

Unsettling the Settler Colonial Structure of Canadian Legal Education: An Examination of Three
Law Schools' Engagement with Reconciliation

by

Kory Smith

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ABSTRACT

Indigenous law has a long and rich history in Canada, and it has played an important role in the formation of Canada's constitution. Unfortunately, the Canadian state has ignored and devalued it, treating it as less important than common law and civil law. In the context of Canadian legal education, law schools have, since the very beginning, been directed towards the study of common law and civil, at the exclusion of Indigenous law. This exclusion exists alongside other barriers for Indigenous law students, including racism and discrimination, isolation and culture shock, and stigma and feelings of powerlessness. In 2015, the Truth and Reconciliation Commission of Canada published its final report and 94 calls to action to advance reconciliation between the Canadian state and Indigenous Peoples. Two calls to action are aimed at legal education: call to action 28 calls for all law students to take a mandatory course in Aboriginal people and the law, and call to action 50 calls for the establishment of Indigenous law institutes.

This study explores how Canadian law schools are engaging with reconciliation. Through the use of semi-structured interviews with faculty members and Indigenous law students at the University of Ottawa, Dalhousie University, and the University of Victoria, the study examines how participants conceptualize reconciliation and whether their engagement with reconciliation is consistent with the liberal or transformative approach to reconciliation. Employing an anti-colonial framework, analysis of the data reveals that participants at all three law schools explain reconciliation, both as a general concept and in the context of legal education, in ways that are consistent with the transformative approach to reconciliation. The data also shows that all three law schools are on the path to implementing transformative reconciliation, but that much work remains to be done to unsettle the settler colonial structure of Canadian legal education.

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INTRODUCTION

[W]e're at a time where post-secondary institutions have grabbed onto the TRC's *Calls to Action* (2015) and we're in a moment in time where change is possible. We now need to decide what kind of change that will be. Will it be superficial, mostly rhetorical change? Or will we finally begin the long process of transformative actions that right the perpetual wrongs done to Indigenous peoples by Canadians? (Gaudry & Lorenz, 2018, p. 172)

It is a mistake to write about Canada's constitutional foundations without taking account of Indigenous law. You cannot create an accurate description of the law's foundation in Canada by only dealing with one side of its colonial legal history. When you build a structure on an unstable base, you risk harming all who depend upon it for security and protection. This book is about attempting to put Canadian law on a stronger footing. Acknowledging the traditional and contemporary place of Indigenous law in this country—alongside the common law and the civil law—is a necessary step in this process. It is crucial to creating a healthier and more accurate conception of Canada's broader constitutional order. (Borrows, 2010, pp. 15-16)

Nature of the Topic

This study is an examination of how Canadian law schools are engaging with reconciliation. The participants in my study are faculty members and Indigenous law students at three Canadian law schools. My main interest is to explore whether these law schools are engaging with liberal reconciliation or transformative reconciliation. The study is informed by a small group of participants at a limited number of law schools. As a result, it is not aimed at making definitive generalizations about the state of Canadian legal education. The conclusions drawn and recommendations made are meant to assist law schools in engaging in the long-term process of reconciliation.

Research Context

Canada is a multi-juridical country with three major legal traditions: Indigenous law, common law, and civil law. Indigenous law consists of legal orders and traditions developed by Indigenous Peoples. In comparison, Aboriginal law refers to the body of law created by the Canadian state that deals with the constitutional rights of Indigenous Peoples and the relationship

between Indigenous Peoples and the Crown. Indigenous law is as diverse as “the social, historical, political, biological, economic, and spiritual circumstances of each [Indigenous] group” (Borrows, 2010, p. 24). Notwithstanding this diversity, Indigenous law has three basic features. First, law in the Indigenous world is connected to everything else and guides all forms of action in Indigenous societies; it is not “separate from religion, hunting, agriculture, food preparation, family life, or entertainment” (Girard et al., 2018, p. 27). Second, Indigenous law seeks to create a sustainable relationship between human beings and the natural world (Girard et al., 2018). This is unsurprising given that, for millennia, Indigenous Peoples relied on their understanding of the natural world for survival. This important relationship with the earth, water, and animal life continues today. Lastly, much Indigenous law has been transmitted orally through origin stories and oral histories and is reliant on human memory (Girard et al., 2018). Despite these basic features, Indigenous law is, like common law and civil law, always changing. Rather than being frozen in a pre-contact past, it is always adapting to new situations.

Since Indigenous Peoples have occupied the Americas for at least fifteen thousand years (Hermes, 2008), Indigenous law is the oldest legal tradition in Canada. It is much older than common law and civil law. As Glenn (2014) notes, it is “the oldest of traditions; its chain of *traditio* is as long as the history of humanity” (p. 62; emphasis in original). Despite the long and rich history of Indigenous law in Canada, it has often been devalued by the settler colonial state, treated as though it “lies at the bottom of the legal hierarchy” (Borrows, 2010, p. 56). Many people assume that Canada acquired its legal system from former imperial powers, the United Kingdom and France, and that Indigenous law, if it did exist, was replaced by common law and civil law through colonization (Borrows, 2010). This thinking has had disastrous consequences for Indigenous Peoples. Many scholars have analyzed the role of law in the imperial project.

Chanock (1985) refers to law as the “cutting edge of colonialism” (p. 4), while Merry (1991) observes that law played a central role in “the colonizing process” (p. 891). This is particularly true in Canada, where the transportation and implantation of common law and civil law was a tool to transform an “unruly” Indigenous population “into civilized individuals capable of assuming the privileges, rights, and responsibilities of self-governance” (Pue, 2016, p. 429). Whereas the common law and civil law were seen as representing rationality, progress, and liberty, Indigenous law was understood as “irrational, inconsistent, corrupt, unwholesome, biased, unpredictable, founded on superstition or charisma, parochial, incompetently administered, primitive, and unreliable” (Pue, 2016, p. 428). It was predictable, then, that the development of Canada’s justice system and legal profession would be grounded in imperial law and culture. As I explain below, this compounded Indigenous Peoples’ experiences of exclusion and discrimination.

Canada’s legal profession was created by and for white, upper-class men. As Backhouse (2016) notes, “the norms of the legal profession have historically been framed around deeply entrenched notions of masculinity, white supremacy, and class privilege” (p. 138). Canada’s oldest law society, the Law Society of Upper Canada—now called the Law Society of Ontario—was formally established in 1797. While the Law Society of Upper Canada was established at the end of the 18th century, Indigenous Peoples were excluded from the legal profession until the middle of the 20th century. From 1876 to 1951, the Indian Act (1876) explicitly prevented Indigenous Peoples from becoming lawyers unless they gave up their Indian status:

Any Indian who may be admitted to the degree of Doctor of Medicine, or to any other degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a

Minister of the Gospel, shall *ipso facto* become enfranchised and be under this Act. (s.86(1); emphasis in original)

Indigenous Peoples who became “enfranchised” had their Indian status terminated and replaced with full Canadian citizenship. Enfranchisement was a colonial policy used by the Canadian federal government to encourage assimilation and to reduce the number of Indigenous Peoples for whom the government was financially responsible. Even after being admitted to the bar, early Indigenous lawyers continued to experience racism and discrimination from the legal profession. Many of them were excluded from the labour market, endured racist comments and behaviour from lawyers and judges, and were subjected to forms of discriminatory disciplinary action, including disbarment (Backhouse, 2016).

