. 52-54) in a chapter about Indigenous law. The section places the issue of violence against Indigenous women and girls in conversation with instruments of Canadian, international, and Indigenous law, and within the historical trajectory of Indigenous women’s advocacy and activism. In the Reconciliation volume, the TRC (2015j) argues that:

Working with Indigenous law must involve discussion about how gender, power relations, and ideas about Indigenous women’s traditional role in society can inform the interpretation and application of Indigenous law in ways that combat colonialism, sexism, and oppression in Aboriginal communities. (p. 54)

This is certainly a strong statement, but one made without accompanying reasons why the TRC did not take on this task, and without recommendations about who should do so and in what forum.

There are also smaller pockets of information on gendered experiences not included in the above-mentioned gender sections. From these disparate passages, I identified several ways in which gender was framed, pulling each passage that spoke to gender in some way as a piece of data and coding these pieces into categories, as listed in Table 8, below.

Table 8: Content specific to gender in the final report

Content specific to gender by category
Gendered experiences in residential schools

The gendered legacy of residential schools
Gender diversity and sexuality

Of these three categories, the gendered legacy of residential schools has the most content. While this aspect of the gendered Indigenous experience is of course extremely important to understand, a lack of accompanying exploration of history and context can render present day issues ahistoric and decontextualized.

5.3.1 Gendered experiences in residential schools

Outside of the sections discussed above, there are three explicit references across all volumes to gendered experiences in residential schools. One instance quotes a survivor speaking to traditional gender roles such as cleaning jobs being reserved for the girls (Truth and Reconciliation Commission of Canada, 2015b, p. 95). Two other passages refer to the fact that students were segregated by gender, with one comment noting that students found ways around gender segregation (Truth and Reconciliation Commission of Canada, 2015d, p. 644), and another saying that gender segregation meant that siblings were separated and family ties broken (Truth and Reconciliation Commission of Canada, 2015f, p. 110). These brief references to gendered experiences in schools are not tied in any way to the other gender frames, which is a fundamental missing piece in understanding the gendered legacy of residential schools. While this category of content is not substantial enough to be consolidated into what could be called a frame, coupled with the earlier ‘Gender relations’ section the main message pertains to gender relations (both familial and romantic) rather than gendered experiences.

5.3.2 The gendered legacy of residential schools

Another category of content related to gender is the differential gendered

outcomes of residential schools. The “Missing children and unmarked burials” volume speaks to mortality by gender. The report presents a table detailing registered deaths at residential schools, 1867–2000 (Truth and Reconciliation Commission of Canada, 2015h, p. 15). The numbers themselves are stark: 3,201 registered deaths. Of those 3,201 registered deaths, 1,161 children are unnamed (Truth and Reconciliation Commission of Canada, 2015h, p. 15). The fact that almost half of the children who died in residential school were not even named is breathtakingly cruel and epitomizes the value that the residential school system placed on Indigenous personhood. Moreover, these are only the deaths that were officially registered.⁷⁵ The table of registered deaths by gender does not reveal any significant gender differences in this practice. Of 1,090 boys who died in residential schools, 139 are unnamed. Of 1,229 girls who died in residential schools, 143 are unnamed. A further 747 deaths had no gender reported. These numbers represent a slightly higher number of deaths of girls in residential schools but a slightly lower percentage of unnamed girls.⁷⁶

Present day gender inequities are covered in various ways across several final report volumes. There are further statistics: In a discussion of Indigenous poverty, the Summary volume (Truth and Reconciliation Commission of Canada, 2015b) notes that Canada-wide, there are significant gaps in the poverty levels of Indigenous and non-Indigenous peoples. This section provides a limited gender breakdown: For men aged 65 or older, there is a 7.8% difference between Indigenous and non-Indigenous peoples’

⁷⁵ An ongoing development that began in Spring of 2021 is the deeply horrifying discovery of unmarked burials at an ever-increasing number of residential schools across Canada, using ground penetrating radar and other means. See Sawyer, 2021.

⁷⁶ The percentage of registered deaths of boys who are unnamed is 12.8, and the percentage of registered deaths of girls who are unnamed is 11.6.

poverty levels. For women aged 65 or older there is a 22.5% difference (Truth and Reconciliation Commission of Canada, 2015i, p. 147). This is a substantial difference between Indigenous men and women in comparison to non-Indigenous Canadians, but the difference is not analyzed, contextualized, or incorporated into a bigger picture gender analysis. There are other important comparative statistics outlined in this section that are unfortunately not broken down by gender: High school completion rates, unemployment rates, and income levels (p. 146–147).

This may be a matter of a lack of this data existing. As the Legacy volume (Truth and Reconciliation Commission of Canada, 2015i) notes, there are a number of data gaps as regards Indigenous peoples:

The homicide victimization rate of Aboriginal people between 1997 and 2000 was seven times that of non-Aboriginal Canadians. However, that data is no longer being gathered. Statistics Canada’s most recent data on homicide and family violence fails to report how many victims were Aboriginal, despite reporting many other characteristics of victims including their ages, gender, and occupations, and whether the victims consumed intoxicants. (p. 257)

After I investigated further, it seems that while at the time the Legacy report was written, Statistics Canada was no longer reporting that data, they did start reporting it again in 2014.⁷⁷ The most recent report⁷⁸ from Statistics Canada, “Homicide in Canada, 2018” found that “the rate of homicide in 2018 for Indigenous people was approximately five times higher than the rate for non-Indigenous people” (Roy & Marcellus, 2019, p. 3).

⁷⁷ The 2012 and 2013 Statistics Canada Homicide Indices did not report Indigenous identity, while the 2014–2018 Indices did.

⁷⁸ As of April, 2021 the most recent Homicide in Canada report is from 2018.

Furthermore, taking gender and Indigeneity into account, from 2014-2018 the rate of homicide victims from most to least orders Indigenous men, Indigenous women, non-Indigenous men, non-Indigenous women. In 2018, Statistics Canada reported that 5% of Canada's population was Indigenous (Roy & Marcellus, 2019, p. 13). This incredibly disturbing information speaks again to the ongoing importance of disaggregated data.

The History Part 2 volume (Truth and Reconciliation Commission of Canada, 2015e) details the gender breakdown of the IAP. Table 41.6 of the History Part 2 volume, "Distribution of Independent Assessment Process claims by gender, as of September 14, 2014," shows that 15,150 women and 16,063 men applied for compensation through the IAP and that 7,326 women and 7,674 men received compensation (p. 407). This means that 7,824 women and 8,389 men had IAP claims that were denied. Again, the numbers are largely proportionate in terms of claims being granted to each gender group.

However, more detailed data shows a greater gender discrepancy. Schedule D of the IRSSA (2006) shows compensable levels of harm for IAP claims, with types of abuse, categorized, and levels of compensable harm rated by "dysfunction" and "impact," with associated variations in compensation amount (in Truth and Reconciliation Commission of Canada, 2015e, pp. 402–404). Table 41.7 (p. 407) of the 'History Part 2' volume (Truth and Reconciliation Commission of Canada, 2015e) lists successful IAP claims by gender and by category of abuse and thus compensation. Here, I saw a stronger gender discrepancy. The History Part 2 volume's Table 41.7 (Truth and Reconciliation Commission of Canada, 2015e, p. 402) is reproduced below as Figure 2, below:

Table 41.7. Compensated claims by gender and the most serious proven act of abuse.

	Female	Male	Total
SL5	649	1,393	2,042
SL4	1,820	2,401	4,221
SL3	2,379	1,465	3,844
PL	646	828	1,474
SL2	627	960	1,587
SL1	1,193	606	1,799
OWA	12	21	33
Total	7,326	7,674	15,000

Source: Secretariat database (SADRE), 14 September 2014, "Data for the TRC – October 7, 2014," electronic document received from the Indian Residential Schools Adjudication Secretariat attached to email from Shelley Trevethan to Kim Murray, 10 October 2014.

Figure 2: Compensated claims by gender and the most serious proven acts of abuse

Figure 2 shows that over twice as many men as women were compensated under category SL5, the most serious level of harm, “repeated persistent incidents of anal or vaginal intercourse⁷⁹ or repeated persistent incidents of anal/vaginal penetration with an object” (Truth and Reconciliation Commission of Canada, 2015e, p. 402). Without knowing anything about the categories under which survivors applied for compensation or obviously the details of abuses that occurred, it is difficult to extrapolate too much from this data. That is to say, it is not stated which categories each survivor applied for compensation under by gender. However, we do know based on this data that male survivors received more net compensation dollars than female survivors in the two most serious categories of abuse.⁸⁰

⁷⁹ It is troubling that this category refers to “intercourse” rather than “rape.” Language matters. For more on the implications of the language used to talk about sexual assault, see Wilkinson, 2008.

⁸⁰ Category SL5 indicates the most serious level of abuse, for which 45-60 points were allocated. As displayed in Figure 1, 649 females and 1,393 males were compensated at SL5 (repeated, persistent incidents of anal or vaginal intercourse, and/or repeated, persistent incidents of anal or vaginal penetration with an object). Category SL4 (One or more incidents of vaginal or anal intercourse, and/or repeated, persistent incidents of oral intercourse, and/or one or more incidents of vaginal/anal penetration with an object) is the next level, for which 36-44 points were allocated. 1,820 females and 2,401 males were compensated under SL4. (Truth and Reconciliation Commission of Canada, 2015e, p. 407). Compensation points translate into compensation dollars at these levels in the following categories: 31-40 compensation points = \$36,000 – \$50,000; 41-50 compensation points = \$51,000 - \$65,000; and 51-60 compensation points = \$66,000 - \$85,000 (ISSA Schedule D, 2006, pp. 3-6).

The Reconciliation volume (Truth and Reconciliation Commission of Canada, 2015j) speaks in general terms to both the ongoing marginalization of Indigenous women through racism and violence, but also to their resilience and the leadership role Indigenous women have had in maintaining and passing on culture, and the revitalization of Indigenous leadership systems and community strength (p. 160–161). For example, Chapter five, “Public memory: Dialogue, the arts and commemoration” contains the statement, “The Commission believes that correcting the historical record concerning Aboriginal women is essential to reconciliation” (p. 161) and notes that the TRC “heard from thousands of Aboriginal women from all walks of life across the country” (p. 160). While my data collection shows that women were directly quoted more times than men in the final report, it is in understanding these testimonies *as gendered* that the Commission could have done more. This section states that the TRC heard from women survivors about “damaged relationships with female relatives, high levels of domestic and societal violence, and the gendered racism they have experienced throughout their lives” (Truth and Reconciliation Commission of Canada, 2015j, p. 160). However, this type of testimony from women survivors is significantly underrepresented in the final report, which again underscores the potential for a more fulsome analysis and understanding of Indigenous women’s experiences that could come from revisiting testimony.

Other references to the gendered impacts of residential schools in the final report are largely presented without accompanying data or analysis. For example, in its discussion of sports, the Summary volume (Truth and Reconciliation Commission of Canada, 2015b) read:

Aboriginal youth today face many barriers to leading active, healthy lives in their

communities. They lack opportunities to pursue excellence in sports. There is little access to culturally relevant traditional sports activities that strengthen Aboriginal identity and instil a sense of pride and self-confidence. Lack of resources, sports facilities, and equipment limits their ability to play sports. Racism remains an issue. Aboriginal girls face the extra barrier of gender discrimination. (p. 298)

The reader is left with unanswered questions from this statement about the nature of this intersection of racism and gender discrimination in sport. Specifically, what particular barriers do Indigenous girls face in sports, and what is the reason for this? Of course, the authors of the final report did not have the space to go into great depth on every issue. However, this passage is representative of the missed opportunities throughout the final report to explain the gendered impact of residential schools. The lack of a fully developed analysis of the differential impact of residential schools on women and girls has specific consequences in policy and in the daily lives of Indigenous women and girls. The absence of this understanding directly impacts the potential for healing for Indigenous women and girls and the potential for transformative reconciliation.

5.3.4 Gender diversity and sexuality

In terms of analysis and exploration of the experiences of gender diverse survivors and sexual orientation in residential school, the final report offers very little. The sole exploration of the two-spirited experience comes in “The Legacy” volume (Truth and Reconciliation Commission of Canada, 2015i), in the form of a 136-word section titled “Two-spirited people.” The section briefly defines the term ‘two-spirited’ as people who are gay or transgendered as having two spirits, and quotes a two-spirited

survivor regarding the “particular vulnerability” (p. 148) of two-spirited people in residential schools. Scudeler (2016) nuances the TRC’s definition somewhat by explaining that “Two-Spirit identity is fluid and not tied to western conceptions of male/female or gay/straight, but can be an affirmation of the integral role Two-Spirit (or tribally-specific named) people have in their communities” (p. 14). The experiences and position of two-spirit survivors could certainly have been explored in a deeper intersectional analysis than 136 words can afford.

In fact, the Summary volume (Truth and Reconciliation Commission of Canada, 2015b) makes reference to the TRC partnering with Egale Canada, a national 2SLGBTQQIA organization, to hold a “forum with members of the Two-Spirit community to discuss the impacts of residential schools and what needs to be done to support reconciliation and healing in that community” and to further inform the TRC final report (Truth and Reconciliation Commission of Canada, 2015b, p. 33). I was able to find a news release online that announced this forum – a two-day event to be held in Toronto in 2014 that would “bring together fifteen direct and intergenerational survivors, from all corners of the country, for a forum to discuss how the schools impact the current social landscape for Two Spirit people” (Truth and Reconciliation Commission of Canada and Egale Canada Human Rights Trust, 2014, para. 1). However, the proceedings or outcome of this forum are not referenced anywhere else in the final report, nor is any video or record of the forum available in the NCTR online archive. I also searched extensively online and in newspaper databases and could not find any further information about this forum. This omission seems to represent a significant missed opportunity for the TRC to educate the public about Indigenous gender diversity and to address the

experiences of two-spirit Indigenous people in Canada now.

Discussion of diversity in gender and sexuality at the TRC was not only extremely limited in the final report but also throughout the entire process of the TRC and the other IRSSA programs. R. James (2020), who worked for several branches of IRSSA programs, describes a “marginalisation of queer indigenous views critiquing the heteronormative colonial-settler structures permeating the settlement agreement” (p. 346). He argues that this lack of attention to gender diversity and sexualities throughout the TRC perpetuates “internalize(d) colonial-settler heteronormativity” (p. 353). By not specifically attending to survivors’ differing experiences and identities as regards gender and sexuality, the workings of the TRC contributed not only to the continuity of heteronormativity but also to the broader pattern within the field of transitional justice of inattention to the same (see Fobear & Baines, 2020). This inattention in the context of the TRC also means that the archive of residential schools is less multidimensional than it could be.

R. James (2020), reflecting on his work with the IAP as a Resolution Health Support Worker employed by the Tsow Tun Le Lum Society,⁸¹ writes that in an IAP hearing, despite multiple people being present in the room, only the survivor and adjudicator are permitted to speak. This was a similar set-up to the TRC public hearings, in which survivors were allocated an amount of time during which they could speak uninterrupted. While this rule at the IAP hearings was implemented in order to avoid an atmosphere of “adversarial questioning and cross examination” (R. James, 2020, p. 345),

⁸¹ The Tsow Tun Le Lum Society is a substance abuse and trauma treatment centre on Vancouver Island. The role of the Resolution Health Support Worker was to “provide emotional support to eligible former Indian Residential school students and their families” (*RHSW*, n.d., para. 5) through the IRSSA programs.

which is well-intentioned, it also achieved a lack of relationality, which could have led to a more fulsome understanding of the lives of survivors. R. James (2020) was not permitted to discuss his perspective or pose questions to those he was supporting from his lived experience as a queer Indigenous intergenerational survivor, which could have opened the door to further conversation on these topics. Relationality is a key element of understanding multidimensional experiences and furthering transformative reconciliation.

