

Statement by Commissioner Wilton Littlechild, I.P.C., Truth and Reconciliation Commission of Canada

Twelfth Session of the UN Permanent Forum on Indigenous Issues, 20-31 May 2013

Agenda Item 6: Study on the links between indigenous rights, truth commissions and other truth-seeking mechanisms on the American continent (E/C.19/2013/13)

28 May 2013

Mr. Chairperson, UN Permanent Forum members and distinguished delegates:

Thank you for the opportunity to address Agenda Item 6.

It is more than two years since I and my fellow commissioners, Justice Murray Sinclair and Dr. Marie Wilson, presented our report here at the Permanent Forum. I'm honoured to provide a brief overview of the progress that the Truth and Reconciliation Commission of Canada has made since then, as well as some of the challenges we face at this juncture of our court-ordered mandate.

When we last presented at the Permanent Forum in 2011, my colleagues and I had been working on behalf of the Commission for little more than a year. Much of what we shared with you at that time had to do with the purpose and inception of the Commission, and the historical and social context in which it had begun to carry out its work. Time is limited. However, there are a couple of points I would like to emphasize by way of context for my further remarks.

First of all, I would like to remind you of the scope of the Commission's mandate. It comes to us through the Indian Residential Schools Settlement Agreement, signed in 2007 by several Parties including the Government of Canada, Catholic and Protestant Churches, and several signatories representing the Residential School Survivors themselves. The TRC is authorized and required:

- to inform all Canadians about the history and ongoing legacy of the residential schools;
- to give an opportunity to all former students, staff and all those affected by the schools to participate in the telling of that history through national and community events and statement gathering;
- to hold seven national public education and commemorative events as well as regional and community events;
- to collect every record that is relevant to the history and impact of the schools;
- to conduct original research that builds upon previous research, and to prepare reports based on this work;
- to establish a National Research Centre (NRC) that will make accessible to all Canadians all of the statements, research and other materials that have been collected by the Commission;

- and last, but most importantly, to guide and inspire a process of healing and reconciliation within Aboriginal families and communities, and between Aboriginal and non-Aboriginal people in this country. It is a vast mandate.

The second point I want to make by way of context is that our mandate is not optional. It is a court-ordered mandate, a legal obligation involving not only the Commission but the Parties to the Settlement Agreement as well.

The agreement itself settled the largest class-action law suit in Canadian history. The Survivors agreed to set aside \$60 million of their compensation fund for the Commission's purposes and to ask the Commission to complete its work within five years. The Commission's mandate ends on July 1, 2014, just over one year from now.

So, that is our mandate. Let me tell you now some of what the Commission has done so far to discharge its obligations.

The responsibilities of the TRC are intertwined and overlapping. When we carry out one aspect of our mandate, we inevitably make progress on one or two others at the same time. For instance, our mandate to inform Canadians about the impact of the residential schools is carried out in large part by holding events at which we provide an opportunity for Survivors of the schools to speak publicly about their experiences. Bearing witness to the truths expressed by Survivors creates possibilities for reconciliation. It doesn't guarantee reconciliation, but we have seen that reconciliation doesn't stand a chance if it is not firmly rooted in a profound appreciation of the truths of others.

At the time the Indian Residential Schools Settlement Agreement was signed, there were approximately 80,000 former students of the residential schools listed in the Agreement, still alive in Canada. Many were quite elderly. In the intervening years, that number has dropped by perhaps 10,000. Since its inception, the Commission has been committed to providing every one of them, and every other person whose life has been affected by the residential school system, with the opportunity to create a record of their experience. To date, we have collected about 5,200 public and private statements. Most were provided by Survivors of the schools themselves. But increasingly, we've been hearing from the children of Survivors and their children – the ones whose lives represent the legacy of the schools. At an average length of 45 minutes to an hour, it would take about two and a half years for one person working full-time to view or listen to the statements we have gathered so far.

We have held five National Events in Winnipeg, Inuvik, Halifax, Saskatoon and Montreal; two Regional Events in Victoria and Whitehorse; and 68 community hearings, a significant number of these in the North. Two National Events remain – the British Columbia National Event in Vancouver from September 18 to 21, and the Alberta National Event in Edmonton from March 27 to 30, 2014. Leading up to those events, we expect to conduct another seven community hearings in BC and Alberta. And we have plans for a closing event in Ottawa. By the time we have shut our doors, we anticipate that we will have gathered more than 6,000 statements.