Unsurprisingly, Indigenous Peoples remain underrepresented as lawyers in the legal profession and continue to experience racism and discrimination. While there are currently no national statistics in Canada related to racial and ethnic diversity within the legal profession, statistics collected by provincial law societies indicate that the legal profession has witnessed a very moderate increase in the number of Indigenous lawyers in the last several decades (Ornstein, 2010; Smith, 2008). For example, the percentage of Indigenous lawyers in Ontario remained unchanged between 1981 and 2001 but increased from 0.6 percent to 1.0 percent between 2001 and 2006 (Ornstein, 2010, p. ii). According to the Law Society of Ontario’s 2016 Statistical Snapshot, 1.5 percent of lawyers in Ontario were Indigenous in 2016 (Law Society of Ontario, 2017, p. 2). Despite making up 1.5 percent of lawyers in Ontario in 2016, Indigenous Peoples accounted for 2.8 percent of the total Ontario population (Law Society of Ontario, 2017, p. 2). This pattern of disproportionality is similar in other provinces. For example, in 2006, 1.5 percent of lawyers in British Columbia were Indigenous, compared to 4.6 percent of the total population (Law Society of British Columbia, 2012, p. 4).

Research conducted by individual law societies shows that Indigenous lawyers face multiple barriers, including discrimination and insensitivity by non-Indigenous lawyers, judges, and clients (Law Society of British Columbia, 2000, p. 39); racism and discrimination in their employment (Law Society of Upper Canada, 2009, p. 17); and isolation and a lack of support (Law Society of British Columbia, 2012, p. 4). For example, in 2017, the Law Society of British Columbia and the Continuing Legal Education Society of British Columbia produced a video documenting the racism and discrimination experienced by Indigenous lawyers and law students. In the video, Indigenous lawyers recount stories of being:

- told not to stand where lawyers stand in court rooms, as it is for lawyers only;
- asked to leave the Barristers' lounge, as it is not for native court workers;
- asked if they were lost in the courthouse; and
- asked when appearing in court if, in fact, they are a lawyer. (Continuing Legal Education Society of British Columbia, n.d., para. 3)

Since the end of the 19th century, law schools have acted as gatekeepers of the legal profession. Lawyers receive their training at law schools and law schools shape the composition and ethos of the legal profession. In examining anti-Indigenous exclusion in the Canadian legal profession, it is necessary to look at the role that legal education plays in this process. Despite the increased emphasis on diversity and inclusion in legal education, Indigenous Peoples remain underrepresented as law students in Canada (Law Society of Ontario, 2017; Law Students' Society of Ontario, 2019; Ornstein, 2010; Robinson, 2016). This under-representation is the result of socioeconomic inequality and systemic barriers experienced by Indigenous students.

Indigenous students experience barriers getting into law school. The law school admission process is depicted as objective and fair. For decades, law schools have used grade point average (GPA) and scores on the Law School Admission Test (LSAT) as indicators of law school success. Students with the highest GPA and LSAT score are admitted, and the rest are

rejected. On the face of it, this approach might seem fair because it ignores more subjective criteria like work and volunteer experience and reference letters, which are time consuming to review and difficult to assess. However, this approach fails to consider applicants as a whole and, as a consequence of using measuring rods that are culturally specific and Eurocentric, leads to inequities in the admissions system that disadvantage racialized and Indigenous students (Canadian Bar Association, 1999; Law Society of British Columbia, 2000).

Even when Indigenous students are accepted into law school, research shows that they experience exclusion from the curriculum (Lindberg, 1997). Unfortunately, Indigenous Peoples have experienced exclusion from the law school curriculum for a very long time. Outside of Quebec, legal education in Canada until the early 1800s consisted of an apprenticeship in a law office, five years for barristers and three years for solicitors. Candidates for the practice of law also had to meet “the social and ethical attributes of the gentleman” by, for example, demonstrating “a rudimentary knowledge of Latin literature and Latin and English” (McLaren, 1987, p. 116). From the 1820s until the 1870s, candidates for the practice of law were required to spend terms attending court and staying in residence at Osgoode Hall, where they attended lectures and participated in law clubs and moot court and essay competitions (McLaren, 1987). Created in 1883, Dalhousie Law School had a significant impact on the trajectory of legal education in Canada. Inspired by the Harvard approach to legal education, where law was treated as the “object of scientific study” (McLaren, 1987, p. 119), students attended classroom lectures to learn about different areas of law, including “Real Property, Crimes, Contracts, Torts, Equity, Evidence, Sales of Goods, Conveyancing, Partnership, Agency and Companies, and Negotiable Instruments” (McLaren, 1987, p. 120-121). The teaching year at Dalhousie Law School was extended from seven hours per week for 21 weeks to 24 weeks in 1911 to 27 weeks in 1914

(McLaren, 1987). At Osgoode Hall Law School, which was founded in 1889, lectures were given by part-time lecturers in the morning and late afternoon. From early on, the teaching year was set at 27 weeks (McLaren, 1987). Outside of Ontario and Nova Scotia, legal education in other common law provinces focused on apprenticeship and practice lectures until the 1920s.

In 1919, the Canadian Bar Association (CBA) established a model curriculum for law schools in the common law provinces. This curriculum was inspired by the revised Dalhousie curriculum of 1915 (McLaren, 1987). The first-year curriculum consisted of Contracts, Torts, Real Property, Constitutional History, Criminal Law, and Practice and Procedure. The second-year curriculum consisted of Equity, Wills and Administration, Evidence, Sale of Goods, Bills and Notes, Agency and Partnership, Insurance, and Practice and Procedure. Lastly, the third-year curriculum consisted of Constitutional Law, Equity, Evidence, Practice and Procedure, Corporations, Municipal Law, Conflict of Law, Mortgages, Suretyship, Drafting of Statutes, Rules of Interpretation and Practical Statutes, and Shipping or Railway Law (McLaren, 1987, p. 124). The essentials of this curriculum were adopted by most common law provinces. From the mid-1920s to the mid-1940s, law school curriculums across the country remained identical to the CBA's model curriculum (McLaren, 1987).