5.4 Critical discourse analysis

Having provided a summary of gender analysis in the TRC final report, I now turn to a critical discourse analysis (Fairclough, 1995) of the TRC's 'What we have learned: Principles of truth and reconciliation' publication (Truth and Reconciliation Commission of Canada, 2015j). The volume opens with ten principles of truth and reconciliation created by the TRC (pp. 3-4), and proceeds with three sections to support these principles: The history, The legacy, and Reconciliation. I selected this publication in particular for a more in-depth critical discourse analysis because its purpose is to put forward the TRC's definition of reconciliation and principles to guide reconciliation. In the TRC's own words, the publication "outlines the Commission's central conclusions about the history and legacy of residential schools and identify both the barriers to reconciliation and the opportunities for constructive action that currently exist" (p. 4). As such, I chose this document – which, unlike the more specialized volumes of the final report, has a broad, foundational purpose that is designed to underscore the work of the Commission – on which to conduct a more thorough critical discourse analysis of representations of gender.

Fairclough (2001), a scholar and instructor of discourse analysis, defines discourses as “diverse representations of social life which are inherently positioned – differently positioned social actors ‘see’ and represent social life in different ways” (p. 3). Gibson and Brown (2009) in turn specify the process of discourse analysis as “interrogat[ing] the minutiae of constructed meaning” (p. 8). Here, I examined the text of ‘What we have learned: Principles of truth and reconciliation’ volume (Truth and Reconciliation Commission of Canada, 2015k) for representations of gender that emerged. This approach, per Fairclough (2001, p.8), allows me to both specify the dominant ways in which gender was discussed, enacted, and practiced through the ‘What we have learned’ volume (Truth and Reconciliation Commission of Canada, 2015k), and to identify other discourses that may interact with gender. I identified several discourses by reading for linguistic tone and formation and identifying implicit assumptions, following Machin and Mayr’s (2012) approach to critical discourse analysis.⁸² Paying close attention to these factors allows more implicit messages to emerge. Discourses that are not “communicated directly in the text... can be revealed by looking for absences” (Machin & Mayr, 2012, p. 2).

The purpose of identifying dominant discourses is to consider how power operates through discourse. Specifying discourses of gender here allows me to then see how power flows through these discourses. My process in conducting the discourse analysis of this text proceeded in the following way: I first read the volume closely, coding statements of relevance to my topic based on tone, language choice and formation, and implicit assumptions. Next, I returned to these categories and annotated

⁸² Machin and Mayr (2012) offer a how-to guide for conducting critical discourse analysis of text, speech, and images.

the selected statements, asking of each statement, what does this tell me about the treatment of gender at the TRC? In summary, my analysis points to a dominant gender-neutral presentation within the TRC's foundational document, which contributes to my overall findings that the TRC had a gender-neutral approach, overall. Furthermore, I identified a dominant discourse that absented the agency and leadership of Indigenous women, coupled with a discourse of hyper-scrutiny of Indigenous mothers. In the next section, I present overall conclusions about the dominant discourses of the volume.

5.4.1 Discourse analysis key findings

Throughout much of the discussion of residential schools in the 'What we have learned: Principles of truth and reconciliation' volume (Truth and Reconciliation Commission of Canada, 2015k), girls are simply absent. For example, the TRC references some children achieving academic success in residential school and going on to successful careers. Six survivors and their career paths are named; all are men (p. 44). Similarly, three men are quoted as having enjoyed positive experiences with teachers that "treated you as their equal," provided "a series of new opportunities," and pushed them to succeed (p. 47). Only one woman is quoted as having had a positive experience with school staff, and this was not for academic reasons but rather being befriended by a staff member (p. 47). Both boys and girls are quoted as experiencing difficulty with academics, but the volume leaves any academic success of girls a mystery.

Similarly, the volume references several inspections that spoke to concerns about the overwork of boys at residential schools, but does not speak to the labour of girls beyond noting that they were sent to work in the laundry "at a tender age" (p. 49). The report does not say whether overwork for the girls was as much an issue as it was for the

boys. Another example of an anecdote which seems to suggest more than is immediately apparent is found on page 56: “In fair weather, the boys would trap gophers and squirrels, and roast them over open fires to supplement their meagre diets. Sometimes, they would share these treats with the girls at the school.” Specifically, the word ‘sometimes’ could suggest that in these circumstances girls went hungry more often than boys. That hunger and starvation – as well as nutrition experiments - occurred at residential schools is a known fact (see S. Dhillon, 2013 and Mosby & Galloway, 2017). However, the gendered differences in these experiences are not as well known, despite the fact that women can experience implications of malnutrition unique to their gender, such as fertility issues (Mosby & Galloway, 2017, p. 1044). A gender analysis of malnutrition at residential schools could have practical implications for Indigenous women’s health outcomes today. While the word ‘sometimes’ in the TRC’s statement above could imply a differential gendered experience in the realm of malnutrition, whether there was a difference is not known due to a lack of further gendered analysis.

The volume cites statistics on a number of fronts, and gender breakdown is only included in two areas: Rates of incarceration by gender and Indigeneity and rates of being victimized by violent crime by gender and Indigeneity.⁸³ Examples of statistics cited that do not include any gender breakdown, however, are: injuries sustained during the course of labour at schools (pp. 49-50), “comparative death rates per 1,000 population, residential schools (Named and Unnamed registers combined) and the general Canadian

⁸³ In 2011-2012, 28% of all people admitted to custody were Indigenous, despite Indigenous people only making up 4% of the population. In 2011-2012, 43% of women admitted to custody were Indigenous. And for youth, Indigenous girls make up 49% of youth admitted to custody, and Indigenous boys make up 36%. Furthermore, Indigenous people are 58% more likely than non-Indigenous people to be the victim of a violent crime. And Indigenous women report being victims of violent crime almost three times more than non-Indigenous women (Truth and Reconciliation Commission of Canada, 2015k, p. 110).

population of school-aged children, using five-year averages from 1921 to 1965” (p. 63), number of filed residential school lawsuits (p. 99), high school graduation rates (p. 106), median income level (p. 106), and comparative to non-Indigenous people in Canada rates of health conditions, causes of death, and suicide (p. 109-110). A lack of gender breakdown for these categories means that we don’t fully understand their gendered impacts. This spans from the residential school experience to today. The TRC did not reveal how the deaths of boys and girls in residential school compared to the general population. They did not reveal whether there were gender trends in who was filing lawsuits about experiences in residential schools. And, crucially, little is revealed about the comparative lives of Indigenous women today – be it high school graduation rates or cause of death. This produces a significant gap in understanding the gendered experiences of Indigenous peoples. Of course, there are further nuances that interact with gender that are not understood by a single category of ‘Indigenous’, such as social class and geographical location.

The dominant way that the TRC constructed the residential school experience in the ‘What we have learned: Principles of truth and reconciliation’ publication (Truth and Reconciliation Commission of Canada, 2015j) was in a generic way that does not account for the differential gendered experiences. The volume followed an explicitly gender-neutral approach– even in areas where a gender analysis would have revealed important information. Furthermore, in numerous areas, information about the lives of Indigenous women and girls is simply absent.

Furthermore, this gender-neutral approach when summarizing and analyzing the experiences of students in residential school is coupled with a discourse of Indigenous

women as damaged mothers. That is to say, there is a focus on pathologizing Indigenous mothers but without an analysis of unique factors that may have impacted girls in certain ways differently from boys. For example, the volume states that “children exposed to strict and regimented discipline in the schools sometimes found it difficult to become loving parents” (Truth and Reconciliation Commission of Canada, 2015k, p. 104). This statement is followed by two examples of mothers experiencing difficulties parenting, but no reference to the role of fathers or any difficulties they may have experienced.

In the discourse of the damaged mother lies a dichotomy not unfamiliar to women. Boesten (2018), referencing Jacobs’ (2008) work on Auschwitz memorials, remarks that Jacobs “observed [that] the gendered narratives of trauma tend to reify traditional representations as either suffering mothers or sexual possessions of the perpetrators” (Jacobs in Boesten, 2018, p. 180). In this case it is men and boys who are absent in the discussion; however, women are under hyper-scrutiny in their role as mothers. When these patriarchal and colonial tropes remain intact, the potential for transformative change is limited.

There are further areas of discussion in the volume where a gender analysis could have provided more information of consequence. For example, pages 78-80 speak to children in schools and their parents choosing whether to raise complaints or report violence and abuse, as well as the institutional reactions when they did so. A sample of this section (Truth and Reconciliation Commission of Canada, 2015k) follows:

Complaints were infrequent, as students had good reason not to report their abuse. Some feared that bullies would retaliate if they were reported. Others were ashamed of what had been done to them, and some did not fully understand what

had been done to them. Many students feared they would not be believed—or would be blamed for some- how bringing the abuse upon themselves. Still others were further punished when they did tell. So, rather than report the abuse, many students chose to fight back; to seek admission into a receptive group, where violence could be fought with violence; or to endure the pain in silence. (p. 80)

A gender analysis of this section could have asked such questions as: Were there gender differences in ability and willingness to speak out, and in how the institution responded? And if so, what might this reveal about the legacy of residential schools? How could that information contribute to gender justice? NWAC's (2010a) first criteria for a gender responsive TRC was that it must "clarify and acknowledge the gendered impacts of colonialism and residential schooling" (p. 26). It is in such clarification that a gender analysis could have been found.

Finally, there are areas within the text that are presented in a gender-neutral fashion but that seem to reveal more about gendered experiences than is explicitly stated. For example, in the discussion of arranged marriages, the text reads, "Principals regularly reported and celebrated student marriages, and, indeed, did often arrange them" Truth and Reconciliation Commission of Canada, 2015k, p. 55 – 56). However, when reading the quoted survivor testimony accompanying this passage, it becomes apparent that, at least in the cases referenced, the most common scenario was marrying a girl still in school to a boy or man who had graduated, with the stipulation that the girl could not leave school until the marriage had taken place. This is a scenario that certainly had differential gendered impact, but is framed in this volume in a way that does not explore these specificities.

I have identified a discourse of absenting the agency of Indigenous women that permeates the representations of Indigenous women in the ‘What we have learned’ volume (Truth and Reconciliation Commission of Canada, 2015k), that intersects with a discourse of Indigenous women as damaged mothers. I next turn to my findings regarding the process of creating the final report, and lay out how the process could have contributed to the gender discourses contained therein.

5.5 Writing the final report

Writing a comprehensive final report for a truth commission, often years in the making, is a colossal enterprise, given time and capacity constraints. A former senior staff member of the TRC told me about the process of choosing testimony to include in the report (Interview A). All testimony had to be transcribed; then, if a passage was selected for inclusion in a report,⁸⁴ there was a process of what my interviewee called “fact-checking.” This does not, as it sounds, refer to checking the veracity of the testimony itself but rather to checking the transcript against the audio or video recording to ensure there were no errors in transmission. This whole process of course takes time, which was less of a concern with testimony from earlier TRC events but was a pressing concern when it came to incorporating testimony from the final events—the final national event took place in Ottawa in June of 2015 and all volumes of the final report were published in December of 2015.⁸⁵

⁸⁴ Aided by the tick-box cover sheet to testimonies (Interview C).

⁸⁵ The Summary volume of the final report (Truth and Reconciliation Commission of Canada, 2015b), which contained the Calls to Action, was launched at the TRC’s final national event in Ottawa in May–June, 2015. The Commissioners wanted the Calls to Action ready for the final national event. Ostensibly, the Summary provided an overview of the full volumes, but the final volumes were in fact completed and released *after* the publication of the Summary.

The process of selecting testimony to include in the final report was, a former employee says, not formulaic but rather based on a consideration of multiple factors:

I don't think that anybody sat down and went we need this many... in part it had to be that someone had said something particularly relevant to the topic at hand. Because, as in all of this stuff, you have to balance a whole bunch of competing priorities. (Interview A)

Furthermore, the content of the report volumes was dictated in part by the Calls to Action, as the same interviewee described:

My job as the lead on [a volume] was to make sure that findings in a particular section support a call to action. From a logistical point of view, you have to ground the call to action. So, my job in large part was to find the documentation and make sure that it was clear where the call to action emerged from so it's not coming out of nowhere. (Interview A)

My interviewee specified that the Calls to Action were largely created by the Commissioners and evolved over time. It is particularly revealing that the content of the final report supported the Calls to Action rather than vice versa – This suggests that rather than being required to simply portray the testimony that was provided, the authors of the final report were beholden to framing the content to support a pre-existing framework. The Calls to Action are certainly remarkable in both their breadth and their commitment to shared responsibility. However, only *one* Call to Action references Indigenous women specifically. It thus follows that largely gender-neutral Calls to Action would beget a largely gender-neutral final report.

I discovered another revealing fact about the final report in the course of my analysis. Earlier in this chapter, I raised the fact that experiences and topics were discussed at the TRC events and in testimony that didn't make it into the final report, such as the example of the TRC-Egale forum for two-spirit survivors. In 2018, former TRC Lead Commissioner Justice Murray Sinclair told the Canadian Press that the TRC had heard from survivors about the forced sterilization of Indigenous women who "were under the supervision of a child-welfare case worker or a social worker from a child welfare agency" (Kirkup, 2018, para. 2). Sinclair's remarks came in the context of a class action lawsuit in Saskatchewan regarding forced sterilization as well as concerns being raised to the United Nations Committee Against Torture that the practice was ongoing in Canada.

Not recalling any discussion of this issue in my reading of the final report, I investigated the discrepancy further. Testimony regarding forced sterilization is not mentioned in any of the final report volumes. Forced sterilization is only mentioned once, in *The Legacy* volume (Truth and Reconciliation Commission of Canada, 2015i), and in an oblique fashion in the context of the UN Convention on Genocide (p. 125) rather than as a crime that was perpetrated against Indigenous women in Canada. Specifically, the reference comes in the midst of a passage on the difference between genocide and the term the TRC uses, cultural genocide. The passage states: "The forcible sterilization of women and girls for the purpose of preventing their group from repopulating itself would be an act of genocide, even though the individual female victim would be allowed to live" (Truth and Reconciliation Commission of Canada, 2015i, p. 125). In terms of the section on the UN Convention on Genocide, analysis of or even reference to the

testimony the TRC heard regarding forced sterilization would have called the TRC's use of 'cultural genocide' into question and instead could have supported a claim that the actions of the federal government in Canada under settler colonialism have constituted genocide. The disregard of one of the most overtly genocidal crimes of residential schools - one that targeted Indigenous girls specifically - and the failure to connect testimony regarding one of the core dimensions of genocidal violence to defining the genocide that occurred in Canada is a very clear indicator that the TRC lacked gender analysis.⁸⁶

A former senior staff member with the TRC confirmed that the TRC heard a great deal about gender-specific experiences in schools that did not make it into the final report, such as testimony about forced sterilizations, differential treatment at Indian Hospitals, forced marriages, and indentured servitude (Interview C). In terms of why these pieces weren't included or were abbreviated in the final report, the interviewee said there were several issues. One was simply a question of space, and the ability to compress the TRC's "huge mandate" into a final report. Another was the availability (or non-availability) of records that would have allowed for a more fulsome investigation into these issues. Specifically, while the Federal government was mandated to share

⁸⁶ The United Nations' Convention on the Prevention and Punishment of the Crime of Genocide (12 January, 1951) defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures to prevent births within the group; e) Forcibly transferring children of the group to another group (p. 1).

records related to residential schools with the TRC after a legal battle,⁸⁷ no such directive existed for provincial governments, many of which held, and did not share, relevant records in these areas. Finally, the enormity of the task at hand meant that not all testimony could be examined in as great a depth as the Commissioners and staff would have liked. “We ran out of time,” Interviewee C said, plainly. ‘Gender’, my research has demonstrated, was seen by the TRC as a factor to add to proceedings rather than as a transversal dimension of analysis that could have guided the research, organizing of information, witnessing practices and analysis of the TRC.