I do not want to get caught up endlessly in numbers, but I do want to be sure I have given you a proper sense of the scope and nature of the Commission's efforts to date. If you had attended the TRC's most recent National Event, the Quebec National Event last month in Montreal, your visit would have been one of about 12,000 over the course of four days. You could have taken in more than 50 ceremonies, truth-sharing and educational activities, reconciliation activities and cultural performances. You could have sat at the back of a packed hall of 500 grade 6-to-12 students from across Quebec and watched as they paid rapt attention to presentations and performances and the opinions of their peers. You could have taken in a variety of films from the acclaimed *We Were Children* by the NFB and Eagle Vision, to a dozen short documentaries created by young people through the Wapikoni Mobile project. You could have witnessed the courageous public statements of dozens of Survivors of the schools, some of them speaking publicly about their experiences for the very first time. You could have watched the induction of eight new TRC Honourary Witnesses including former Prime Minister Paul Martin and former NHL star Joé Juneau. Former Prime Minister Joe Clark joined the ranks of our Honourary Witnesses last year in Saskatoon. Our very first Honourary Witness was former Governor General Michaëlle Jean. We are also honoured to have former UN Permanent Forum Chairperson and residential school survivor, Grand Chief Edward John, as an Honourary Witness. You could have witnessed 24 expressions of reconciliation from individuals, organizations, governments and churches. You could have taken part in a very moving birthday party for the hundreds of Survivors who were present, whose birthdays were never celebrated at residential school – cupcakes and hand-made cards courtesy of children from church congregations throughout the Montreal-Ottawa corridor.

More than 45 journalists registered to cover the Quebec National Event. Live webcasting of the event attracted more than 6,700 streams to over 30 different countries. We have been aware from the outset of our work, of the important International impact the Commission could have, and has been having. When the Commission first began its work, the population of Quebec was relatively ill-informed about Canada's residential schools and their legacy. We believe we have turned that around.

I could share with you similar details from our other national and regional events, but that will suffice to give you some idea of the work we are doing.

The TRC has collected 2.6 million documents from the Government of Canada and the churches. This is a large number, but it does not include any of the millions of documents relevant to the residential schools which are housed by Library and Archives Canada (LAC).

Recently, Canada's Auditor General commented on the inability of Canada and the Commission to reach agreement on the scope of documents to be produced by Canada to the Commission. I would like to acknowledge up front that the Government of Canada and the Commission were not able to come to an agreement over the documents housed by Library and Archives Canada. This was a fundamental disagreement that went on too long. It was resolved in January of this year by the Ontario Superior Court of Justice,

which upheld the Commission's interpretation of the Indian Residential Schools Settlement Agreement. Now that the issue has been clarified, the TRC, Aboriginal Affairs and Northern Development Canada (AANDC), and Library and Archives Canada are working jointly to determine how and when the relevant documents will be produced to the Commission. From the Commission's perspective, there seems to be no lack of intention on the part of AANDC and LAC to follow through on Canada's legal commitments in this regard. The amount of work entailed and the amount of time remaining in the TRC's mandate do present serious concerns to both Canada and the Commission itself.

The fact that the TRC has not yet received the majority of the documents in Canada's possession has the potential to compromise the ability of the Commission to comply with its mandate as well as the quality and extent of the Commission's research and final report. With 13 months left in our mandate, it is hard to imagine that the documents can be produced to us in time for them to contribute to this latter aspect of our mandate. Nevertheless, we continue to work closely with AANDC and LAC on a plan to secure relevant documents and to prepare them to be accessible to Canadians through the NRC.

Despite the delays in document production to the TRC, we have undertaken a great deal of relevant research. Some of this was represented in our interim report and our preliminary history of the schools entitled *They Came for the Children*, both released in February of 2012. It will also be represented in our four-volume final report, which will address: the work of the Commission and its findings; the history of the residential schools; their legacy; and the requirements and prospects for meaningful reconciliation.

I will mention one particular research project which has been ongoing for much of the Commission's existence and that is the Missing Children Project. You may know that about 150,000 Aboriginal children attended Canada's residential schools over a period of roughly 150 years. You may not know that thousands of them died at the schools or went missing. The Commission has thus far identified, or discovered details concerning 4,134 children who died at the schools or went missing from them. That number continues to grow as work on the project continues. It is, of course, of great interest to the families involved. More importantly however, it allows us to discuss the impact of the schools on the daily lives of Aboriginal families in a manner that has deep emotional meaning for everyone.

Now let me bring you up to date on the progress of the National Research Centre. The Settlement Agreement calls on the TRC to establish a National Research Centre within its five years of operation. Over the past two and a half years, the Commission has taken a number of steps towards the centre's establishment, including a forum of international experts, and a well publicized call for expressions of interest. We received four expressions of interest from prospective host organizations, each with numerous partners, and are pursuing negotiations with the organization that best met our selection criteria. I refer to the University of Manitoba, and its eight proposed "founding partners," which will be announced at a signing ceremony next month.

Finally, in the area of reconciliation, the Commission has continually emphasized the importance of reconciliation being about establishing and maintaining a relationship of mutual respect. I have already referred to the dialogues we have held at our Community, Regional and National Events with Survivors and others in attendance. Those have generated significant discussion and interesting perspectives. The Commissioners have also engaged in such discussions with the Parties to the Settlement Agreement at All Parties Meetings we have been holding with them. We have spoken at numerous public and private conferences and gatherings with Community, Provincial and National Leaders on the question of reconciliation.