Beginning in the late 1940s, changes were made to law school curriculums across the country. Courses in Administrative Law, Taxation, Labour Law, and Public International Law were added to law school programs (McLaren, 1987). Great changes occurred specifically in Ontario in the 1950s. In 1955, the Law Society of Upper Canada established a Special Committee on Law School to examine the relationship of law to other academic disciplines (McLaren, 1987). This Committee's work resulted in the publication of a report in February 1957 which recommended a B.A. degree or its equivalent as a minimum entrance qualification

(Law Society of Upper Canada, 1957). More importantly, it recommended that the academic law course be made a three-year full-time program (Law Society of Upper Canada, 1957). That same year, the Law Society promulgated regulations that set down the following list of 23 subjects which were to be mandatory elements of the law school curriculum:

- Legal History
- Contracts
- Torts
- Real Property
- Personal Property
- Civil Procedure
- Criminal Law and Procedure
- Agency
- Partnership
- Company Law
- Constitutional Law
- Evidence
- Banking and Bills of Exchange
- Family Law
- Sale of Goods
- Equity
- Real Estate Transaction
- Trusts
- Wills and Administration of Estates
- Municipal Law
- Taxation
- Legislation and Administrative Law
- Jurisprudence or one subject of a jurisprudential nature (Law Society of Upper Canada, 1972, p. 59-60)

Although these regulations were only mandatory for law schools in Ontario, the Law Society's stature in the legal community gave them the "character of a national *ukase*" (McLaren, 1985, p. 132; emphasis in original). In 1969, changes to these regulations were requested by the Committee of Ontario Law Deans and approved by Convocation (Law Society of Upper Canada, 1972). Labour Law and Conflict of Laws were added to the list of 23 mandatory subject areas. In addition, the undertaking to provide instruction in these subject areas was subject to the understanding that students will be required to take the "major basic class offered" in Civil

Procedure, Constitutional Law of Canada, Contracts, Criminal Law and Procedure, Personal Property, Real Property, and Torts (Law Society of Upper Canada, 1972, p. 61). Between the 1960s and 1980s, law schools across the country developed courses and research institutes in new areas of law, including Aboriginal law (McLaren, 1985).

The curriculum requirements set by the Law Society of Upper Canada in 1957 and revised in 1969 were not reviewed again until 2009, when the Federation of Law Societies of Canada's Task Force on the Canadian Common Law Degree reviewed existing academic requirements and recommended the adoption of "a national academic requirement for entry to the bar admission programs of the common law jurisdictions" (Federation of Law Societies of Canada, 2009, p. 4). The national requirement obliges Canadian law school graduates to demonstrate competency in problem solving, legal research, oral and written communication, and ethics and professionalism (Federation of Law Societies of Canada, 2009). In addition, it also requires that graduates demonstrate substantive legal knowledge of the following three areas:

3.1 Foundations of Law

The applicant must have an understanding of the foundations of law, including,

- a. principles of common law and equity;*
- b. the process of statutory construction and analysis; and*
- c. the administration of the law in Canada.*

3.2 Public Law of Canada

The applicant must have an understanding of the core principles of public law in Canada, including,

- a. the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada;*
- b. Canadian criminal law; and*
- c. the principles of Canadian administrative law.*

3.3 Private Law Principles

The applicant must demonstrate an understanding of the foundational legal principles that apply to private relationships, including,

- a. contracts, torts and property law; and*

- b. *legal and fiduciary concepts in commercial relationships*. (Federation of Law Societies of Canada, 2009, pp. 9-10; emphasis in original)

Although the national requirement requires students to demonstrate an understanding of the rights of Aboriginal Peoples, it does not require students to learn about Indigenous law.

The discussion above shows that Canadian legal education has, since the early 19th century, involved engagement with common law and civil law. Law students have not, until very recently, been required to take courses in Indigenous law. In addition to being excluded from the curriculum, Indigenous students experience other barriers in law school, including racism and discrimination from both professors and students (Canadian Bar Association, 1999; Department of Justice Canada, 1992; Law Society of British Columbia, 2000; Law Society of Upper Canada, 2009); social isolation and culture shock (Law Society of British Columbia, 1996); alienation (Lindberg, 1997); stigma and feelings of powerlessness (Canadian Bar Association, 1999); and “difficulty in reconciling their Aboriginal cultural background with the environment of law school” (Law Society of Upper Canada, 2009, p. 16).

In 2006, the Indian Residential School Settlement Agreement (IRSSA)—the largest class-action settlement agreement in Canadian history—was approved by all parties involved. Implementation of the IRSSA began in 2007. One of the elements included in the IRSSA was the establishment of the Truth and Reconciliation Commission (TRC). Created in 2008, the TRC was mandated to

- reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities; and
- guide and inspire a process of truth and healing, leading toward reconciliation within Aboriginal families, and between Aboriginal peoples and non-Aboriginal communities, churches, governments, and Canadians generally. The process was to work to renew relationships on a basis of inclusion, mutual understanding, and respect. (Truth and Reconciliation Commission of Canada, 2015, p. 23)

During its operation, the TRC held events across the country, including seven National Events in Winnipeg, Inuvik, Halifax, Saskatoon, Montreal, Vancouver, and Edmonton between 2010 and 2014 (Truth and Reconciliation Commission of Canada, 2015, p. 25). The TRC also received over 6,750 statements from survivors, family members, and others who wished to share information about residential schools, including former staff and their children (Truth and Reconciliation Commission of Canada, 2015, p. 25-26). In 2012, the TRC released an interim report with a short history of residential schools, findings, and recommendations (Truth and Reconciliation Commission of Canada, 2015, p. 33).

In June 2015, the TRC published a multi-volume final report that concluded that the residential school system amounted to cultural genocide (Truth and Reconciliation Commission of Canada, 2015, p. 1). The TRC also published 94 “calls to action” to advance reconciliation between the Canadian state and Indigenous Peoples. Three of the 94 calls to action are aimed at the legal profession:

27) We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. (Truth and Reconciliation Commission of Canada, 2015, p. 168)

28) We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. (Truth and Reconciliation Commission of Canada, 2015, p. 168)

50) In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the

development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada. (Truth and Reconciliation Commission of Canada, 2015, p. 207)¹

Law students must engage with Indigenous law because Canada was not built upon European-derived law alone. Indigenous law existed prior to the arrival of settlers, it assisted in the formation of Canada's constitutional framework, and it continues to be practiced by Indigenous Peoples today across the country (Borrows, 2010). In addition to learning about Indigenous law, law students must be better educated in the history and cultures of Indigenous Peoples and the legacy of the residential school system. In its summary report, the TRC briefly explains why:

The criminal prosecution of abusers in residential schools and the subsequent civil lawsuits were a difficult experience for Survivors. The courtroom experience was made worse by the fact that many lawyers did not have adequate cultural, historical, or psychological knowledge to deal with the painful memories that the Survivors were forced to reveal. The lack of sensitivity that lawyers often demonstrated in dealing with residential school Survivors resulted, in some cases, in the Survivors' not receiving appropriate legal service. These experiences prove the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools. (Truth and Reconciliation Commission of Canada, 2015, p. 168)

In the spirit of the 2015 TRC report, all Canadian law schools have made formal commitments to implement calls to action 28 and 50. The Council of Canadian Law Deans (CCLD) recently put together summaries provided by Canadian law schools outlining their responses to calls to action 28 and 50 (Council of Canadian Law Deans, n.d.). Based on the summaries, their responses have varied and have included both curricular and co-curricular initiatives, including the creation of a joint degree program in Canadian common law (Juris Doctor (JD)) and Indigenous legal orders (Juris Indigenarum Doctor (JID)), the introduction of new mandatory and optional courses in Aboriginal and Indigenous law, the creation of

¹ Although call to action 50 is not specifically addressed to law schools, many law schools have indicated that it is broad enough for them to engage with.

concentrations and options in Aboriginal and Indigenous law, the hiring of more Indigenous faculty members, and increased exposure to Indigenous culture and practices (Council of Canadian Law Deans, n.d.).