5.6 Conclusions

This chapter has concluded my analysis of gender in the TRC’s context and history, proceedings, and outputs, with consideration of the TRC’s final report and associated reports. I have presented original data on gender representation in the TRC’s final report, and found that the report volumes largely achieved equitable descriptive representation by gender but fell short on gender analysis, or the substantive representation of residential school practices and legacies and survivors’ experiences as gendered.

In conducting a critical discourse analysis of the TRC’s report outlining the principles of truth and reconciliation (Truth and Reconciliation Commission of Canada, 2015k), I also identified a dominant discourse of absencing Indigenous women, coupled with a hyper-scrutiny in their role as mothers. Another key finding in this chapter, which

⁸⁷ In January of 2013, already five years into the life of the Commission, the Ontario Superior Court ruled that the federal government “must provide all relevant documents to the TRC” as outlined in the Indian Residential Schools Settlement Agreement (Galloway, 2013), regardless of where such records were located. The Federal government argued that it was only obligated to provide records still in its possession but that the TRC was responsible for funding and carrying out the locating of records found in Library and Archives Canada. The TRC argued that it had neither the funds nor the time to do so. See also Blackburn, 2013.

I discovered by cross-referencing media with the final report and corroborated with interview data, is that there were several elements of the residential school experience and its legacy exclusive to girls and women on which the TRC heard testimony, but which did not make it into the final report. This included the horrific practice of forced sterilization.

Similar to my findings in the previous chapter regarding the TRC's events, I found that there was no centralized directive to include gender analysis or a focus on gender in the final report. My analysis shows that this lack of attention resulted in numerous missed opportunities for gender data to be consolidated into a cohesive understanding of gendered experiences at residential schools and under settler colonialism and the lasting impact. My research revealed that several factors contributed to this lack of centralized gender planning, from time and financial restraints to, in the case of the final report, the requirement to select content that would support the Calls to Action (Truth and Reconciliation Commission of Canada, 2015a), only one of which references Indigenous women.

Of course, the question of what sort of impact a final report has is an important one. Certainly, in terms of assessing what information the public receives from a truth commission, it is not a strong tool—reading seven volumes of a final report is not the way most people are getting their information about the TRC.⁸⁸ The Calls to Action, however, have been a particularly galvanizing facet of the reports. For example, interviewees from a non-profit organization reported that they use the TRC Calls to Action as an advocacy tool: “So we can say, not only is this something that the women

⁸⁸ Thanks to Rosemary Nagy for making this point at the International Studies Association annual meeting 2017 in Baltimore, ML.

we consulted with said we should do, but it is a TRC call to action” (Interviews G and H). Moreover, the final report and in particular the Calls to Action are unavoidably the legacy of the institution and in years to come will serve as the main reference for the TRC. I return to the Calls to Action in the next chapter, as I theorize a discourse of survivance for truth commissions that could offer greater potential for gender equity.

6: Absence and Survivance

6.1 Introduction

In 2018, two court verdicts exposed deep societal divides, generating renewed suspicion about reconciliation in Canada. Raymond Cormier was found not guilty in the death of Tina Fontaine, an Indigenous girl murdered in Winnipeg in 2014, and Gerald Stanley was acquitted of the murder of Colten Boushie, a young Indigenous man Stanley shot dead on his property in rural Saskatchewan in 2016. Perry Bellegarde, AFN Grand Chief, characterized these verdicts as “send[ing] a troubling signal to Canadians that they will not face consequences for acts of violence they commit on First Nation individuals” (p. 166).

The circumstances surrounding the death of Tina Fontaine are illustrative again of the particular precarity inflicted on Indigenous women and girls through decades of structural violence. Gender-based violence is a pervasive societal problem across populations, but Indigenous women are 3.5 times more likely to experience violence than non-Indigenous women (NWAC, 2019). Furthermore, Indigenous women may distrust state institutions due to entrenched discrimination. As J. Dhillon (2015) argues, “Indigenous women and girls are often scared to reach out to police for fear that they will be further violated through terrorizing police practices or have to contend with the outright omission of their accounts of violence” (p. 22). Tina Fontaine had a brutal upbringing. She fell through the cracks of the system again and again, and spent the last day of her life alone in the downtown Winnipeg hotel room Manitoba Child and Family Services placed her in (Manitoba Advocate for Children and Youth, 2019). She was 15 years old.

Gerald Stanley, who killed Colten Boushie, said he thought Boushie was trespassing on his property with the intent to steal - friends who were with Boushie said they were looking for help with a flat tire (Giles & Dove, 2020). Stanley was acquitted of second-degree murder by a jury that purposefully had no Indigenous representation.⁸⁹ The fall-out from the not-guilty verdicts in both the Boushie and Fontaine cases reveal deeply embedded gendered ways that the state relates to Indigenous boys and girls. As an interviewee plainly stated, “[Boushie and Fontaine] illustrate men as a threat, women as an easy target” (Interview J).

In the previous three chapters I presented data regarding the manner in which the Canadian TRC addressed gender. I found that the TRC was largely inattentive to gender in its planning, activities, and outputs. More specifically, I identified a discourse of absence when it comes to the ways the state has historically related to Indigenous women – it is the same discourse that was present in the work of the TRC. The impact of this discourse of absence is clear: the agency of Indigenous women is often missing in the way the state makes policy and conducts relations on both the macro and micro scale. As Interviewee J stated above, this discourse creates the figure of an “easy target,” or a passive woman to whom abuses simply ‘happen’. This discourse brushes aside the patriarchal grounding of colonialism in favour of a view which frames women as victims in an ahistorical context, thereby effectively erasing the profound leadership and resiliency of Indigenous women.

⁸⁹ A federal government spokesperson acknowledged “long-standing and well-documented concerns that racialized Canadians were being unfairly excluded in the jury selection process” (Giles & Dove, 2020, para. 16) through the ability for crown and defense counsel to veto potential jurors without giving a reason. In the trial of Raymond Cormier, defense lawyers vetoed all potential Indigenous jurors. In late 2018, former Attorney General of Canada and Minister of Justice Jody Wilson-Raybould introduced legislative changes that eliminate this veto power, Bill C-75, An Act to Amend the Criminal Code (Stefanovich, 2020).

The purpose of this chapter is to reframe reconciliation within the context of gender, removing it from the prevailing absence discourse and locating it anew, within a politics of agency and survivance. Although my reframing is focused on Canada, the theorizing presented is applicable beyond the Canadian landscape, and could inform further areas of research in the field of transitional justice more broadly. I begin by revisiting the gendered absence discourse I identified in the previous chapters. This discourse has been a consistent thread throughout gendered state relations with Indigenous peoples. The deaths of Tina Fontaine and Colten Boushie, and the myriad problematic aspects of the trials of their alleged killers,⁹⁰ tragically illustrate the danger of allowing this discourse of absence to persist. A gender-neutral truth commission begets a gender-neutral reconciliation – This in turn facilitates the continuation of dangerously stereotyped understandings of the gendered experiences of Indigenous peoples, and fails to appreciate how gendered violence is a key organizing dimension of genocide.

Subsequently, I envision an alternative politics of survivance that, if incorporated in transitional justice practices, could offer greater potential for disrupting patriarchal power relations. In Canada, specifically, a politics of survivance might open space for elements of transformation in state-Indigenous relations. Such a politics, as I operationalize it, incorporates an appreciation of resistance and refusal that recognizes Indigenous women as political agents and leaders, creates opportunities for ongoing public engagement, and highlights intergenerational survivance. I loosely borrow the concept of survivance from Vizenor (2010), who used the term - a portmanteau of survival and resistance - to denote an Indigenous “narrative resistance that creates a sense

⁹⁰ On the Stanley trial, see G. Starblanket & Hunt, 2020.

of presence over absence, nihility, and victimry” (p. 41). Vizenor largely employs the term in the context of literature, arguing the value of work that demonstrates survivance in resistance to dominance. I apply the term to the narrative and discourse of transitional justice.⁹¹ Drawing on others’ work on resistance and transitional justice (Baines, 2011, 2017; Leebaw, 2011) and Indigenous feminisms (Million, 2013, Tuck, 2009), I envision a politics of survivance in reconciliation that incorporates stories of resistance; a politics of refusal; intergenerational survivors; and ongoing public engagement.

It may seem as though the concepts of resistance and survivance could be used interchangeably. However, here I want to denote a subtle difference in these concepts. I am sometimes wary of too much focus on resistance, which could be interpreted as carrying a normative judgement, i.e. resisting is good, not resisting is bad. I trouble this notion in greater detail further into this chapter, but will expand briefly here first for the sake of conceptual clarity. Tuck (2009), in setting up her critique of damage-centred research and offering of desire-focused research provides the following caution, which is also applicable to my seeming juxtaposition of absence and survivance:

I am not arguing to install desire as an antonym to damage, as if they are opposites. It is important not to make the mistake of merely swapping one framework for another, nor is this merely an issue of political correctness or linguistic correction. Rather, it is an argument for desire as an epistemological shift. It is certainly not a call for another “d” word: denial. It is not a call to paint everything as peachy, as fine, as over (p. 419).

⁹¹ Jobin & Kappo (2017) and G. Starblanket & Stark (2018) also draw on the concept of survivance in their work.

In this vein, my reframing is not intended to imply that survivors should behave in a certain way or articulate their experiences in a particular way. Rather, it is an argument for recognizing the complexities and multiplicities of experience and the strength of survivors. The concept of survivance as a political act is clearly encapsulated by George (2007): “In the face of genocide, our resilience is unmistakable; we were not supposed to be here (p. 50)”. Through invoking survivance, I see the possibility for inclusion of a broader range of experience and a more comprehensive appreciation for what it means to have endured in one way or another, through family, through stories, and through existence - through being still here.

To nuance these concepts even further, Million (2013) reminds us that the inclusion or the recognition of a language of resistance and political agency is not always a matter of overt and explicit naming of acts of resistance on the part of individuals but can be a more subtle yet influential matter of the language we use to talk about everyday experiences. This allows for a more fulsome understanding of resistance and survivance. For example, in practical terms, surviving often means *not* resisting. In landscapes of limited room for maneuver, grand acts of resistance are simply not possible or desirable⁹². On the other hand, as Nagy (2015) points out in reference to the TRC, the fact that the commission’s language almost exclusively refers to ‘survivors’ rather than ‘victims’ “distinguishes passive helplessness from resilience and empowerment” (p. 537). It is this type of discursive politics that Million (2013) argues must be included in an understanding of resistance.

⁹² See Scott (1987).

Theorizing vulnerability can be inherently fraught. As Butler et al. (2016) write, “there is always something both risky and true in claiming that women or other socially disadvantaged groups are particularly vulnerable” (p. 2). That is to say, on the one hand, Indigenous women *are* in many ways in a position of precarity by design due to generations of racism and sexism, both legislated and otherwise. However, an assumption of inherent vulnerability, or seeing vulnerability as the whole of a person can be just as harmful as ignoring Indigenous women’s social position altogether, and can in fact fuel an absence discourse, where the agency of the individual is disappeared in favour of a consolidated category of those who are vulnerable. Moreover, this portrayal of vulnerability is often divorced from context, as though a particular vulnerability to violence and racism was not years in the making at the hands of colonialism. This kind of context-absence can strip women of power and position them as agency-less, reinforcing particular patterns of discrimination and violence.

Carving out further institutional space for survivance may allow for more comprehensive collective meaning-making. Scheper-Hughes (2008) writes that “resilient narratives reframe adverse events in order to make them meaningful [and] purposeful” (p. 44). Baines (2017) writes that “resistance is not exclusively opposition to violence, but entangled in the realities of living through mass violence, while retaining a sense of humanity” (p. 129). Certainly, under a program whose aim was famously to “kill the Indian in the child,” existence in itself is resistance. In other words, the very fact that Indigenous culture survived the genocide of the residential schools is a testament to the survivance practiced by children in residential schools, and that is part of a historical continuum of Indigenous resistance to settler colonialism which continues to this day. As

L. Simpson (2017) writes, “I exist as kwe⁹³ because of the continuous refusal of countless generations to disappear from the north shore of Lake Ontario” (p. 34).

In summation, I extend Kuokkanen’s (2019) position that self-determination without gender justice is incomplete: I argue that reconciliation without gender justice is incomplete. I offer a reconceptualization of reconciliation and gender that centres, in particular, the leadership and tenacity of Indigenous women through a politics of survivance. While these are theoretical interventions, they also have practical implications. Truth commissions continue to be implemented in societies reckoning with past and present injustice.⁹⁴ Especially relevant for truth commissions in the planning process, my research confirms the contention of NWAC (2010a) and others that a gender lens is most effective when built into all aspects of a commission from the earliest stages. As such, I introduce a new way of thinking about survivance as a framework for a more gender just reconciliation. I begin, however, by further expanding upon how the absence discourse operates.

6.2 Absence

I begin by offering three examples which illustrate how the absence discourse I identified in the TRC’s final report has played out in other areas of state-Indigenous relations in Canada – one focused on historical leadership, one focused on activism concurrent to the TRC, and one focused on systemic problems in Canada’s child welfare system. Although the focus of this dissertation is the TRC, briefly expanding on the gendered discourse of absence before, during, and after the work of the commission both

⁹³ Simpson (2017) defines the word kwe as “woman, within the spectrum of genders in... the Nishnaable language” (p. 29), a spectrum that “does not conform to the rigidity of the colonial gender binary” (p. 29).

⁹⁴ In 2020, truth commissions were announced for the Sami peoples in Sweden (see Last, 2020) and in the Australian state of Victoria (see Allam, 2020).

illuminates the discourse in greater depth and underscores the continuities in this discourse writ large.

To begin, Indigenous women have been at the forefront of resistance and activism for decades.⁹⁵ Indigenous women have led the charge on most major Indian Act amendments (see Anderson, 2016, and Sterritt, 2007). Specifically, numerous legal challenges brought by Indigenous women have changed the face of legislated gender injustice in the Indian Act, including *Lavell v Canada* (1971), *Bédard v Isaac* (1972), *Lovelace v Canada* (1981) and *McIvor v. Canada* (2009).⁹⁶ Both Lavell and Bédard married non-Indigenous men and subsequently lost their Indian status, meaning that they were no longer permitted to live on reserve. Bédard returned to her reserve after her divorce and was evicted by her band, despite the fact that they had been permitted to grant exceptions on residency by the Department of Indian and Northern Affairs (Barker, 2006, p. 136). Lovelace and McIvor also challenged these provisions, further asserting that the fact that they couldn't pass on Indian status to their children amounted to gender discrimination.

Barker (2006) reminds us that not only did these women go through protracted legal battles in multiple courts but they also faced significant criticism and discrimination within their communities and from national Indigenous organizations such as the then-National Indian Brotherhood (since 1982, the AFN). The intersection here of settler colonialism and patriarchy led to, as Barker (2006) puts it, a discourse where “the exclusion of women and their concerns from national politics and discussion of Indian sovereignty was represented as normal and necessary to the survival of Indian rights” (p.

⁹⁵ For an exploration of the leadership roles of Indigenous women globally, see Lightfoot, 2016, pp. 83–84.