One of the most significant ones was the annual gathering of the Council of Ministers of Education last July where we emphasized the need to look seriously at curriculum changes in the field of public education that teach children appropriately about the history of the relationship between Aboriginal and non-Aboriginal people in Canada in order to lay the foundation for mutual respect in the future. We asked the Ministers to make a commitment to make those changes and followed that up with personal letters asking for updates following that meeting. Many have responded positively and we look forward to meeting with them again this summer.

Lt. Gov. David Onley of Ontario, Lt. Gov. Philip Lee of Manitoba, Lt. Gov. Graydon Nicholas of New Brunswick and Lt. Gov. Steven Point of BC have all hosted TRC events including Dialogues on Reconciliation with members of the public at their respective Government Houses. Our emphasis on Reconciliation will continue to the end of our mandate.

Hai Hai. Thank you.

W. Littlejohn 172

5/24/13

**Statement by Expert Member Dr. Wilton Littlechild, I.P.C.,
Twelfth Session of the UN Permanent Forum on Indigenous Issues, 20-31 May 2013
Agenda Item 6: Study on the links between indigenous rights, truth commissions
and other truth-seeking mechanisms on the American continent (E/C.19/2013/13)
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In resolution 21/24 the Human Rights Council requested the Expert Mechanism to prepare a study on access to justice in the protection and promotion of the rights of indigenous peoples. This study outlines the right to access to justice as it applies in the indigenous peoples' context including analysis of its relationship to indigenous peoples' rights to self-determination, non-discrimination and culture. It also examines access to justice issues relevant to indigenous women, children and youth and persons with disabilities as well as the potential of truth and reconciliation processes to promote indigenous peoples' access to justice. The study finishes with the Expert Mechanism's Advice No. 5.

I want to highlight a few specific observations of the Expert Mechanism in this Study.

Lack of implementation demonstrates a wider problem, related not to the final outcome or report of a Commission, but rather inadequacies in the process leading up to it and the process of engagement. Ultimately, truth commissions will not lead to recognition of indigenous peoples' self-determination or transform a country by themselves. However, the processes around them, including the building of platforms, can have transformative potential. For this reason, while the quality of the recommendations of truth commissions is important, it is insufficient. To be implemented, truth commissions need to be part of a larger political process that builds alliances and consensus.

In terms of their suitability for indigenous peoples, there are also challenges related to how truth commissions have been conducted including their tendency to focus mostly on recent violations and a discourse of national unity and reconciliation. In the case of national reconciliation, which is often a goal of truth commissions, some observers have questioned whether current understandings of reconciliation are appropriate in the context of indigenous peoples as there is the danger of strengthening the dominant national identity at the expense of others.

In relation to transitional justice mechanisms:

- Indigenous peoples and indigenous peoples' representative institutions should be consulted and involved in all stages of the establishment and carrying out of transitional justice mechanisms.
- Truth commissions should be guided by and should make explicit reference to the Declaration on the Rights of Indigenous Peoples.
- Truth commissions should recognize and address the historical injustices experienced by indigenous peoples, as well as how failures to recognise indigenous peoples' self-determination historically and today have created conditions for human rights violations.

- Truth processes should be linked to larger outreach and education efforts. These efforts should include explaining important justice issues, such as self-determination, to the broader public.
- Truth processes and reparations programs should be designed in a way that respects the cultures and values of indigenous peoples.

The Expert Mechanism's Study is informed by the International Expert Seminar on Indigenous Peoples' Access to Justice, including Truth and Reconciliation Processes, organized by the OHCHR, Columbia University's Institute for the Study of Human Rights and the International Centre for Transitional Justice. This Seminar was supported by the government of Canada.

In closing, the Seminar found that the Truth and Reconciliation processes can indeed improve access to justice when Indigenous peoples can be fully engaged at the outset and throughout the duration of the process, especially in relation to implementation.

W. Littlechild for

5/29/13

**Closing Statement by Expert Member Dr. Wilton Littlechild, I.P.C.,
Twelfth Session of the UN Permanent Forum on Indigenous Issues, 20-31 May 2013
Agenda Item 6: Discussion on the World Conference on Indigenous Peoples and
Study on the links between indigenous rights, truth commissions and other truth-
seeking mechanisms on the American continent (E/C.19/2013/13)
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I welcome the Study on the links between indigenous rights, truth commissions and other truth-seeking mechanisms on the American continent. As a Commissioner of the Truth and Reconciliation Commission of Canada, I support the conclusions and recommendations from this Study. However, I would like to propose three recommendations. The first is to consider for inclusion the update by the Truth and Reconciliation Commission of Canada in the Final Report as it affirms and is consistent with many of the recommendations. Secondly, I am concerned about the exclusion of spiritual abuse of residential school survivors in Canada. Furthermore, the UN *Declaration on the Rights of Indigenous Peoples* makes several references to spirituality of Indigenous peoples, especially in relation to lands, territories and resources. Thirdly, the main emphasis is on truth commissions and I would like to recommend for consideration a half-day discussion on reconciliation within the framework of the UN *Declaration on the Rights of Indigenous Peoples*.

W. Littlechild ipc
5/28/13