Research Questions

My dissertation examines Canadian law schools' engagement with the TRC's calls to action 28 and 50. My core research question is: *Are law schools engaging with the liberal approach to reconciliation which maintains the status quo and reproduces colonial relations, or are they engaging with the transformative approach to reconciliation which has the potential to transform oppressive relations?* I was also guided by several sub-questions: How do legal educators and Indigenous law students explain reconciliation, both as a general concept and in the context of legal education? How are law schools responding to calls to action 28 and 50? What challenges have law schools encountered while formulating and implementing their response to calls to action 28 and 50? According to legal educators and Indigenous law students, does call to action 28 sufficiently contribute to transformative reconciliation in Canadian legal education? If not, what more must be done?

Significance of the Topic

Research is beginning to explore how law schools are engaging with calls to action 28 and 50. For example, Askew (2016) examines some of the strategies that are being adopted by law schools to respond to call to action 28, as well as some of the challenges of teaching Indigenous law. Napoleon and Friedland (2016) discuss how storytelling can be a useful method for teaching Indigenous law in law school. Similarly, Borrows (2016) uses Anishinaabe law to demonstrate how Indigenous law is taught best when organized in accordance with Indigenous frameworks. He also explores some of the challenges associated with teaching Indigenous law,

such as whether Indigenous law can be taught in English and organized by common law categories. Hewitt (2016) explores whether the focus on Indigenizing legal education under call to action 28 comes at the expense of decolonizing law schools as institutions under call to action 50. Similarly, Barkaskas and Buhler (2017) examine whether the goal of reconciliation as understood in call to action 28 goes far enough, or if law schools must go further by Indigenizing and decolonizing clinical legal education. Habermacher (2019) investigates the institutional cultures of three Canadian law schools. In doing so, he examines how these law schools are engaging with call to action 28 in order to “further tease out their culture as well as demonstrate their relevance to improve our understanding of law Faculties’ responses to common contemporary challenges” (p. ii). Finally, Parmar (2019) examines what cultural competence means in the context of reconciliation. In doing so, she outlines a broad conception of cultural competence that responds to calls to action 27 and 28 by “[paying] attention to Indigenous laws, legal practices, as epistemologies as sources of ethics and professionalism” (p. 557).

This literature makes a significant contribution to scholarship on reconciliation in Canadian legal education. My research adds to this growing body of literature in two important ways. First, I use interviews with faculty members and Indigenous law students to explore whether law schools are engaging with the liberal or transformative approach to reconciliation. Interviewing faculty members allows me to understand how they conceptualize reconciliation and how they helped implement their institution’s response to the TRC’s calls to action. Interviewing Indigenous law students allows me to understand how they explain reconciliation and assess how responses to the TRC’s calls are being perceived by students. Except for Habermacher (2019), very few scholars have used primary qualitative research to investigate how law schools are engaging with reconciliation. Further, Habermacher’s (2019) research

involved interviews with faculty members only, and the main focus of his research was on the institutional cultures of law schools, not engagement with reconciliation. Second, my research is deeply grounded in social theory. Using anti-colonial theory allows me to situate Canadian legal education, and the experiences of Indigenous law students, within the broader context of Canadian settler colonialism. In addition, by theorizing reconciliation and analyzing institutional responses to the TRC's calls to action within these discussions, my research contributes to the broader discussion about whether the politics of recognition (Coulthard, 2014) is able to transform the colonial relationship between the Canadian state and Indigenous Peoples.

General Argument

The central substantive argument of my dissertation is that the three law schools that I studied are on the path to implementing transformative reconciliation, but much work remains to be done. I argue that all three law schools define reconciliation, both as a general concept and in the context of legal education, in ways that are consistent with the transformative approach to reconciliation rather than the liberal approach to reconciliation. However, each law school is still in the process of implementing transformative reconciliation into their program.

Positionality: Locating Myself in the Research

The importance of locating one's self in one's research is an essential element of many approaches to research, including Indigenous, anti-colonial/anti-racist, and feminist methodologies (Absolon & Willett, 2005; Aveling, 2013; Bishop & Glynn, 1992; Carlson, 2016; Dei, 2005; Hales, 2006; Kovach, 2015; Max, 2005; Nicholis, 2009; Steinhauer, 2001; Wilson, 2008). Research is anything but objective and neutral. Researchers are a living part of their research projects (Lincoln & González, 2008); their personal and political context is present when they choose a research topic, craft research questions, select theoretical and

methodological frameworks, collect and analyze data, and communicate conclusions. Given this reality, it is important for researchers to situate themselves in their research so that participants and readers know who they are. This is particularly true for white settler researchers, who have often hidden their personal histories, biases, and motives from Indigenous Peoples. Sharing personal information is an important part of building a relational approach to research where researchers and research participants work together to foster mutual trust, respect, and dialogue (Dei, 2005, p. 11). Establishing such a relationship requires researchers to be transparent with, and accountable to, research participants. According to Absolon and Willett (2005), self-location is an essential aspect of conducting research with Indigenous Peoples for four reasons. First, because Indigenous Peoples have been treated as objects of research, they want to know who the researcher is and why they are doing the research. Second, self-location protects against voyeuristic accounts of Indigenous Peoples by researchers with no vested interest in their well-being. Third, self-location works to guard against Eurocentric research hidden under the guise of objectivity and neutrality. Finally, self-location shifts the focus of conducting research with Indigenous Peoples from one that is goal-oriented to one dedicated to creating an ethical research process (p. 106-107). Kovach (2015) also argues that self-location is important because it acts as “a powerful tool for increasing awareness of power differentials in society and for taking action to further social justice” (Kovach, 2015, p. 110). Self-location is an important starting point for research with Indigenous Peoples that begins by naming our social and physical locations and explaining how we came to our research.

I am a white, middle-class, English-speaking Canadian male of European descent. I was born and raised in Ottawa, Ontario, on the traditional unceded territories of the Algonquin people. I have attended Carleton University and the University of Ottawa, both of which are

located on the unceded territories of the Algonquin people. Identifying as a white settler is important because it frames how I come to my research project. My settler positionality structures the research question(s) I ask, the theoretical and methodological frameworks I engage with, how I collect and analyze data, and how I communicate findings. On its own, however, such an identification risks becoming a “settler move to innocence” (Tuck & Yang, 2012) or “confession of whiteness” (Applebaum, 2010) that “absolve[s] me from any complicity in perpetuating a system that enables whites to maintain power” (Aveling, 2013, p. 204). To be something more meaningful, my identification as a white settler must be accompanied by sustained efforts to challenge settler colonialism and interrogate the ways in which I benefit, directly and indirectly, from the subjugation of Indigenous Peoples.