⁹⁶ See Barker (2006) for further detail on these landmark cases.

137). It is notable that the AFN had never elected a woman as National Chief before their most recent election in July of 2021.⁹⁷ Scholars have argued in numerous geographical contexts that gender justice and addressing lateral violence⁹⁸ often falls secondary to national liberation or self-determination struggles (see Hassim, 2006; Bhattacharjya et al., 2013; Grey, 2014), and this is of course the crux of Kuokkanen's (2019) work.

Grey and James (2016) argue that Indigenous women are often portrayed in state discourse as passive objects of state programs concentrated on their supposedly-inherent vulnerability, despite a long history of strength in leadership. They also identify that this is not a new phenomenon, noting that in the time of residential schools "alongside the physical violation of Indigenous girls inside the schools lay a simultaneous concern for their vulnerability outside of them" (p. 313). This is not a trope unfamiliar to Indigenous peoples, who are often cast in the role of requiring paternalist protection from the Canadian state.

The TRC missed an opportunity to interrupt this pattern. The *History: Part 2* (Truth and Reconciliation Commission of Canada, 2015e) volume of the final report details the dismantling of the residential school system (pp. 9–107). Although the section covers many major developments in state–Indigenous relations during this period in some depth, there is no reference to the Indigenous women's activism that led to significant changes to the Indian Act. In fact, the section contains very little reference to women at all. Similarly, in the same volume (Truth and Reconciliation Commission of Canada, 2015e), a chapter called "Getting to the Settlement Agreement" details the "growth of

⁹⁷ RoseAnne Archibald was elected National Chief of the AFN in July of 2021. See "First Nations youth inspired by RoseAnne Archibald's election as AFN national chief", 2021.

⁹⁸ The Native Women's Association of Canada (2011) defined lateral violence as "a learned behaviour as a result of colonialism and patriarchal methods of governing and developing a society" (p. 1).

national Aboriginal political organizations” (p. 552). The section covers the various iterations of the AFN, the Congress of Aboriginal People, The Métis National Council, and the Inuit Tapirisat of Canada but does not mention NWAC, a significant national Indigenous political organization. In short, Indigenous women’s resistance to colonialism is largely invisible across volumes addressing history, despite significant latitude given to covering other aspect of state–Indigenous relations in Canada beyond the residential schools system.

The activism of Indigenous women concurrent to but outside of the context of the TRC was also met with a discourse of absence. In 2012, an Indigenous resistance movement was arising across Canada in response to a series of parliamentary omnibus bills introduced by the former Harper government that infringed upon Indigenous sovereignty (see Kino-nda-niimi Collective, 2014). Bill C-45, the Jobs and Growth Act, proposed changes to the Indian Act, the Fisheries Act, the Canadian Environmental Assessment Act, and the Navigable Waters Act (Webber, 2016, p. 8). The resistance movement began as a series of teach-ins about Bill C-45 in October of 2012 led by four women from Saskatchewan: Jessica Gordon, Sylvia McAdam, Nina Wilson, and Sheelah McLean (Caven, 2013). It then expanded into a series of loosely connected rallies and protests across the country under the umbrella of the Idle No More movement. Idle No More declared a Day of Action on December 10, 2012, which led to Chief Theresa Spence of the Attawapiskat nation declaring a fast in solidarity with the movement. She vowed to fast until former Prime Minister Harper agreed to meet with her.

The discursive treatment of Chief Spence and her hunger strike is emblematic of the way the absence discourse can show up as a stereotyping hyper-scrutiny of

Indigenous women. Various forms of media and public commentary, including comments made by both an MP and a Senator (see "Sen. Brazeau mocks Chief Spence, Idle No More movement", 2013), did not take her hunger strike seriously because she was drinking fish broth twice a day. Spence was also subject to comment and ridicule about her body and weight (A. Simpson, 2016). For example, the author of a Toronto Sun article from January of 2013 consulted a doctor after a public appearance by Spence, and said that "there [was] no way Attawapiskat Chief Theresa Spence would be standing if she was really on a hunger strike," and a dietician, who advised, in response to Spence saying that she had lost thirty pounds, that someone of a higher weight can "have more success" on Spence's type of "diet" (Hume, 2013).

Idle No More and Chief Theresa Spence's hunger strike showcase different reactions to Indigenous womens' leadership. In the case of Idle No More, due to the dispersed nature of the movement, the leadership was not always a feature of its public profile, with media treating it as a leaderless movement, with racist reactions, to be sure, but with less of an overtly gendered objectification and dismissal of the movement (see Coulthard, 2014, p. 162). However, Chief Theresa Spence's efforts drew ire. A. Simpson (2016) argued that Spence's body and resilience was a threat to a society where Indigenous women are mandated to disappear—through the legal elimination wrought by the Indian Act and through dehumanization. Hyper-focusing on Chief Spence's body constituted an undermining and erasure into absence of her activism and leadership.

Finally, Canada's child welfare system offers an example of an ongoing structural milieu in which the absence discourse continues to play out. The child welfare system is frequently invoked as a case of inequities against Indigenous peoples in state policy. The

system disproportionately impacts Indigenous women by placing Indigenous mothers in particular under hyper-scrutiny and offering them little room for agency. There are now more children in Canada's child welfare system than there were at the height of the residential schools system. Former TRC Chief Commissioner Murray Sinclair puts it as such: "The monster that was created in the residential schools moved into a new house... and that monster now lives in the child-welfare system" (Krugel, 2018, para. 8). As of Statistics Canada's 2016 reporting, "Indigenous children comprise[d] 52% of foster children under 14 years of age despite representing just 8% of that age group in the Canadian population." (Haight et al., 2018, p. 397).

Further exemplifying the damaged mother frame I spoke to in chapter five, discourse around the removal of Indigenous children from parents is hyper-focused on Indigenous mothers. There are several passages in the Legacy volume of the final report (Truth and Reconciliation Commission of Canada, 2015i) referencing Indigenous women who are unable to meet the expectations of motherhood, from behaviour in pregnancy to parenting techniques. While this discussion is implicitly tied to attending residential school or being an intergenerational survivor, a lack of explicit analysis of the intersection of patriarchy and settler colonialism in the TRC final report means that there is little discussion of Indigenous men as fathers. The "birth alert" system, which operates across Canada in different forms, flags expectant mothers deemed to be at risk, not fathers. Of course, the biological role of a mother and a father are different; however, the Canadian child welfare systems offer a clear example of deeply patriarchal and racist systems combining to disproportionately impact Indigenous women.

British Columbia lifted its birth alert system in 2019. In some provinces, a woman having been in the child welfare system herself is enough to be granted a birth alert flag (Ridgen, 2019). Given the statistics for Indigenous children in care, the deep prejudice against Indigenous women inherent in such practices seems obvious. The injustices of this system were brought to widespread attention in June of 2019, when “Baby H” was taken from an Indigenous mother by authorities in Kamloops, B.C. - she was judged to be neglecting her baby 90 minutes after giving birth by C-section (Ridgen, 2019). Child apprehension can have devastating effects for all concerned. A quantifiable example comes from a recent University of British Columbia study (Thumath et al., 2020), which found that having a child apprehended increased the risk of a mother’s subsequent accidental overdose by 55%. For Indigenous women the risk doubled (Watson, 2020).

These are by no means the only areas in which an absence frame is imposed upon Indigenous women. For example, critiques of Indigenous women’s place in the arts are plentiful. Silver, Ahlberg and Greeves (2019) write that “Women have long been the creative force behind Native American art, yet their individual contributions have been largely unrecognized, instead treated as anonymous representations of entire cultures” (para. 2). Similarly, in theatre, MacKenzie (in Narine, 2021) sees Indigenous women reconfiguring gendered histories of colonialism through playwrighting. She says that “in these reconfigurations, there’s the possibility of creating spaces of resistances for those once considered vanquishable” (para. 3). Purposively interrupting spaces of discursive absence with vibrant presence is a tool that Indigenous women are using in many arenas to claim space. In the next section, I theorize a politics of countering absence with survivance.

6.3 Survivance

I argue that a politics of survivance - which I envision as a practice that incorporates attention to resistance, refusal, intergenerational survivance, and ongoing public engagement – can be incorporated into transitional justice practices, and could offer increased opportunity for furthering gender justice and transformative justice. In theorizing a politics of survivance, I draw on the work of Million (2013) and Tuck (2009), specifically their cautions about, as Tuck (2009) puts it, damage-centered research and as Million (2013) holds, articulating Indigenous justice claims through a language of trauma and biomedical conditions that trap Indigenous peoples within the very paradigm that has perpetuated the ills—the Western state system. Million (2013) argues that Indigenous women in particular are often dehumanized and homogenized within the discourses of settler colonial power, and that Canada’s model of restitution for Indigenous peoples is one that encourages a lack of political agency. In other words, what she frames as pathologizing studies have particular consequences for Indigenous women: through the language of trauma, the state has judged their capacity to be mothers and even their suitability to bear children. Moreover, Million (2013) argues that while the residential school system is most often articulated as the primary harm to Indigenous peoples, gender-based violence is a less-articulated force that shapes state–Indigenous relations. In short, Million (2013) points to the potential for discourse to become embedded in a way that becomes self-reinforcing through language, programs, and policies.

Tuck (2009) and Million (2013) each propose alternative ways of framing research in Indigenous context. Tuck (2009) proposes what she calls a desire-based

framework as the antithesis to damage-centred research. She argues this framework could focus on “understanding complexity, contradiction, and the self-determination of lived lives” (p. 416). As a result, she argues, a new research framework would “resist all-too-easy, one-dimensional narratives of damage in order to expose ongoing structural inequity” (p. 417). Million (2013), taking a similar approach but considering gender in particular, proposes “felt theory” (pp. 56–78) as a way of naming the political nature of women’s testimony that could be dismissed as subjective personal experience or belonging in the private rather than public realm. Million (2013) writes that Indigenous women’s “felt scholarship continues to be segregated as a ‘feminine’ experience or as polemic, or, at worst, not as knowledge at all” (p. 57). She draws on Indigenous women’s life stories⁹⁹ to illustrate how they have:

“participated in creating a new language for communities to address the real multilayered facets of their histories and concerns by insisting on the inclusion of... lived experience, rich with emotional knowledges, of what pain and grief and hope meant or mean now” (p. 57).

There is also a recognition, in Million’s work, that the ongoing effects of settler colonialism are felt not just across but also *within* communities, and that giving testimony on these lived experiences is a particularly political act for Indigenous women, for whom talking about their experiences could be considered tantamount to betraying community. Suffice it to say that the provision of testimony and sharing of lived experience is rarely politically neutral.

⁹⁹ Million (2013) specifically referenced authors Maria Campbell, Lee Maracle, Beatrice Culleton, Ruby Slipperjack, and Jeannette Armstrong (p. 57).

I incorporate elements of Tuck's and Million's work in my argument that practices of survivance can and should be attended to in transitional justice, to the benefit of gender justice. Much as Kuokkanen (2019) argues that Indigenous self-determination must take gender seriously, and that simply adding more women to the landscape will not achieve this, I argue that the politics of reconciliation must take gender seriously. As the example of the TRC shows, the descriptive representation of women, is necessary but not sufficient to enable a transitional justice that is attentive to gender. A reframing of transitional justice discourse to lift up survivance could further gender justice.

I first address resistance and refusal, then turn to intergenerational survivors and ongoing public engagement, before concluding with an example of how this theory could be operationalized in what is perhaps the most concrete part of a truth commission's work, its final report. I reiterate here that in this dissertation I have largely bracketed the question of whether formal transitional justice mechanisms are the best venues for justice and conciliation or reconciliation to be furthered, or whether other types of approaches could offer more opportunities. However, because truth commissions will likely be happening for some time, I have identified areas that could assist with moving the absence discourse toward survivance.

6.3.1 Resistance and refusal

Several scholars in the transitional justice field have spoken to the interplay of resistance, refusal, and transitional justice. Leebaw (2011) argues that facilitating the inclusion of stories of resistance in the field, which is rife with "often dubious efforts to emphasize common experiences of suffering across lines of conflict and difference," could lead to a more fulsome version of transitional justice that has more of a role for

political judgement and thus decisive change. This is of particular importance for women and the recognition of women as leaders. Baines (2017) speaks to this point, and argues it is in storytelling we are able to recognize the complexities of survivor agency: “Stories reveal acts of resistance and contestation of dehumanizing violence, and reclaim sites of knowledge where survivors have otherwise been rendered speechless” (p. 19). Ortner (1995), in turn, defines resistance as the refusal to occupy the category being foisted upon oneself (p. 184), which is a particularly apt description for anyone whose ascribed category or categories come with concomitant layers of discrimination.

Leebaw (2011) offers a framework for recognizing resistance in transitional justice. Drawing on Hannah Arendt’s theory of political judgment, Leebaw’s (2011) framework suggests recognizing resistance in transitional justice in order to galvanize a populace into political dialogue and to invite critical reflection on state practices, fostering collective responsibility. Leebaw (2011) invokes the concept of resistance as a way for victims or survivors of injustice to take back control of transitional justice. That is to say, what can be depoliticized by transitional justice’s narratives of closure—what Leebaw (2011) called the “organized forgetting” (p. 18)—is repoliticized. Baines theorizes a “lived experience approach,” which “understands survivors as complex human beings who advance multiple justice claims located within social relationships and relations that give human life meaning.”¹⁰⁰ From this perspective, survivors as the experts in their own experiences and needs, and the aim is to mitigate or at least nuance the errors in translation, so to speak, that can occur during the blunt force of transitional justice’s categorizing and compartmentalizing.

¹⁰⁰ Personal communication.

In assessing the TRC report for narratives of resistance, I found limited material, and further evidence of the absence discourse, which I will detail shortly. Again, returning to the tick-box cover sheet that statement-takers used, a tick-box could have been used for identifying narratives of resistance, and elements of survivance. Given my finding that Indigenous women are frequently given a discursive treatment of absence in the TRC final report and across Indigenous-state relations more broadly, a greater attentiveness to stories of resistance and survivance could hold potential for greater gender justice, and, as Leebaw (2011) asserts, a greater role for political judgement. In this way, we might see a reconciliation that moves beyond, as Coulthard (2014) puts it, a politics of recognition. In particular, Baines's approach to survivor narratives - recognizing complex multiplicities and emphasizing a lived experience focus - would render the absence discourse that the state imposes on Indigenous women unworkable by emphasizing multifaceted agency.

Before looking more closely at how the TRC treated narratives of resistance, I return briefly to the question of vulnerability. In discussion of residential schools, talking about vulnerability and resistance is somewhat less fraught than it is when talking about adults. At issue is the individual agency of *children*, which of course looks different from the agency of adults¹⁰¹ - an assumption of vulnerability is less problematic. The use of terms like resistance and resilience in this context could be interpreted as holding unfair expectations of children. Haig-Brown (2008) and Chrisjohn, Young, and Maraun (1997) each identify the complex relationship survivors of residential schools sometimes have with the notion of resistance. For example, Haig-Brown (2008) recounts the story of a

¹⁰¹ This is not to erase the political agency of children. For more on the interplay of child/adult discourse and race, see Rollo (2018).

girl who chose to collude with the nuns as a means of survival: “Rather than actively resisting the system, she chose to work it to her advantage. In her privileged position, she gained considerable control over her life and as a result developed a sense of self-esteem” (p. 109). Chrisjohn, Young, and Maraun (1997) remind us that invoking resistance can bring back traumatic memories for survivors: “There may be occasions where an individual witnesses a physical assault upon someone to whom [one] has ties and suffers the permanent mortification of having (and being known to have) taken no action” (p. 93). All this to say, in invoking resistance I do not intend to de-emphasize vulnerability. Moreover, I am not offering a judgment call about how an experience should or should not have been, but rather I envision a discursive spectrum that allows for a greater complexity in narrative framing.