My interest in this research topic comes from my experiences as a white settler law student at the University of Ottawa. I started law school in September 2014. From the beginning of law school, it was very clear whose legal system we were studying. I took common law courses with mostly non-Indigenous students taught by mostly non-Indigenous professors. We rarely talked about Indigenous legal traditions or Indigenous Peoples’ interactions with the Canadian legal system. There was no required course on Aboriginal or Indigenous law, although there were optional courses in these areas.

In early June 2015, I was working at a law firm for the summer. I was sitting on the bus reading the news one morning when I came across a CBC article that caught my attention: “Truth and Reconciliation Commission: By the numbers”. In the article, the author, Daniel Schwartz (2015), discusses key information from the TRC’s summary report, including the history and legacy of the residential school system and the purpose and findings of the TRC. The TRC was not new to me. I first heard about it as a first-year university student back in 2008, a

few months after Prime Minister Stephen Harper delivered his apology to residential school survivors and all Indigenous Peoples. I learned more about the TRC's work as I continued with my undergraduate education.

What stood out to me in the CBC article was the mention of 94 recommendations or "calls to action" for redressing the legacy of the residential school system and advancing reconciliation. I immediately went to the TRC's website and downloaded the summary report. Over the rest of the summer, I read the report and calls to action. I was surprised to learn that the TRC included three calls to action that apply specifically to the legal profession. After reading the summary report, I began reflecting on my own experiences as a law student, and I was left with many questions that I wanted answers to: How has the legal profession historically treated Indigenous Peoples? What role has legal education played in this process? What are Canadian law schools doing to respond to calls to action 28 and 50?

During my second year of law school, I took a course called Aboriginal Peoples and the Law. During this course, I learned more about the multiple barriers that Indigenous students encounter in law school, as well as the TRC's calls to action and the legal profession's responses to them. Taking this course made me want to better understand the experiences of Indigenous law students and contribute to unsettling the settler colonial structure of Canadian legal education. I started doing research on the history of anti-Indigenous exclusion and discrimination in Canada's legal profession. I applied for admission to the Ph.D. program in sociology at Carleton University for fall 2017. The research proposal that I submitted as part of my admissions package focused on exploring the ways in which Canadian legal education may still harm Indigenous students. However, after discovering that much had already been written about the contemporary barriers that Indigenous Peoples encounter accessing Canadian legal

education, I decided to shift my focus to how law schools are responding to calls to action 28 and 50. I found that little scholarly work had been directed at this topic because the TRC report and calls to action were still so new. I also thought that it was important to shift the focus from how Indigenous law students might still experience colonial domination to what law schools, as settler institutions, are doing to engage with reconciliation.

Undertaking this research is important to me for personal and professional reasons. I benefitted greatly from attending a law school whose curriculum, pedagogy, and methods of evaluation embodied my worldview and experiences. I never experienced racism and discrimination and never felt alienated or isolated from having to reconcile my culture with the law school environment. In 2017, the LSO began requiring lawyers to “adopt and abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public” (Law Society of Upper Canada, 2016, p. 2). Beginning in 2018, lawyers and paralegals were required to indicate to the LSO whether they had adopted and were abiding by a statement of principles (Law Society of Upper Canada, 2016, p. 18). The LSO provided sample templates to assist licensees in drafting their statement. One of the templates included “a commitment to advance reconciliation” and “support improved relationships between Indigenous and non-Indigenous peoples in Ontario and Canada” (Garcia, 2017).

On September 11, 2019, the LSO’s Board of Directors repealed the statement of principles and replaced it with a requirement that licensees “acknowledge in their annual reports, in accordance with the professional conduct rules, their special responsibility as a lawyer or paralegal to respect the requirements of human rights laws in Ontario and to honour the obligation not to discriminate” (Law Society of Upper Canada, 2016, p. 4a). The statement of

principles was opposed by StopSOP, a group of lawyers in Ontario dedicated to reversing the statement of principles requirement. 22 lawyers in the 2019 LSO benchers² election were members of StopSOP (StopSOP, n.d.). Based on StopSOP's benchers profiles, the majority of these lawyers are white men (StopSOP, n.d.). While these lawyers claim to oppose the statement of principles requirement on the grounds that it constitutes compelled speech, Sealy-Harrington (2020) shows that what they are really opposed to is equality and diversity initiatives. Using public statements made by these lawyers about the statement of principles requirement, Sealy-Harrington (2020) argues that they perceive diversity as "vacuous", a "misguided trend", and "a fiction predicated on the myth of 'systemic racism'" (p. 225). The StopSOP campaign and the repeal of the statement of principles requirement demonstrate the ongoing white, male, middle-class dominance in the Canadian legal profession. Of course, not all white men are opposed to diversity initiatives and think that the LSO was correct in repealing the statement of principles requirement. As Sealy-Harrington (2020) points out, many white men "have used their privilege to advance, not undermine, efforts at greater substantive equality in the legal profession" (p. 222).

Although the statement of principles has been repealed, I believe that as a white settler lawyer practicing Aboriginal and Indigenous law, I have an obligation to advance reconciliation. White settler legal professionals like myself need to be engaged in the work of reconciliation for another important reason. Because law schools benefit from their current structure, there is very little incentive to change. White settlers hold most of the powerful positions in the legal profession. Most law students, faculty members and Deans, and law society benchers and Board

² The LSO is governed by a board of directors who are also known as "benchers". 40 lawyer benchers are elected every four years by Ontario's lawyers.

and committee members are white, straight, able-bodied, and upper-middle class. As a result, it is unlikely that the system will change unless we work with Indigenous Peoples and demand that it does. It is my hope that by revealing and theorizing the mechanisms through which Canadian law schools are engaging with reconciliation, I will have made an important contribution to advancing transformative reconciliation in Canadian legal education.

Note on Language

Many words have been used by the Canadian state to refer to the original inhabitants of present-day Canada, including ‘Indian’, ‘Native’, ‘Aboriginal’, and ‘Indigenous Peoples’. ‘Indian’ is a legal term that comes from the Indian Act. Section 2(1) of the Indian Act (1985) defines ‘Indian’ as “a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian”. ‘Status Indians’ are persons who are registered as Indians under the Indian Act. ‘Non-Status Indians’ are persons who are not registered under the Indian Act or who lost their status under current or former provisions of the Indian Act. Non-Status Indians are ineligible for the rights and benefits offered to Status-Indians by the federal and provincial or territorial governments. The Indian Act has not historically recognized Métis and Inuit as ‘Indians’. However, in 1939 the Supreme Court of Canada ruled that Inuit are the responsibility of the federal government.³ The Supreme Court did the same thing for Métis peoples in 2016.⁴ ‘Indian’ is a homogenous term that lumps diverse groups of peoples into one category. It is also considered outdated and offensive and should only be used in the context of the Indian Act. Consequently, I only use the term ‘Indian’ in my dissertation in direct quotations or when discussing the Indian Act.

³ Reference as to whether the term "Indians" in s. 91(24) of the B.N.A. Act includes Eskimo inhabitants of the Province of Quebec, [1939] SCR 104.

⁴ Daniels v Canada (Indian Affairs and Northern Development), 2016 SCC 12.

‘Native’ is a vague, outdated term that is very often used pejoratively in Canada. While it is sometimes used to describe a person born in or associated with a specific place, it has come to be associated with Indigenous Peoples. Many Indigenous Peoples believe that it is only appropriate to use this term when referencing an organization, such as the Native Women’s Association of Canada. For these reasons, I only use the term ‘Native’ in my dissertation in direct quotations or if it is used by a research participant for self-identification or other purposes.

‘Aboriginal’ is a legal term defined in section 35(2) of the Constitution Act (1982) as referring to “the Indian, Inuit and Métis peoples of Canada”. While it was used by the Canadian state, the media, and in public discourse for many years, it has now largely been replaced by the term ‘Indigenous Peoples’, discussed below. One of the problems with the term ‘Aboriginal’ concerns its etymology. The “ab” is a Latin prefix that means “away from” or “not”. Taken as a whole, then, the word ‘Aboriginal’ can mean “not original”. More generally, ‘Aboriginal’ has also been criticized as a homogenous term that hides more meaning than it conveys. For these reasons, I only use the term ‘Aboriginal’ in my dissertation if it is used by a research participant for self-identification or other purposes, or in the context of discussing Aboriginal law.

The term ‘Indigenous Peoples’ has come to replace the older term ‘Aboriginal’. ‘Indigenous’ comes from the Latin word ‘indigena’, which means “sprung from the land; native”. ‘Peoples’ is added after ‘Indigenous’ in recognition of the heterogeneity and sovereignty of Indigenous communities. International organizations like the United Nations have been using the term ‘Indigenous Peoples’ for decades to refer to Indigenous communities across the globe. ‘Indigenous Peoples’ is capitalized because it is a proper name of nations of people. It is important to acknowledge that not all Indigenous Peoples and communities use the term ‘Indigenous’. They may instead use words in their own language that carry a similar meaning.

Moreover, since Indigenous communities are so diverse, it is recommended to use community-specific terms when referring to a specific Indigenous community. I use the term ‘Indigenous Peoples’ or a variation thereof (e.g., ‘Indigenous students’) in my dissertation unless specified otherwise (see above). I also use community-specific names where appropriate.

Chapter Summaries

Before jumping into my dissertation, I want to provide the reader with a short roadmap of its contents. Generally speaking, my dissertation has two parts—an introductory part that explains the theoretical and methodological frameworks underpinning the dissertation, and an analytical part that contains my analyses and arguments.

The introductory part contains Chapters 1 and 2. Chapter 1 introduces the foundational theories and concepts that I use throughout my dissertation. I use anti-colonial theory to conceptualize the settler colonial structure of Canadian legal education. Further, I explain how law schools are engaging with reconciliation as a means to challenge this structure. In doing so, I outline two approaches to reconciliation: the liberal approach and the transformative approach. After concluding that only the transformative approach is capable of creating a new, healthy relationship with Indigenous Peoples, I end this chapter by discussing how transformative reconciliation can be implemented in Canadian legal education. Chapter 2 outlines my methodology and research design. I describe my methodology, ethical framework, qualitative research methods, ethics clearance protocols, analytical processes, and methodological limitations.

The analytical part includes Chapters 3 to 6. Chapters 3, 4, and 5 explore how each law school defines reconciliation, both as a general concept and in the context of legal education; how each law school has responded to The TRC’s calls to action; and, most importantly, whether

these law schools are engaging with the liberal or transformative approach to reconciliation.

Chapter 6 makes comparisons between the three law schools and outlines recommendations that law schools can consider when formulating responses to the TRC's final report and calls to action.

CHAPTER 1: THEORETICAL FRAMEWORK

Chapter Overview

A considerable amount of time, effort, and money has been dedicated to studying the Canadian legal profession's relationship with Indigenous Peoples (see, for example, Adjin-Tettey & Deckha, 2010; Askew, 2016; Bhabha, 2014; Canadian Bar Association, 1999; Department of Justice, 1992; Devlin, 1989; Devonshire, 2014; Lawrence & Shanks, 2015; Law Society of British Columbia, 2000; Law Society of Upper Canada, 2009; Lindberg, 1997; MacAulay, 1991; Macdonald & McMorro, 2014; Mills, 2016; Monture, 1990; Purich, 1986). While these studies improve our understanding of how Canadian legal education marginalizes Indigenous Peoples and discounts their legal traditions, many of them are silent on how this process is shaped by settler colonialism (see, for example, Canadian Bar Association, 1999; Department of Justice Canada, 1992; Devlin, 1989; Law Society of British Columbia, 1996; Law Society of British Columbia, 1998; Law Society of British Columbia, 2000; Law Society of Upper Canada, 2009; MacAulay, 1991; Purich, 1986).

In this chapter, I draw on two bodies of literature to elucidate and challenge the settler colonial structure of Canadian legal education: anti-colonial theory and reconciliation. In the first section, I flesh out the contemporary meanings and workings of anti-colonial theory by engaging primarily with the work of George Dei and his collaborators.⁵ In the second section, I use anti-colonial theory to frame the ways in which law schools are a site of ongoing colonization for Indigenous students. In the third section, I discuss how anti-colonial theory can be used to challenge the settler colonial structure of Canadian legal education by demanding that law

⁵ George Dei's writing on anti-colonial theory is grounded in the African experience. I use his work in my study for two reasons. First, he and his collaborators provide the clearest explanations of anti-colonial theory. Second, his principles of anti-colonial theory are useful analytic tools for exploring the settler colonial structure of Canadian legal education. I have also supplemented his work with that of Indigenous anti-colonial scholars.

schools take accountability for the harm they have caused Indigenous students. Canadian law schools are taking responsibility for the harm caused to Indigenous students by formulating and implementing responses to calls to action 28 and 50. In the fourth section of this chapter, I examine two approaches to reconciliation with Indigenous Peoples: liberal reconciliation and transformative reconciliation. After concluding that, of these two approaches, only the transformative approach has the potential to create a new, healthy relationship with Indigenous Peoples, I end this chapter by discussing how transformative reconciliation can be implemented in Canadian legal education.