The TRC’s final report has several passages across the volumes devoted to resistance, in which women and girls barely appear. There are two discrete sections devoted specifically to resistance stories, although there are other elements of the report that would have lent themselves well to it. For example, the ‘Survivors speak’ volume (Truth and Reconciliation Commission of Canada, 2015c) is divided into chapters that detail a variety of elements of residential school life. The chapter titles are: “Language and culture; Fear, loneliness, and emotional neglect; Despair; and Abuse. A chapter on elements of resistance could have been included here. in ‘Honouring the truth, reconciling for the future’ (Truth and Reconciliation Commission of Canada, 2015b), the Summary volume, there is a six-page section titled “Resistance: ‘I am the Father of this Child’” that draws on narratives from other final report volumes to detail parental resistance and the practice of running away (pp. 114–121). In addition, pages 669–675 in

The History Part 1 (Truth and Reconciliation Commission of Canada, 2015d) is called “Parents Respond and Resist 1867–1939.” This section focuses specifically on parental resistance.

In the “Resistance: ‘I am the father of this child’” section in the Summary volume (Truth and Reconciliation Commission of Canada, 2015b, pp. 114-121), it is notable that although fathers figure heavily in stories of parents refusing to enrol their children in residential school, pulling them out of school, or protesting conditions at school, mothers are far less present. This is likely due in part to the TRC relying on official government and church records for evidence of these instances and the fact that men’s voices would be considered more valid than women’s voices at that time. Nevertheless, it is still striking how passive and absent this section renders women from the official record, and this within a space where Indigenous peoples were already forcibly rendered passive by little room for manoeuvre. The section concludes by noting that parents’ resistance occasionally resulted in “small victories” (p. 121) but that Indigenous peoples had little control over how the residential school system operated. The section in the *History: Part 1* volume largely follows the same pattern.

Along with the data I retrieved from the TRC final report, stories of resistance have been captured in forms outside of the TRC, in scholarly publications (see Haig-Brown, 2008; Milloy, 1999; Miller, 1996), community resources (See Stout & Kipling, 2014); and in memoirs penned by survivors (see Fontaine, 2010; Sellars, 2013; Merasty, 2015). Acts of resistance highlighted in these other materials in some ways devote more space to the overt analysis of patterns and types of resistance, based on the accounts of survivors. For example, Haig-Brown (2008) writes that some students created a counter-

culture to the schools, a “sub-culture” that was “distinct from that being promoted by the religious orders,” and that there were “students who sought refuge within the system as a means of immediate survival but whose actions led to eventual changes within it” (p. 98). In a document prepared for the Aboriginal Healing Foundation, Stout and Kipling (2014) categorize the coping strategies of residential schools students as detachment, re-interpretation, accommodation, and resistance (p. 54), and offer thoughts on the role of resistance in the lives of the children at residential schools: “The children attending these schools were not only victims, but also agents who consciously implemented strategies and tactics to cope with the difficult circumstances in which they found themselves” (p. 53). Similarly, Miller (1996) identified common strategies of resistance that included ridicule, non-cooperation, and arson. An explicit naming and analyzing of resistance as resistance, which the TRC report does not completely do, goes some way to recognizing survivors as multifaceted individuals with political agency even in spaces of seemingly having no power.

In short, by facilitating the inclusion of stories of resistance in a truth commission, more room is made to discuss ongoing resistance and ongoing injustices, complicating the notion of a clean temporal break. In other words, the story a truth commission puts forward about the past contributes to the malleability of the story that exists in the present. In the Canadian case, the TRC’s ungended narrative of colonialism renders some of the present-day injustices against Indigenous women more rigid, less permeable to change.

In envisioning a survivance frame for transitional justice focused on resistance, there is a risk of seeming overly prescriptive or seeming to dictate how survivors should

engage with transitional justice. Drawing on the concept of a politics of refusal (see L. Simpson, 2017; Flowers, 2015), I argue, could help to mollify this concern. Specifically, invoking a transitional justice of survivance centres the agency of survivors - refusing to participate is an agentic move that can be part of survivance. Refusal differs importantly from resistance in that, as McGranahan (2015) argues, it is more about recognizing and perhaps rejecting social relationships than about navigating domination. For example, in the case of the TRC, there was certainly overt resistance to the process, which was also at times part of a dual track of engagement with and critique of the process (see D. Robinson & Martin, 2016), but there was also both an active and a passive refusal on the part of some survivors to take part. To refuse can be generative and strategic. For example, Flowers (2015) defined refusal as “simultaneously a negation of access to information and resources, as well as an affirmation of sovereignties” (p. 33). She draws on Foucault to further imagine the generative potential of refusal: “We have to imagine and to build up what we could be” to get rid of the “simultaneous individualization and totalization of modern power structures” (Foucault in Flowers, 2015, p. 34). Understanding refusal in this multidimensional way, as having multiple loci of genesis, must be part of a fulsome narrative of survivance. Theorizing refusal only as passive further feeds a discourse of absence.

Understanding refusal as a part of the narrative of transitional justice can reveal a more multidimensional story than one focused solely on those who choose to participate. Garneau (2016) says that in some cases, a refusal to participate in the TRC “signal[led] the need for forms of representation outside of the current reconciliation narrative” (p. 23). That is to say, and especially in the face of ongoing colonial injustices, refusal to

take part in formal reconciliation initiatives like the TRC could be an act of protest or an act of self-preservation. Beyond refusal of the TRC process as an ethos, there are, of course, many survivor stories not included in the TRC's narrative because many never made it home from school, or have since passed away, or circumstances do not allow it, or survivors choose to keep their past private, for a whole host of reasons. As Vowel (2016) notes, the truth about residential schools was silenced for many years (p. 172). As such, silence regarding the past perhaps remained the status quo for many. Understanding the politics of refusal, and incorporating this piece into the narrative that a truth commission puts forth is an important part of a politics of survivance and recognizing the multifaceted agency of survivors.

6.3.2 Intergenerational survivors

Intergenerational trauma is a concept familiar to those conversant in state discourse around Indigenous peoples. However, survivance is also a thread that wends its way through generations. Despite the imposition of settler colonialism and practices of genocide, Indigenous peoples are still here. Furthermore, many Indigenous youth are highly politically and culturally engaged in new ways (see J. Dhillon, 2017), representing and honouring of the tenacity and resilience of the generations before them. A former senior TRC employee told me:

There is a whole new generation of young people coming up in their communities who are doing just amazing work. And they are the faces of change, but that doesn't come from nowhere. That comes from a long history of Indigenous resistance. (Interview A)

Detailing the connection between point A and point B (the long history of resistance leading to the activism and resurgence of Indigenous youth) and telling the story of intergenerational survival is an essential part of a politics of survivance. It also presents an opportunity to celebrate the strength of Indigenous women.

A storytelling project created by the University of Victoria's Centre for Youth and Society in 2012, which supported Indigenous youth to create digital stories of resistance to residential schools, exemplifies this emerging youth-led change-making.¹⁰² Seven short videos illustrate intergenerational survivance through storytelling. The words of Rita Merrick, in her video 'Stories of our Grandmothers,' speak poignantly of intergenerational resistance. "Grandmother recalls a time when she was connected to the spirit world, in great pain and great suffering," Merrick begins. "Many figures appeared before her. Those were her future generations," and without her "perseverance and resiliency they would not get a chance to walk mother earth." Merrick says that her grandmother:

...chose to survive for a reason that far exceeded her pain. Grandmother lived so that granddaughter could be here today. This story will shape the ways in which granddaughter lives her life. It is through this shared story that granddaughter will start to understand the strength that runs through her veins.

On residential schools, Merrick says: "This shameful era has hindered our development momentarily. But the resistance and resurgence of our cultures continues. Languages are being relearned. Ceremonies are being attended. And individual healing is taking its course." Merrick is the first generation of her family to not attend either residential

¹⁰² The videos can be found at <https://www.uvic.ca/research/centres/youthsociety/resources/digital-stories/index.php>

school or day school: "To them I say - your paths of resistance are admired, emulated, and lived. You are our heroes."

In 'Qwam Qwam,' Shayli Robinson tells the story of her Auntie's determination while at Kuper Island residential school to hold on to her Hul'qumi'num language so that she could still speak to her family back home – many of whom did not speak English. Sally and two of Robinson's other aunts started giving lessons in Victoria a number of years later. Robinson reflects on what it meant to take these classes as a child:

I was questioning what being Native meant. What makes you Native? I didn't really know what it meant. Having something tangible like speaking my Native language and having it written down and recorded to listen to at night helped me through that identity phase so much.

These two videos beautifully illustrate an intergenerational survivance that tells the story of the thread of Indigenous women's survivance - from the young girls attending residential school to their nieces and granddaughters sharing their love and appreciation years later. There must be room in transitional justice to include these sorts of stories – the choice to deliberately understand the stories of intergenerational survivors as products of the resistance of their ancestors is a framing that is within the reach of truth commissions, should they stretch to include them.

The particular value of incorporating the stories of intergenerational survivors as part of a politics of survivance in a truth commission is multifaceted. First, telling stories of intergenerational survivance could assist with de-temporalizing a conflict or injustice being addressed through transitional justice. In the Canadian case, when much of the history of residential schools being addressed happened many decades ago it could be

particularly meaningful to understand more fully the links between past and present - this history did not occur as long ago as it may seem from looking at a photograph. Second, it could also be a frame through which settlers examine their own intergenerational legacies. The explicit linking of past to present could encourage reflection on how one's own family history shapes one's circumstances today. However, all of the above is predicated on the assumption inherent in transitional justice that the exercise in question can contribute to a more just future by facilitating relationship transformation. In the next section, I propose that a politics of survivance must both include ongoing public engagement beyond the institutional life of a truth commission and, crucially, must re-examine the role of engagement and witnessing.

6.3.3 Ongoing public engagement and reconsidering witnessing

In chapter three, I addressed theories of testimony and witnessing, and considered the long history of state-led inquiries and restitution efforts in Canada that requested testimony from survivors of residential schools. In this section I propose that a politics of survivance must both create opportunities for a more relational witnessing and must decouple it from the institutional lifespan of a truth commission. On the practice and purpose of witnessing, Simon (2005) writes that:

As an educational space, a transactional sphere of public memory must be instilled with practices that help us attend to the alterity of the lives of others.

What might such practices be, practices that could encourage the disruptive touch of memories not mine? (Simon, 2005, p. 94)

The “disruptive touch of memories not mine” (Simon, 2005, p. 94) is evocative phrasing to describe a moment of bearing witness to someone else's memory. This is an implicit -

if not always explicitly stated - element of truth commissions: Through knowing about the truth, there will be disruption, and that disruption will bring change in some way. But what prompts this touch to be disruptive? And to what end? These are questions that should be considered at the outset of a transitional justice initiative.

What might a more relational witnessing look like in the context of a truth commission? In the case of the TRC, the role of the audience at events was largely static and passive, with limited exceptions. For example, Niezen (2017) references the Churches Listening Area, which was a space at national events “where survivors could sit down individually with a church representative of their choice and hear a private, personal apology” (p. 89). Also, as discussed in chapter five, the TRC appointed honorary witnesses who were asked to accept “the sacred trust of bearing witness to the truths of residential school survivors, and of contributing to the goal of ongoing reconciliation between the Indigenous and non-Indigenous people of Canada, beginning with sharing what they have heard and learned” (Truth and Reconciliation Commission of Canada, 2015b, p. 397).¹⁰³ But the role of these individuals was not prescriptive, and some struggled with what this role actually meant. Honorary witness Nick Noorani, an advocate for newcomers to Canada, spoke out in 2019 about the vague nature of the role (“TRC honorary witness grapples with feeling like a ‘fraud’ after observing testimony,” 2019):

I saw something that was from the depth of people's souls and the only thing I can do is talk about it to people I meet. And that to me is not adequate... It's not helped any community get fresh drinking water. (para. 21)

¹⁰³ For a full list of the TRC's honorary witnesses, see Truth and Reconciliation Commission of Canada, 2015b, p. 397.

Noorani's words speak to the flawed assumption that the facilitation of listening is enough to precipitate change. A more prescriptive role for honorary witnesses, along with clear avenues to pursue further advocacy could have lent a far greater impact to this role.

For the majority of the TRC's events, those in the audience acted as *de facto* witnesses, or as Niezen (2017) called them, "temporary audiences and abstract, remote publics" (p. 85). The role of the audience in the TRC's proceedings was strictly passive. Quinn (2016), in her work on post-conflict acknowledgement and public engagement, talks about "thin sympathy" as a "basic understanding of the needs of the other" (p. 121). In invoking this concept, Quinn (2016) conceptualizes this basic understanding (on the part of bystanders/the general populace) as a necessary precondition for "healing processes" to come out of institutions like the TRC. She argues that "sympathetic response is the key intervening variable that stimulates the impulse to acknowledge" (p. 124). However, I argue that truth commissions can and should do more to encourage listening to be less passive and more active – working towards true relational witnessing. Listening is of course necessary, as is acknowledgement, but I would argue that they do not offer a sufficient form of relationality to spur redress for past injustice, nor does it ensure a more just future.

Qwul'sih'yah'mat Robina Thomas (in Jobin & Kappo, 2017) envisions a more active role for listening, describing storytelling as "both a historic and contemporary pedagogy... for resisting colonialism – a pedagogy in which the student must learn to listen – not simply to hear" (p. 139). I hold that part of facilitating a politics of survivance and furthering transformative reconciliation necessitates asking more of witnesses, and facilitating opportunities for ongoing engagement. Much as those who provided

testimony to the TRC were provided with guidelines, rules, and support for providing testimony, so too could truth commissions build in similar provisions for those witnessing.

Truth commissions of course vary in the extent to which they compel public engagement. Melissa Steyn (2012), in her work on reconciliation in South Africa, argues the failure to engage a settler/bystander/beneficiary¹⁰⁴ population in discursive and material restitution processes facilitates ongoing wilful ignorance about the true nature of the abuse - a phenomenon she calls the 'ignorance contract' - and does nothing to further substantive change in relationships and material conditions. The consequence of such considered ignorance is that a historically dominant population can maintain its social position both discursively and materially. Nagy (2012) calls this situation a state of "settler denial" in the Canadian context.

In the provision of testimony, there is often an inherent promise that it will be witnessed and cared for in some way. For instance, at a TRC regional event in Kamloops, B.C., in 2013, Chair of the TRC, Justice Murray Sinclair said:

The important thing for you to understand is that by giving us your testimony in a public way, we are committing to you that we will take your story and we will keep it in our national archive so that future generations will always know and always have accessible to them information about what went on in the residential school that you attended for as long as they wish to access that information. (Thompson Rivers University, 2013, 10:06)

¹⁰⁴ "Beneficiary" is the term used by Mahmood Mamdani (2002) to describe white South Africans during apartheid.

Sinclair here neatly stated the purpose and destination of TRC testimony, and suggested that one audience for testimony is “future generations... *for as long as they wish to access that information*” (Thompson Rivers University, 2013, italics mine). Here, a passive role for the archive is suggested – one that depends on the potential interest of future generations - rather than a more purposeful incorporation of the archive into the everyday lives of Canadians.

An understanding of the TRC materials to which Sinclair referred as “the archive” is somewhat limiting. Riaño-Alcalá and Baines (2011) conceptualize the idea of testimony as a living process as “spaces where survivors retain and transmit memories of violence in an ongoing and reiterative process of documentation in the everyday” (p. 2). They cite performative acts (poetry, song, drama, and dance), embodied archives (scars and physical illness or injury and emotions), and memoryscapes (landscape and material markers of memory) as acts of “emplaced witnessing” (p. 3) that occur alongside or outside of more formal processes. Angel (2012) also calls for a broader definition of testimony to include not only spoken testimony but also performance and resistance, while Angel and Wakeham (2016) explore the use of photographs as testimony. These are important dimensions to consider in the diffusion of the TRC archive in Canada. While the work of the TRC carries on in some ways through school curricula, the Calls to Action, and government programs and discourse, the living archive of what happened at residential schools is broader, deeper, and intergenerational.

How can the living archive inspire change? Regan (2006, 2011) argues that settler Canadians must undergo a process of unsettling, or restorying. In building her argument, Regan (2006, 2011) draws on the work of Lederach (2005), who writes that

“the space of narrative, the act of linking the past with the future to create meaning in the present, is a continuous process of restorying” (p. 146). Regan (2011) describes the project of restorying in the Canadian context as such: “We must make decolonizing space for Indigenous history – counter-narratives of diplomacy, law, and peacemaking practices – as told by Indigenous peoples themselves” (p. 2). Restorying is just that – a process, not a finite event. Furthermore, it is a process that requires momentum, coordination, and resources. If the TRC had been transitioned into a permanent body of some kind, this would have allowed for ongoing public engagement. Crucially, it would also allow for work to be resourced and conducted with a broader array of foci, including gender.

As it stands, the way that most people now engage with the work of the TRC is through the Calls to Action. The 94 Calls to Action - released at the close of the commission - contained a number of bold political requests. However, in keeping with so many recommendations that have come before, there has been poor take-up of the TRC Calls to Action. In a December 2019 assessment of implementation, Jewell and Mosby found that 9 of 94 Calls to Action are complete, defining ‘complete’ as whether all steps were taken to fully address the content of the Call, and “by the specific parties to whom the Call to Action refers” (p. 2).¹⁰⁵ In a related news article, Jewell referred to the Calls to Action tasked to the federal government and marked as complete that were tasked to the federal government as “cosmetic changes” (Martens, 2019a). While I wouldn’t categorize

¹⁰⁵ Calls marked as complete are Calls 13 (Federal acknowledgement of Indigenous Language Rights), 41 (Missing and Murdered Indigenous Women’s and Girls Inquiry), 48 (Adoption of UNDRIP by Churches and faith groups), 49 (Rejection of the Doctrine of Discovery by churches and faith groups), 72 (Federal support for the National Centre for Truth and Reconciliation), 83 (Reconciliation agenda for the Canada Council for the Arts), 85 (Reconciliation agenda for the Aboriginal Peoples’ Television Network), 88 (Long-term support from all levels of government for North American Indigenous Games), and 90 (Federal support for Indigenous sports programs and athletes) (Jewell & Mosby, 2019, p. 4).

the completed Call 41 - which urges the federal government to appoint a national inquiry on missing and murdered Indigenous women and girls, - cosmetic, it is difficult not to consider a record of 9 of 94 completed actions, four years after the launch of the Calls to Action, as indicative of poor progress.

However, there are differing interpretations of what constitutes a completed action, and the federal government has offered cautions about the realistic pace of change (see Martens, 2019). The Government of Canada has created a landing page to provide updates on Calls to Action progress (Government of Canada, 2019), and CBC News also has an ongoing program of monitoring Calls to Action progress (Beyond 94: Truth and reconciliation in Canada). Sources differ on how they describe progress. In December of 2020, Crown-Indigenous relations Minister Carolyn Bennett said that 76 of the 94 Calls to Action fall under federal jurisdiction, and that 80% of those 76 are “completed or well underway” (Monkman, 2020, para. 11). However, the CBC as of their last update in February, 2021, listed Calls to Action progress as follows: 10 complete, 23 projects underway, 38 projects proposed, and 23 not yet started (Beyond 94: Truth and reconciliation in Canada).

In June of 2020, five years after the TRC released the Calls to Action, Ry Moran, then-Director of the NCTR, pointed out that if implemented, Call 53 - the establishment of a National Council on Reconciliation tasked to “Monitor, evaluate, and report to Parliament and the people of Canada on reconciliation on progress across all levels and sectors of Canadian society, including the implementation of the Truth and Reconciliation Commission of Canada’s Calls to Action” - could prove useful in systematizing the monitoring of progress (Pashagumskum, 2020, para. 18). Call 53 has

yet to be implemented. Perhaps the Calls to Action are not the most effective way of galvanizing ongoing engagement with the work of the TRC. I suggest that creative and ongoing ways of bringing the archive of the TRC into the everyday lives of Canadians in ways that compel a deeper relational witnessing could offer more opportunities for transformative reconciliation.

Ongoing public engagement through the work of a truth commission could also further a politics of survivance by de-temporalizing injustice and building the work of a commission into everyday community initiatives. This could allow for successive generations of involvement in learning initiatives, and embed the work of the truth commission into community, bit by bit. This approach would go against the traditional definition of what a truth commission is, in terms of being time-bound. However, being restricted by traditional definitions will yield traditional results. Ongoing public engagement could increase truth commission relevancy and impact.

6.5 Conclusions

A truth commission usually has limited-to-no capacity to make policy, although it can make recommendations. However, there is a contradiction here, in that a truth commission is regularly presented as an instrument of societal change. In Canada, there are also varying interpretations within Indigenous studies on the value of engaging in processes like the TRC. For the purposes of my inquiry, I have, to some extent, bracketed these questions.¹⁰⁶ My main concern has been to understand the context for, operations of, and legacy of the Canadian TRC as it regards - or fails to regard - gender. My data

¹⁰⁶ These questions are addressed elsewhere. For a thorough exploration of the value of Indigenous peoples engaging with state led processes, see work cited in chapter one of this dissertation regarding the Indigenous resurgence school (pp. 17-20). For a recent exploration of the assumption that a transitional justice leads to change, see Gready and Robins, (2020).

analysis has revealed the presence of what I have called an absence discourse that permeates the state's relationship with Indigenous women. In this chapter I have theorized a politics of survivance as a way that truth commissions and transitional justice can endeavour to counter the absence discourse. Perhaps a greater role for survivance within the TRC could have led to a richer possibility of transformative change coming out of the TRC. Instead, given a discourse of absence, the outcome is a political discourse that in some ways replicates the state's historically discursive treatment of Indigenous women as passive victims, rather than as survivors and leaders. In other words, if we do not understand the past and present gendered impacts of colonialism—as I argue we did not through the TRC—a culture of denial about the justice needs of Indigenous women in Canada will persist.

I have drawn on insights from transitional justice and Indigenous studies to contend that an increased focus on resistance, refusal, and intergenerational survivors, as well as reconsidering the role of witnessing and long-term public engagement, could all contribute to a more gender-just transitional justice through facilitating a greater capacity to see and understand agency. Such an approach would add to other recommendations I have discussed, including those from NWAC (2010, 2012), and building in an intersectional approach from start to finish.

In the final chapter, I offer conclusions regarding my research contributions to both the literature and to the practices of transitional justice and state redress. The contribution of this dissertation is both a deconstructing and a reconstructing of gender and reconciliation, and offers both an analysis of the intersection of colonialism and patriarchy as it operated through the TRC, using NWAC's (2010a) criteria for gender

responsive reconciliation as a guide for my analysis. In this chapter I have introduced a reconstruction of gender and reconciliation, offering a course correct from a discourse of absence as regards Indigenous women and toward a politics of survivance. I discuss potential future research avenues arising out of this work, as well as relevant political developments.

To conclude my juxtaposition of absence and survivance, and to return to the opening of this chapter, a final note on the life of Tina Fontaine: Tina Fontaine was targeted by overlapping racist, colonial, patriarchal structures. She was also a young woman who made her own choices, experienced difficulties, asked for help, loved children, was close with her Auntie, reconnected with her mother, and was laid to rest with her father. Let her be remembered and honoured as the person she was, not simply as a voiceless victim.

7: Conclusions

7.1 Introduction

The Canadian TRC was a mammoth enterprise, borne of a monumental legal victory awarded to survivors of residential schools. The commission spanned the country, with a commitment to hearing the stories of survivors and their families - both in community and through the large national events - and a mandate to conduct extensive research and make sense of countless archives and government records. Along with this mandate came an expectation that what was learned in the course of its seven years would be summarized into a final report that could educate and spur change. The TRC - as with many other truth commissions worldwide - was beset with high expectations and hope that the process could be a landmark moment in resetting the state-Indigenous relationship.

Hope is hard won. Hope that the TRC could usher in significant change was not a naïve hope, but rather a hope informed by years of activism and resilience on the part of Indigenous peoples, and informed by incremental change and plenty of disappointments. It is in the spirit of this hard-won hope that I have sought to cast a critical yet hopeful eye over the TRC. Taking the potential of the TRC seriously is an essential and respectful way to honour the survivors who shared their experiences with the commission, as well as those who weren't able to. The national and community events were significant gatherings of survivors, many of whom participated at great personal cost. The work that took place through the TRC must not be consigned to history as the work of so many other inquiries and fact-finding missions before it.

At the time of writing, it has been six years since the close of the TRC.

Legislation to implement UNDRIP has now passed both federally and provincially in British Columbia. 2021 also brought new awareness of the horrors of residential schools to many, prompted by the Tk'emlúps te Secwépemc nation's statement in May that they had uncovered the remains of 215 children buried at the former Kamloops Residential School. Tk'emlúps te Secwépemc Chief Rosanne Casimir said that to their knowledge, the children uncovered are "undocumented deaths" (Dickson & Watson, 2021, para. 4). Since the Tk'emlúps te Secwépemc nation's recovery of their children, numerous other nations have also employed ground penetrating research technology to search the sites of former residential schools in their communities. As of September, 2021, the remains of more than 1,300 children had been recovered (Gilmore, 2021, para. 3). In August, the federal government announced \$321 million will be put towards assisting other nations to search sites. This unthinkable national crime, brought to the attention of many non-Indigenous Canadians for the first time, has renewed attention to the TRC's Calls to Action, and questions of accountability, complicity, and justice for Indigenous peoples.

There is a window of political opportunity to further transformative reconciliation. There is a spectrum of responses to the spectre of change once again being raised by the hard work of those aiming to create change in politics, government, law, and countless other areas – hope, suspicion, weariness, refusal, and many combinations thereof. Fully understanding the idea of transformative reconciliation and locating it within Indigenous-state relations and institutions like the TRC is part of maximizing a window of opportunity and furthering justice for Indigenous peoples. Truth commissions must facilitate ongoing social justice and self-determination progress, particularly for

Indigenous women, who have been doubly oppressed under patriarchy and settler colonialism.

I proceed by bringing together the key contributions of this dissertation to praxis and policy and to the literature. I suggest further research opportunities that could build on my work, and conclude with final reflections.

7.2 Key contributions – praxis and policy

I sought to assess the gender regime of the TRC, a significant moment in state-Indigenous relations that appeared to have potential to intervene in both colonial and patriarchal relations of power. My research has demonstrated that the TRC's gender regime was one in which gender was largely treated as a neutral factor rather than as a factor that differentially impacted the lives of survivors both at residential school and today. Without thoroughly understanding these gender differences, the state's ability to further particular redress and justice for Indigenous women is limited.

As I established in chapter three, this pattern of inattention to gendered experiences is not new for state-Indigenous relations. Settler colonialism uniquely targeted Indigenous women by design, through disenfranchising legislation such as the 'marrying-out' rule that stripped women of status if they married a non-Indigenous man, and through a targeting of Indigenous women in their capacity as mothers – with forced sterilizations and the Sixties Scoop. State-led redress measures such as RCAP, implementation of UNDRIP, and the 2008 official apology have been inattentive to gender in design or implementation, or both.

The TRC posed an opportunity to interrupt this pattern. Transitional justice as a field has accumulated learning about what plans and practices have the potential to recognize and address the harms and injustices that affect women differently (see

Lambourne & Rodriguez Carrion, 2006; Rimmer, 2010; Buckley-Zistel & Stanley, 2012). Furthermore, NWAC (2010a) offered specific guidelines at the outset of the TRC for implementing gender sensitive practices within a truth commission that are grounded in Indigenous epistemologies and specific to Indigenous context. However, the TRC did not embed particular consideration of gendered discrimination and injustice into its proceedings or outputs, resulting in a status quo in Canada's treatment of Indigenous women.

Truth commissions proliferate across the globe. They are implemented to address harms against Indigenous peoples in countries such as Peru and Guatemala (International Center for Transitional Justice, n.d.), but the Anglosphere of settler colonial countries are at relatively nascent stages of reckoning with the past amidst rights claims from Indigenous peoples. Canada is the first Anglosphere state to have instituted a national truth commission, although regional commissions and inquiries have existed and are ongoing. An ongoing and high-profile regional truth commission, the Yoo-rrook Commission, was formally established in the state of Victoria in Australia, in May of 2021. Interestingly, the Yoo-rrook Commission is mandated with investigating both historical and ongoing injustices against Indigenous Australians (Wahlquist, 2021), rather than a focus on a discrete historical period of time. Furthermore, the commission has the ability to compel testimony under oath. How the Commission addresses gender in its proceedings has yet to be seen, but in terms of my earlier discussion of descriptive representation the five commissioners are chaired by an Indigenous woman – Professor Eleanor Bourke, a Wergaia/Wamba Wamba elder.¹⁰⁷

¹⁰⁷ See <https://www.firstpeoplesvic.org/our-work/truth-telling/yoo-rrook-justice-commission/> for a full list of commissioners.

In my analysis I have identified several practical decisions impacting the TRC's gender regime in particular, with learnings that could inform future truth commissions and transitional justice initiatives. First, the design of the statement-taker's cover sheet, with tick-boxes to note content covered in testimony, was used by report writers to source content by particular topic area. The sheet did not have any tick-boxes related to gender. If pre-specified categories related to gender had been identified for statement-takers, there could have been more opportunity to code testimony that specifically related to gendered experiences. Crucially, this could have prevented the fact that, according to media sources and confirmed by a senior staff member from the TRC, the commission heard significant testimony regarding forced sterilization, forced marriages, indentured servitude, and differential gendered treatment at Indian Hospitals, but these topics appeared nowhere in the final report.

Another example of a TRC process that contributed to gender being sidelined was the fact that the Calls to Action were created by the Commissioners in advance of the final report being written, and large portions of the final report were then crafted around material that would support the Calls to Action. Given that only one of the 94 Calls to Action explicitly references Indigenous women, this order of proceedings could have contributed to a gendered discourse of absence in the final report. I have also made suggestions for new directions, based on my analysis of the TRC and on theory in transitional justice and Indigenous studies, that could contribute to a more gender-just truth commission – these include fostering a politics of survivance that incorporates the concepts of resistance and refusal; inclusivity of intergenerational survivors; ongoing

public engagement beyond the institutional life of a truth commission, and re-examining the role of witnessing.

I have argued that truth commissions can interrupt this discourse through the adoption of a gender lens as a foundational and cross cutting lens through all stages of the process: data gathering, historical analysis, statement taking and analysis, and the crafting of the final report all stages of the process. NWAC's principles, based on their work with Indigenous women and with survivors, articulate a road map for reconciliation that is based in Indigenous epistemologies and in being attentive to the political role and justice needs of Indigenous women at the unique nexus of patriarchy and settler colonialism. Informed by the conceptual grounding, I used NWAC's principles to assess the transformative reconciliation potential of the TRC. This is yet again another reminder that the road map was already there – informed by Indigenous women.