Anti-Colonial Theory

In her 1990 article, “Now that the Door is Open: First Nations and the Law School Experience”, Patricia Monture notes that

it is...most important...to recognize that the ‘missionary’ approach to education of First Nations in Canada has not been eradicated. It is insidious in our educational institutions of today. Perhaps, legal education is one of the clearest examples of the festering of current education policy in days past. (p. 184)

The history of Canadian legal education must be located within Canada’s history of using educational policy to assimilate, segregate, and separate Indigenous Peoples. Anti-colonial theory helps us to do this. Anti-colonialism emerged during the second half of the 20th century in the work of early anti-colonial scholars like Frantz Fanon (1963, 1967), Albert Memmi (1965), Aimé Césaire (1972), Achille Mbembe (2001), and Amílcar Cabral (2016). It has since been elaborated upon by scholars like George Dei (2000, 2006), Alireza Asgharzadeh (Dei & Asgharzadeh, 2001), Arlo Kempf (2009, 2010), Marlon Simmons (Simmons & Dei, 2012), Linda Tuhiwai Smith (2012), Leanne Simpson (2014), Glen Coulthard (2010, 2014), Eve Tuck (Tuck & Yang, 2012; Daza & Tuck, 2014), Njoki Nathani Wane (2006), and many others.

Closely related to anti-racism, anti-colonialism challenges all relations of colonial domination, from Euro-American colonization to more nuanced and sophisticated forms of colonial oppression (Kempf, 2010). Discussing anti-colonialism as a framework, Dei and Asgharzadeh (2001) write that “its goal is to question, interrogate, [theorize,] and challenge the foundations of institutionalized power and privilege, and the accompanying rationale for dominance in social relations” (299).

In their article, “Reframing Anti-Colonial Theory for the Diasporic Context”, Simmons and Dei (2012) put forward twelve principles of anti-colonial theory. While all twelve principles are important for a deep understanding of anti-colonial theory, four of them are especially significant for understanding and challenging the settler colonial structure of Canadian legal education. The first principle of anti-colonialism that is important for my study is that it is imperative to use a transhistorical analysis that challenges the ‘post’ in post-colonialism (Simmons and Dei, 2012, p. 76). ‘Post-colonialism’ and ‘anti-colonialism’ are sometimes used interchangeably by authors (see, for example, Pidgeon, 2009). However, anti-colonial scholars make it clear that they are not the same. While post-colonialism has made significant contributions to our understanding of colonial relations, anti-colonial scholars challenge its conceptualization of colonialism. Anti-colonial scholars have consistently contested the ‘post’ in post-colonialism, where ‘post’ is meant to mean *after* colonialism (see, for example, Kempf, 2009; Wane, 2006). They dispute the idea that colonialism is a thing of the past—that the colonizers have left and that their oppressive laws and institutions have been dismantled (Smith, 2012). As Kelley (2000) writes, “we are hardly in a ‘postcolonial’ moment. The official apparatus might have been removed, but the political, economic, and cultural links established by colonial domination still remain with some alterations” (p. 27). As long as these links remain in

place, and as long as our relationships continue to be structured by oppression and domination, colonialism will continue to exist (Dei and Asgharzadeh, 2001).

For anti-colonial scholars, colonialism is not, as the term ‘post-colonialism’ suggests, a thing of the past. Moreover, it is not an event that ends with, for example, the independence of previously colonized peoples. Rather, anti-colonial scholars acknowledge that the present requires an in-depth inquiry into the past; that present systems of oppression and domination are contemporary manifestations of processes that began centuries ago. Commenting on the transhistorical nature of colonialism, Kempf (2010) writes that “colonialism is alive and well in our classrooms, curricula, popular press, and popular culture. It is not only under the instruction of invading colonizing regimes that people find themselves excluded from the format and content of dominant culture and norms” (p. 64).

Anti-colonial scholars also contest the ‘post’ in post-colonialism as it applies to Indigenous Peoples because, as Daza and Tuck (2014) note, “there is nothing *post*...about the omnipresence of coloniality in Indigenous life” (p. 310; emphasis in original). They argue that Canada is a settler colonial state that continues to oppress Indigenous Peoples. Settler colonialism refers to “circumstances where colonizers ‘come to stay’ and to establish new political orders for themselves” (Veracini, 2013, p. 313). It is a “logic of elimination” (Wolfe, 2006) that involves the violent appropriation of Indigenous lands and resources for the purpose of erecting a “new colonial society” (Wolfe, 2006, p. 388). While this process began centuries ago, it exists today and is “relatively impervious to regime change” (Wolfe, 2006, p. 402). The Canadian settler colonial state has used a diverse set of strategies to ensure continued access to Indigenous Peoples’ lands and resources. In Canada, the primary strategies include murder and

violent removal, assimilation, and state-sanctioned land claims negotiations and agreements (Coulthard, 2014).

The Canadian government's use of these strategies amounts to genocide. The term "genocide" was coined by Raphael Lemkin in his 1944 book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Lemkin (1944) defines genocide as a "coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" (p. 79). Genocide, according to Lemkin (1944), "does not necessarily mean the immediate destruction of a nation"; its objectives also include "[the] disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, and even the lives of the individuals belonging to such groups" (p. 79).

What is clear from Lemkin's explanation is that one can commit genocide through means other than mass killings. However, these means are often taken less seriously because they do not call to mind images of the Jewish holocaust or Rwandan genocide. Coordinated plans of destruction using these less physical/biological means are said to be examples of "cultural genocide", which refers to "the purposeful weakening and ultimate destruction of cultural values and practices of feared out-groups" (Davidson, 2012, pp. 18-19). Lemkin (1944) warns against making distinctions between different kinds of genocide. Instead, he argues that it is essential to consider the physical/biological, economic, social, and cultural elements of genocide simultaneously. Wolfe (2006) criticizes the concept of cultural genocide on the basis that when it is used, "genocide emerges as either biological (read 'the real thing') or cultural—and thus, it

follows, not real” (p. 398). Cultural genocide has also been used by governments as a way to avoid responsibility for harms committed against Indigenous Peoples.

In 1948, Lemkin’s (1944) definition of genocide was adopted by the United Nations in its Convention on the Prevention and Punishment of the Crime of Genocide (1951). Article 2 of the Convention 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 intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The Canadian Crimes Against Humanity and War Crimes Act (2000) relies on the international definition of genocide found in the *Convention*. The Canadian statute defines genocide as

an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (s. 4(3))

In its 2015 final report, the TRC concludes that Canada’s actions towards Indigenous Peoples constitute genocide:

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as “cultural genocide.”

Physical genocide is the mass killing of the members of a targeted group, and *biological genocide* is the destruction of the group's reproductive capacity. *Cultural genocide* is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.

In its dealing with Aboriginal people, Canada did all these things. (p. 1; emphasis in original)

Similarly, in its 2019 final report, the National Inquiry into Missing and Murdered Indigenous Women concludes that the persistent state violence committed against Indigenous women “amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit, and Métis... [that] has been empowered by colonial structures, evidenced notably by the *Indian Act*, the Sixties Scoop, residential schools, and breaches of human and Inuit, Métis, and First Nations rights” (p. 50). In its *Supplementary Report* (2019), the National Inquiry makes it clear that it believes that the distinction between “cultural genocide” and “real” genocide is misleading. Despite the definitional differences of genocide between the TRC and the National Inquiry, both reports reach the same conclusion: Canada is a settler colonial state that has engaged in a centuries-long process of physical, social, and cultural violence against Indigenous Peoples that constitutes genocide.