Specifically, in analyzing the interplay of patriarchy and settler colonialism that has long characterized state-Indigenous relations and that is of particular detriment to Indigenous women, I sought to establish a comprehensive picture of the TRC's gender regime.

My data analysis of the TRC's setup, proceedings, and outputs revealed a lack of attention to gender equity. While in some areas, equitable demographic gender representation was achieved - such as survivors' direct quotations in the final report - I found overall the TRC did not purposively incorporate equitable gender representation in its programming and outputs, the result of which I have called an absence discourse regarding Indigenous women. I define the absence discourse as the state's tendency towards a discourse where Indigenous women are either absent in terms of recognition

and engagement as agentic, resilient political individuals, or are the objects of hyper-focus in terms of being pathologized and stereotyped.

My outlining of a politics of survivance in Chapter six is both a theoretical intervention and a practical set of suggestions for countering the erasure of women's agency and leadership. While my findings regarding the absencing of women were specific to the TRC, planning a gender responsive truth commission is, I would argue, essential in any setting. I have proposed several directions under the umbrella of survivance that could offer the potential for better gender responsiveness: a greater attentiveness to the multiplicities of survivor experiences through recognizing resistance and refusal, highlighting intergenerational survivance, and de-temporalizing the role of witnessing at truth commissions – purposively embedding multi-faceted and ongoing public engagement with testimony beyond the official life of a truth commission.

7.3 Key contributions - the literature

In order to further transformative reconciliation, transitional justice must be decoupled from the idea of a transitional moment and a time and budget limited process. The building of relationships and the establishment of a collective responsibility for reconciliation are multifaceted and ever-changing challenges that require significant investment and commitment. By thinking about truth commissions through the prisms of Coulthard's (2014) critique of the politics of recognition and Lightfoot's (2012) selective endorsement, it becomes clear why some truth commissions have limited impact and little follow-through on recommendations. A significant discursive commitment to Indigenous rights and self-determination can come at the expense of transformative change through as Coulthard (2014) argues, a politics of distraction, or as Lightfoot (2012) argues, selectively endorsing human rights norms while neglecting to fully

commit. Indigenous studies as a literature has frequently moved toward casting a lens beyond the present moment, envisioning transformed futurities. This is a direction that, if applied to transitional justice, could help the field expand beyond a focus on justice at the time of political transition, and towards more solidified transformative change.

I have built a working definition of transformative reconciliation that draws on scholarship in Indigenous studies and transitional justice and is rooted in feminism and centering the experiences of Indigenous women. Borrows and Tully (2018) define transformative reconciliation as a practice that transforms relationships and is accompanied by strong practices of Indigenous resurgence. I have approached transformative reconciliation as a practice that is rooted in relationality and collective responsibility, and centred on disrupting both colonial and patriarchal power relations.

Transformative change in state-Indigenous relations requires, and has always required, Canada to learn how to be in good relations with Indigenous nations. Put simply, establishing good relations requires reciprocity, vulnerability, and the commitment to recognize and shift relations of power. My analysis of the TRC revealed very little opportunity for relationality. I have looked to scholars delving into questions of testimony and witnessing (see Million, 2013; Baines and Riaño-Alcalá, 2011; Regan, 2011; Oliver, 2001) to articulate a politics of relationality in my definition of transformative reconciliation. In particular, I have argued that the prevailing assumption in the study and praxis of transitional justice - that testimony and witnessing as practiced in the truth commission model contribute to reconciliation – must be reconsidered and reworked to include stronger opportunities for relationality. A commitment to transformative reconciliation demands that the consolidation of testimony and the passive

nature of witnessing that is by-design a part of most truth commissions be reconsidered. Embedding and compelling opportunities for meaningful and ongoing witnessing is an integral part of working towards transformative reconciliation.

This was, of course, a balancing act. The TRC was an opportunity for survivors of residential schools to tell their stories, and for the commission to blow open the layers of secrecy and misinformation about what happened at residential schools. It was not designed as a forum to feature non-Indigenous people. This piece was deeply needed. However, the TRC also asked very little of non-Indigenous people throughout the process. Furthermore, the lack of opportunity for relationality meant that those whose relations are shaped both by gender discrimination and racism remain status quo.

Moreover, a commitment to relationality must come not just from the state but from a society writ large. A critical mass of collective responsibility for transformative reconciliation is required to support Indigenous self-determination and to craft better relations. Working to imbue a collective responsibility for addressing gender-based violence, for example, could lessen the notion that such violence is solely a crime conducted by a perpetrator and could further the view that it is a structurally supported phenomenon enabled by patriarchy and systemic discrimination. The planning, proceedings, and outputs of a truth commission must compel as broad a group of participants as possible, and furthermore this sense of collective responsibility must not end with the lifespan of a TRC but must be centrally and relentlessly pursued after the commission is over. Through bringing together theories of transitional justice with Indigenous political theory, I have envisioned a way that transitional justice practices can contribute to transformative reconciliation. By bringing the transitional justice literature

together with Indigenous political theory and proposing elements that are more likely to disrupt patriarchal power relations in particular, I have offered points of consideration for furthering transformative reconciliation in settler colonial context.

This nesting of transitional justice within an Indigenous context was the direction of NWAC (2010a), as they suggested key elements that should be included in a truth commission to ensure it is both culturally relevant and gender sensitive. They explicitly drew on Hayner's (2011) six purposes of a truth commission, and adapted them to name six indicators of a culturally grounded, gender responsive truth commission (p. 26). My specific and unique contribution to the literature is an in-depth analysis of a truth commission against NWAC's criteria and other factors gleaned from both Indigenous studies and transitional justice – a gender analysis of a truth commission in the settler colonial Anglosphere. Furthermore, based on what I found, namely that an absencing of Indigenous women's agency permeated the TRC, I have theorized a shift in discursive direction towards a politics of survivance that incorporates stories of resistance; a politics of refusal; intergenerational survivors; and ongoing public engagement. Understanding and analyzing gender and transitional justice through a politics of survivance as I have articulated it is both a contribution to the literature and a fruitful arena for further analysis of transitional justice processes.

Methodologically, the design of my inquiry was inspired by Kuokkanen's (2019) investigation into the gender regime of Indigenous self-determination in Canada, Greenland, and Finland. More specifically, I have positioned my study as a continuation of Kuokkanen's (2019) findings that gender is not perceived to be a part of self-determination discourse in Canada, and her argument that self-determination without

gender justice is incomplete. In building her theoretical framework, Kuokkanen (2019), draws on the work of Val Napoleon (2007, 2009), who has called for an approach to Indigenous nation building and governance that begins with the premise that gender is a foundational consideration.

Gender is not yet mainstreamed into reconciliation discourse, and reconciliation without gender justice is incomplete. As this theoretical space expands, there are myriad avenues for further research. Reconciliation is almost wholesale the language that permeates not only state-Indigenous relations in Canada but also countless other political, institutional, and community initiatives. As programs or policies carried out in the name of reconciliation proliferate, there is a need for further analysis as to how gender is incorporated in such initiatives.

Such analysis can take many forms. Drawing on NWAC's (2010a) "indicators toward culturally relevant gender responsive reconciliation" (p. 27), I sought to establish the gender regime of the TRC by considering, through content, discourse, and framing analysis, to what extent the setup, operations, and output of the TRC met the following criteria:

1. Restore and respect Indigenous women's agency, authority, leadership and decision-making capacity.
2. Restore safety and the human right to security of the person for Indigenous women and girls – physically, mentally, emotionally, spiritually, politically and economically.
3. Reclaim and revitalize Indigenous knowledge, worldviews, and traditions of gender balance in ways that are relevant to the contemporary context.

4. Share the truth about the gendered impacts of colonization, human rights violations, and ethnocide/genocide such as tragically high levels of violence against Indigenous women and girls, and exclusion of women from leadership and decision-making.
5. Promote personal and social responsibility for ending neocolonial attitudes and practices that devalue Indigenous women and create social conditions that put women and girls in harm's way. (p. 27)

I considered criterion 1 in terms of both descriptive and substantive representation (Lore, 2016). While Indigenous women were directly quoted slightly more than Indigenous men across all volumes of the final report, there were other areas that descriptive representation was lacking - most significantly. Following the resignation of the three original three TRC commissioners, there was no representation of Indigenous women in key leadership positions.

To assess the remaining criteria, the substantive representation of Indigenous women through the TRC, I turned first to framing analysis to specify how the TRC represented the gendered experiences of women in the final report volumes. This analysis revealed small and disparate passages that discussed gendered experiences of survivors in a fashion devoid of deeper analysis. References to the experiences of Indigenous women today are not analytically tied to the experiences of girls in residential school, nor to the broader ways in which discrimination and violence against Indigenous women was central to Canada's program of settler colonialism. The experiences of survivors who do not identify as being within a gender binary and consideration of sexuality merits even

less consideration in the final report – a 136-word section, to be exact (Truth and Reconciliation Commission of Canada, 2015i, p. 148).

While framing analysis allowed me to identify the explicit representations - or framing – of gendered experiences, critical discourse analysis allowed me to identify more implicit representations of gender. I conducted a critical discourse analysis of the TRC’s ‘What we have learned: Principles of truth and reconciliation’ publication (Truth and Reconciliation Commission of Canada, 2015k). Power operates through discourse, and by interrogating the key messages the TRC put forward regarding truth and reconciliation, I identified a discourse that silenced the agency of Indigenous women while simultaneously placing under hyper-scrutiny their roles as mothers. The discursive trends of the volume I analyzed were revealed through both the unstated assumptions inherent in the language used therein and in the lack of pieces of information or testimony that would illuminate the experiences of Indigenous women.

7.4 Further Research Directions

There have been a number of developments in state-Indigenous relations in Canada which would provide opportunity to develop the ideas presented in this dissertation further. In particular, subsequent to the TRC delivering its final report, and as I was drafting this dissertation, the government of Canada launched a national inquiry on murdered and missing Indigenous women and girls - the NIMMIWG. The NIMMIWG is an obvious arena for future research in the area of gender and reconciliation. The calls for a national inquiry had been made for quite some time before its launch, but former Prime Minister Harper had responded to such calls by saying “I think we should not view this as sociological phenomenon. We should view it as crime” (Boutilier, 2014, para. 3). He went on to argue that the legal system is the best way of dealing with what he called

“crimes of violence against not just aboriginal women, but women and persons more generally” (para. 4.). Harper’s comments displayed a lack of intersectional and contextual understanding of a crisis which has historical, institutional, and systemic causes that are not addressed through individual criminal investigations. Prime Minister Trudeau launched the NIMMIWG in 2016.

At least 1,181 Indigenous women were murdered in Canada between 1980 and 2012. This is a rate 4.5 times higher than all other women in Canada (RCMP, 2014, p. 7). In 2009, the issue received international attention when Amnesty International released “No More Stolen Sisters: The need for a comprehensive response to discrimination and violence against Indigenous women in Canada” (Amnesty International, 2009), and in 2010, NWAC released “What their stories tell us: Research findings from the Sisters in Spirit initiative” (NWAC, 2010c), the culmination of five years of research on missing and murdered Indigenous women and girls across Canada.

The NIMMIWG examined systemic violence against Indigenous women and covered a broad range of its facets,¹⁰⁸ but was beset by problems at the outset - both procedural and systemic. The Inquiry, in progress at the time of most of my interview research, was largely met by fatigue and an unenthusiastic response from those I interviewed. A former MP pointed out that the Privy Council Office controlled the NIMMIWG, and that the Clerk of the Privy Council of Canada at the time was Harper’s Deputy Minister of Indian Affairs and Northern Development, suggesting systemic

¹⁰⁸ The Final Report chapter headings are as follows: Centring Relationships to End Violence; Indigenous Recognitions of Power and Place; Emphasizing Accountability through Human Rights Tools; Colonization as Gendered Oppression; Confronting Oppression – Right to Culture; Confronting Oppression – Right to Health; Confronting Oppression – Right to Security; Confronting Oppression – Right to Justice; Wellness and Healing; “I am here for justice, and I am here for change”: Commemoration and Calling Forth; Valuing Lived and Front-Line Experiences; and Calls for Justice.

continuities (Interview D) that could render actual change difficult. Youth interviewees suggested the same incongruity in outward appearances and actual potential for change. Regarding the NIMMIWG and MMIWG, one interviewee said, “Whether Trudeau is doing anything, at least they’re talking about it. But the problem is people who don’t know anything think the government is doing something” (Interview K). At the outset of the NIMMIWG, interviewees told me, health support at events and post-testimony psychological support was lacking, and non-profits took up this role informally (Interviews G and H). Interviewees also suggested that an allocation of two years from start to finish was too compressed: Hiring took a long time, and as a result the launch was rushed (Interviews G and H). The NIMMIWG is a rich area through which to examine the broader themes of this dissertation. Overall, the NIMMIWG’s approach to gender analysis and critique of colonialism was more direct than the TRC’s. For example, the final report volumes (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019a & 2019b) explicitly cite gender oppression as a phenomenon throughout their analysis, and while the TRC argued that colonialism wrought cultural genocide upon Indigenous peoples, the NIMMIWG removed the qualifier, speaking plainly of genocide. However, in setting up the NIMMIWG the government implemented an ambitious process without sufficiently resourcing or planning it, severely hampering its potential impact. Delays in setting up an implementation strategy on the part of the federal government (see Olson, 2020) means that the NIMMIWG runs the risk of being forgotten and of Indigenous women’s voices being devalued again.

Related to the NIMMIWG, the intersection of policing and Indigenous peoples - and Indigenous women and girls in particular (see J. Dhillon, 2015) - in Canada is fraught

with discrimination. The Missing Women Commission of Inquiry, held in British Columbia from 2010 to 2012,¹⁰⁹ was created to “inquire into and make findings of fact respecting the investigations conducted between January 23, 1997, and February 5, 2002, by police forces in British Columbia respecting women reported missing from the Downtown Eastside of the City of Vancouver” (Oppal, 2012, p. 4). Commissioner Wally Oppal’s findings (2012) revealed repeated failures on the part of the RCMP and Vancouver Police Department in murdered and missing Indigenous women investigations as well as systemic problems in law enforcement’s approach to Indigenous women more generally, including “discrimination, system institutional bias and political and public indifference” (p. 28). The NIMMIWG reviewed the Missing Women Commission of Inquiry reports, along with 98 other reports from government, academia, and advocacy groups in order to make their recommendations. Within these recommendations, police reform is a major theme (Buck, 2019).

Shortly after the publication of the NIMMIWG final report, which was highly critical of the RCMP (Freeze, 2019), the federal government announced a thirteen-member civilian advisory panel to oversee the RCMP. This panel was tasked with making “non-binding recommendations about police resources and labour relations” (Martens, 2019a). John Domm, an Indigenous man, and former chief of police of the Nishnawbe-Aski and Rama police services, was named to the panel, but there were no Indigenous women appointed to the group. Janet Merlo, a former RCMP constable who successfully led a class action lawsuit against the federal government for the sexual harassment and discrimination experienced by women employees, called the lack of

¹⁰⁹ Also known as the Oppal Inquiry.

representation for Indigenous women a “farce” (Martens, 2019a). Here again Indigenous women’s voices are erased both in terms of representation on the panel, and also in terms of the countless reports and recommendations left unactioned. Picking up the work of the Oppal Inquiry and the NIMMIWG and drawing on some of the insights I have identified regarding the discursive patterns in the way the state talks about Indigenous women in order to thoroughly analyze the gender regime of the policing of Indigenous people is a potential future research area.

7.5 Final Words

Even seemingly positive developments in Indigenous-state relations that arise at the political level, as Lightfoot (2017) argues, are in practice often limited by the bureaucratic structures they happen within. She cites the example of Trudeau’s Minister of Crown-Indigenous Relations Carolyn Bennett’s announcement in 2015 that the federal government would implement UNDRIP, with the qualification that it be “in accordance with the Canadian Constitution” (Lightfoot, 2017, p. 453). Interviewee D, a former opposition member of parliament, registered a similar suspicion about the immovable nature of Canadian law and government, or “the machine”, as he called it. Interviewee D, speaking with me in 2018, said that institutions like RCAP and the TRC come with “solid intentions,” but as one example of many continuities in the bureaucracy he told me: “Jody Wilson-Raybould has the same Deputy Minister that Harper did... it’s like trying to turn the Titanic on a dime.”¹¹⁰

During the 2019 federal election campaign, Prime Minister Trudeau again promised to implement UNDRIP if re-elected (Bryden, 2019). Once elected, he directed

¹¹⁰ At the time of interview, Jody Wilson-Raybould was Minister of Justice and Attorney General in Prime Minister Justin Trudeau’s cabinet.

Minister of Crown–Indigenous Relations Carolyn Bennett in her mandate letter to:

- Support the Minister of Justice and Attorney General of Canada in work to introduce co-developed legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples by the end of 2020
- Lead and coordinate the work required of all Ministers to continue to implement the Truth and Reconciliation Commission’s *Calls to Action*
- Lead and coordinate the work required of all Ministers in establishing a National Action Plan in response to the National Inquiry into Missing and Murdered Indigenous Women and Girls’ *Calls for Justice*, in partnership with First Nations, Inuit and Métis Peoples (Trudeau, 2019, para. 17-19)

In December of 2019, Minister of Crown–Indigenous Relations Carolyn Bennett announced that the federal government would soon be releasing a national action plan to respond to the NIMMIWG and particularly to the 231 calls for justice (Wright, 2019). However, progress was delayed by the COVID-19 pandemic. In February of 2021, NIMMIWG Commissioner Michele Audette spoke out against the lack of progress from the federal government, calling for urgency and transparency on progress (Malone, 2021), and in June the federal government released the long-awaited action plan (Canada, 2021).

My critique of the TRC’s gender regime does not dismiss the difficulty faced by an institution with limited resources tasked with an almost impossible feat. In that sense, I also offer also a broader critique of transitional justice and the misfit between expectations for truth commissions and long-term commitment to their work. I have also argued that Canada is furthering a reconciliation that in many ways sidelines gender, and

that a re-orienting of reconciliation towards a more relational model offers greater opportunity for truly understanding – and then dismantling – the particular injustices faced by Indigenous women at the nexus of settler colonialism and patriarchy.

In presenting the broader ideas of this dissertation, I also intend to provide a theoretical contribution that is applicable beyond the Canadian context. In drawing together the Indigenous studies and transitional justice bodies of literature, I have sought avenues for transformative change. The idea that a redress and reconciliation practice that is relational, based in collective responsibility, and that actively seeks to disrupt both colonial and patriarchal relations of power is more likely to lead to transformative change could be more extensively theorized and operationalized and could be applied to analysis of the gender regimes of other truth commissions. In particular, seeking successful examples of the elements of a politics of survivance – attention to resistance and refusal, embedding opportunities for more extensive and ongoing public engagement, and highlighting intergenerational stories – enriching gender-responsive reconciliation practices would strengthen and diversify my theorizing.

Through the TRC and other commissions, inquiries, and institutional processes, Canada has facilitated multiple, massive, nation-wide forums for the collection of testimony from Indigenous peoples and the creation of recommendations in the name of reconciliation. However, such bodies, once completed, have been plagued by an implementation gap. Lightfoot's (2012) theory of selective endorsement introduces a grey area to the question of state endorsement of human rights norms, offering Canada's endorsement of UNDRIP without implementation as an example of nuance within commitment due to reputational concerns yet a lack of political will to shift existing

power relations. This pattern has been at play with regards to other initiatives in Canada as well. While certainly institutions such as RCAP and the TRC were impossible tasks in many practical ways, unreliable government commitment to carrying forward recommendations and ensuring the stories of survivors are not lost suggests an embrace of the discourse of reconciliation without transformational change. Recommendations have been left unactioned, and in many cases, public officials and Canadians have not learned from or even *listened to* the testimony collected. In the case of the TRC in particular, there continues to be much to learn from and about the work done by the Commission.

Taking up the work of the TRC is now a collective responsibility. As Interviewee C told me, there is no one who has listened to all of the testimonies. The collection of testimony is now archived, and there is work to be done in drawing out the truth and the untold stories. Although I was not able to access archived testimony for this project, I hope that the archives of the NCTR will be made more accessible and available for this kind of research in future. In March of 2021, Stephanie Scott, a member of the Roseau River First Nation in Manitoba and herself a Sixties Scoop survivor, was announced as the new Executive Director of the NCTR (Kirkup, 2021). Scott was formerly the NCRT's Director of Operations, and before that led statement taking for the TRC. A new Executive Director is often an opportunity for a renewal or new direction in an organization. Scott, in a recent interview, spoke to how her own background informed her feelings on her appointment: "Growing up as an Indigenous woman in Canada and being a Sixties Scoop [survivor], sometimes you think 'Am I really good enough? Can I do

this?''' (Kirkup, 2021, para. 21). The time is right for a renewed analysis of TRC testimony, using a number of different lenses including gender.

I conclude with words from Anishinaabe elder Mary Deleary, who told the TRC (Truth and Reconciliation Commission of Canada, 2015j):

Our relatives who have come from across the water [non-Aboriginal people], you still have work to do on your road.... The land is made up of the dust of our ancestors' bones. And so to reconcile with this land and everything that has happened, there is much work to be done ... in order to create balance. (p. 5)

Everything that has happened. Canada must understand the past, must listen, must learn how to be in relation with Indigenous peoples, must do so, so much better.

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Appendix 1: Royal Commission on Aboriginal Peoples recommendations referencing women

3.2.6: Aboriginal leaders take a firm, public stance in support of the right to freedom from violence of all members in the community, but particularly of women, children, elders, persons with disabilities and others who may be vulnerable, as well as in support of a policy of zero tolerance of actions that violate the physical or emotional safety of Aboriginal persons;

3.2.7: Aboriginal governments adopt the principle of including women, youth, elders and persons with disabilities in governing councils and decision-making bodies, the modes of representation and participation of these persons being whatever they find most agreeable.;

3.2.8: The full and equal participation of women be ensured in decision-making bodies responsible for ensuring people's physical and emotional security, including justice committees and boards of directors of healing centres and lodges.;

3.2.9: Aboriginal leaders and agencies serving vulnerable people encourage communities, with the full participation of women, to formulate, promote and enforce community codes of behaviour that reflect ethical standards endorsed by the community and that state and reinforce the responsibility of all citizens to create and maintain safe communities and neighbourhoods.;

3.2.13: With a view to self-starting initiatives in the family law area or to self-government, Aboriginal nations or communities establish committees, with women as full participants, to study issues such as (a) the interests of family members in family assets; (b) the division of family assets on marriage breakdown; (c) factors to be considered in relation to the best interests of the child, as the principle is applicable to

Aboriginal custody and adoption; (d) rights of inheritance pertaining to wills, estates or intestacy; and (e) obligations of spousal and child support.;

3.3.13: The government of Canada provide funds to the national Aboriginal organizations, including national Aboriginal women's organizations, to permit them to prepare a comprehensive human resources development strategy in health and social services that (a) facilitates and draws upon regional initiatives, integrates information from diverse sources, and is structured to incorporate regular updating; (b) builds an inventory of Aboriginal human resources currently available in health and social services, identifying where, in what field and at what level Aboriginal personnel are currently practising; (c) assesses current and future Aboriginal human resources needs and identifies the actions needed on the part of governments, educational institutions and others to address these needs; (d) assesses requirements for direct service personnel as well as for planners, researchers and administrators; (e) collates an inventory and available evaluative data on training and education options; (f) explores recruitment, training and retention issues; (g) examines the personal and professional supports required to encourage Aboriginal professionals to practise in Aboriginal communities; (h) develops proposals for a system to monitor the status of Aboriginal human resources; and (i) develops an analysis of how, to the maximum extent possible, Aboriginal human resources development can be brought under Aboriginal control.;

3.3.15: Federal, provincial and territorial governments and national Aboriginal organizations, including Aboriginal women's organizations, explore how training approaches and personnel complements of current health and social services, including the community health representative and drug and alcohol abuse programs, can contribute

to a more comprehensive, holistic and integrated system of services, while helping to maintain continuity and adequacy of Aboriginal community services;

4.7.17: Aboriginal women give Aboriginal and non-Aboriginal service agencies direction and guidance in formulating policy and developing services that may be used by Aboriginal women and children and participate fully in the delivery of programs and services established specifically to meet the needs of urban Aboriginal women.;

4.7.18: In addition to cross-cultural training, non-Aboriginal individuals and organizations whose work or responsibilities directly affect urban Aboriginal women's lives receive comprehensive information and education on the situation of urban Aboriginal women.

Appendix 2: Testimony cover sheet

PRE IRS					
1. What was life like before IRS?			AGE		
Family	<input type="checkbox"/>	Attended school prior to IRS	<input type="checkbox"/>	Community Discrimination..... <input type="checkbox"/>	<input type="checkbox"/>
Parents attended IRS..... <input type="checkbox"/>				Resistance..... <input type="checkbox"/>	
Siblings attended IRS..... <input type="checkbox"/>					
Abuse	<input type="checkbox"/>	Traditional/Cultural Practice	<input type="checkbox"/>		<input type="checkbox"/>
Sexual..... <input type="checkbox"/>		Language..... <input type="checkbox"/>			
Physical..... <input type="checkbox"/>					
Drugs/alcohol..... <input type="checkbox"/>					
Domestic Violence..... <input type="checkbox"/>					
Illness/health	<input type="checkbox"/>	RCMP	<input type="checkbox"/>		<input type="checkbox"/>
DURING IRS					
2. Tell me about the day you went to IRS and what did a typical day look like?			AGE		
Intake/Arrival Experience	<input type="checkbox"/>	RCMP	<input type="checkbox"/>	CAS/Indian Agent	<input type="checkbox"/>
Travel Experience..... <input type="checkbox"/>					
Education	<input type="checkbox"/>	Abuse:	<input type="checkbox"/>	Family/Friend Relationship	<input type="checkbox"/>
• Academics..... <input type="checkbox"/>		• Physical..... <input type="checkbox"/>		• Siblings..... <input type="checkbox"/>	
• Supports..... <input type="checkbox"/>		• Sexual..... <input type="checkbox"/>		• Family visit..... <input type="checkbox"/>	
• Language..... <input type="checkbox"/>		• Other..... <input type="checkbox"/>		• Correspondence..... <input type="checkbox"/>	
• Religious studies..... <input type="checkbox"/>		• Staff – student..... <input type="checkbox"/>		• Visits home..... <input type="checkbox"/>	
		• Student- Student..... <input type="checkbox"/>			
		• Witnessed..... <input type="checkbox"/>			
		• Bullying..... <input type="checkbox"/>			
Daily routine	<input type="checkbox"/>	Health Care	<input type="checkbox"/>	Classroom Experience..... <input type="checkbox"/>	<input type="checkbox"/>
• Chores..... <input type="checkbox"/>		• Disease..... <input type="checkbox"/>		• Dorm Experience..... <input type="checkbox"/>	
• Kitchen..... <input type="checkbox"/>		• Pregnancy..... <input type="checkbox"/>		• Religious Experience..... <input type="checkbox"/>	
• Farm..... <input type="checkbox"/>		• Puberty..... <input type="checkbox"/>		• Food..... <input type="checkbox"/>	
• Garden..... <input type="checkbox"/>		• Suicide..... <input type="checkbox"/>		• Clothing..... <input type="checkbox"/>	
				• Recreational Activities..... <input type="checkbox"/>	
Resistance	<input type="checkbox"/>	Positive experience	<input type="checkbox"/>	Acts of Kindness	<input type="checkbox"/>
• Speaking language... <input type="checkbox"/>				• Staff to Student..... <input type="checkbox"/>	
• Hiding..... <input type="checkbox"/>				• Student to Student..... <input type="checkbox"/>	
• Running away..... <input type="checkbox"/>				• Other <input type="checkbox"/>	
• Lock-up..... <input type="checkbox"/>					
Discipline	<input type="checkbox"/>	Discrimination	<input type="checkbox"/>	Alcohol / Drugs	<input type="checkbox"/>
Consensual Sex	<input type="checkbox"/>	Death	<input type="checkbox"/>	Traditional Cultural practice	<input type="checkbox"/>
Cemetery/Burial Location.....	<input type="checkbox"/>	Burial practice	<input type="checkbox"/>		<input type="checkbox"/>
		• IRS..... <input type="checkbox"/>			
		• Traditional... <input type="checkbox"/>			
POST IRS					
3. Tell me what life was like after IRS.			Age		
Family History:	<input type="checkbox"/>	Abuse:	<input type="checkbox"/>	Institutional Interface	<input type="checkbox"/>
• Marriage..... <input type="checkbox"/>		• Sexual..... <input type="checkbox"/>		• Jail/police..... <input type="checkbox"/>	
• Children..... <input type="checkbox"/>		• Physical..... <input type="checkbox"/>		• Social work..... <input type="checkbox"/>	
• Parents..... <input type="checkbox"/>		• Dom. Violence..... <input type="checkbox"/>		• Child Welfare..... <input type="checkbox"/>	
• Extended..... <input type="checkbox"/>		• Subst Abuse..... <input type="checkbox"/>		• Sanitarium / hospital..... <input type="checkbox"/>	
• Foster/adopted..... <input type="checkbox"/>		• Self harm..... <input type="checkbox"/>		• Religious institutions..... <input type="checkbox"/>	
• Grandchildren..... <input type="checkbox"/>				• Schools..... <input type="checkbox"/>	
Self care	<input type="checkbox"/>	Community Ties	<input type="checkbox"/>	Action	<input type="checkbox"/>
• Health..... <input type="checkbox"/>		• Ab/Non – Ab..... <input type="checkbox"/>		• Search for justice..... <input type="checkbox"/>	
• Sexuality..... <input type="checkbox"/>		• Discrimination..... <input type="checkbox"/>		• Suicide..... <input type="checkbox"/>	
• Cultural/traditional practice		• Marginalization..... <input type="checkbox"/>		• Homelessness..... <input type="checkbox"/>	
• Language..... <input type="checkbox"/>		• RCMP..... <input type="checkbox"/>		• Artist Expression..... <input type="checkbox"/>	
				• Political Social /Activism <input type="checkbox"/>	
Reporting	<input type="checkbox"/>	Education	<input type="checkbox"/>	IRS	<input type="checkbox"/>
• Formal..... <input type="checkbox"/>		• High school..... <input type="checkbox"/>		• Apology..... <input type="checkbox"/>	
• Informal complaints..... <input type="checkbox"/>		• College..... <input type="checkbox"/>		• Settlement agreement..... <input type="checkbox"/>	
		• University..... <input type="checkbox"/>		• Commemoration..... <input type="checkbox"/>	
Employment History	<input type="checkbox"/>	Healing	<input type="checkbox"/>		<input type="checkbox"/>
		• Healing journey..... <input type="checkbox"/>			
		• Culture..... <input type="checkbox"/>			

003

Time of Recording: _____ 1
MACHINE # _____