The second principle of anti-colonialism that is important for my study is that knowledge must work to challenge colonial oppression and domination (Simmons & Dei, 2012, p. 74). Anti-colonial theorists do not merely describe or theorize colonial relations. Instead, they take an “action-oriented stance” (Dei & Lordan, 2016, p. x) that challenges all forms of colonial domination. This principle is closely connected to a third principle put forward by Simmons and

Dei (2012), which says that “anti-colonialism posits a ‘literacy of resistance’ to bring about social change (Kempf, 2010, p. 45)” (p. 76). Anti-colonial theorists do not simply theorize colonial domination or argue that it is immoral and should not exist. They go one step further by advocating for social change.

But who should be responsible for making this social change? This brings us to the fourth important principle of anti-colonialism, which says that the dominant must take responsibility for their actions and complicities in order to create positive social change (Simmons & Dei, 2012, p. 76). Anti-colonialism is predominantly conceptualized as a form of resistance for and by the colonized. However, anti-colonial scholars recognize that the colonizer must fully participate in the anti-colonial struggle by being held responsible for acts of oppression and domination. As Kempf (2009) notes, “[d]ominant bodies must work primarily against the oppression by which they are privileged and in which they thus participate” (p. 20; see also Kempf, 2010). Of course, settlers must contribute to the anti-colonial struggle in meaningful ways that do not reassert their power and privilege over Indigenous Peoples.

Settler Colonialism and Canadian Legal Education

In Canada, one of the most powerful strategies of elimination has been the education system. Anti-colonial scholars investigate “knowledge production, the validation and dissemination of information, and roles of power and representation in education” (Kempf, 2006, p. 134). In doing so, they argue that “[e]ducational imperialism is a crucial element of colonialism, with profound effects on the colonized” (Kempf, 2006, p. 132). Dei and Simmons (2010) assert that education is a “form of ‘epistemic violence’” that has been used against Indigenous populations to reproduce domination and social inequalities (p. xvi). Take, for example, the Canadian government’s use of residential schools. Between the 1860s and the

1920s, the Canadian government established and operated industrial and boarding schools for Indigenous children that focused on religious indoctrination and manual labour. Between the 1920s and the 1990s, the Canadian government and church organizations jointly operated residential schools where Indigenous children would receive classroom instruction and “practical skills”. In reality, many Indigenous children experienced physical, emotional, and sexual abuse (White & Peters, 2009), and one of the main purposes of the schools was to eradicate Indigenous ontologies, epistemologies, languages, and cultures.

Canada has not restricted its use of colonizing educational practices to residential schools. In the context of post-secondary education, it has used less brutal and more covert techniques to oppress Indigenous post-secondary students. The worldviews and knowledges of Indigenous students are dismissed because they “do not conform to dominant expectations and experience” (Dei, 2010, p. 11; see also Kempf, 2006, p. 132). In addition to discounting Indigenous students’ cultures and experiences, Canadian universities and colleges offer students a “settler history that preserves the salience of settler domination” (Kempf, 2006, p. 133).

The settler colonial structure of post-secondary education has devastating consequences for Indigenous students. According to recent research, Indigenous students continue to experience racism and discrimination while at university (Gordon and White, 2014; Clark et al., 2014). In their study with five Indigenous undergraduate students at a leading Canadian university, Clark et al (2014) found that the students experienced microaggressions on campus, including expectations of cultural primitiveness, unconstrained voyeurism, jealous and misinformed accusations about education funding and tax benefits, having their cultures and identities excluded or misrepresented, and social isolation (Clark et al., 2014). Similarly, in his one-on-one interviews with Indigenous and non-Indigenous students at McMaster University,

Bailey (2016) found that Indigenous students experience racism, social isolation, and a general lack of awareness and understanding from other students about Indigenous Peoples (Bailey, 2016). Finally, in her book *Colonized Classrooms: Racism, Trauma and Resistance in Post-Secondary Education*, Cote-Meek (2014) discusses the many obstacles and challenges that Indigenous students face in post-secondary education. She notes that Indigenous students are often called upon to act as experts in Indigenous cultures and experiences in the classroom. When they do not speak their own languages or participate in cultural events, Indigenous students are perceived as not being a “real Indian” (Cote-Meek, 2014, p. 90). Cote-Meek (2014) also argues that Indigenous students rarely find themselves represented in the university environment. They are often missing in the classroom curriculum and amongst the faculty and staff employed at the institutions (p. 91). This research demonstrates that the post-secondary classroom continues to be a source of colonial violence for many Indigenous students.

Canadian law schools have made efforts to increase ethnic and cultural diversity and inclusion in their programs. Despite these changes, Indigenous students continue to encounter barriers in law school that impede their success. A common barrier that Indigenous law students experience is a tension between Indigenous worldviews and law and Western philosophy and the Western legal system (Adjin-Tettey & Deckha, 2010; Devonshire, 2014; Law Society of British Columbia, 1998, 2000; Lindberg, 1997; MacAulay, 1991; Purich, 1986).

Indigenous Peoples and non-Indigenous people often do not share the same ontological and epistemological assumptions (Lindberg, 1997). The Western positivist and Eurocentric worldview is based on a linear philosophy grounded in scientific reason. According to this worldview, there is only one truth, which can be scientifically verified, and knowledge is disembodied, context independent, and based on cause and effect. The Western worldview is

also characterized by a mode of understanding that is literal and language-based, and a mode of relating that is individualistic. Conversely, Indigenous worldviews are characterized by a “cyclical and holistic philosophy” (Devonshire, 2014, p. 315) where many truths or ways of knowing exist, and knowledge is embodied, situated, and “expressed as an oral tradition, transmitted through specific elders, in language and syntax that is unique to that particular culture” (Devonshire, 2014, p. 315). Indigenous worldviews are often characterized by modes of understanding that are symbolic and imaginative, and modes of relating that are relational and interconnected. Indigenous students, then, often come to law school with a different worldview than the one embedded within the law school curriculum. Commenting on the tension between Western philosophy and Indigenous knowledge systems in the law school context, Devonshire (2014) makes the following important comment:

The cyclical and holistic philosophy of most native communities contrasts with the linear philosophy of western society. When Indigenous students are taught the fundamentals of the legal system, they confront values that are at variance with their own beliefs and systems. This requires adaption. It takes time and a refocusing of thoughts by the academy as well as by Indigenous students, to recognize that in studying law, Indigenous students are learning another language and another code. (p. 315)

Similarly, Lindberg (1997) notes that, for Indigenous students, “coming to law school is similar to moving to a foreign country, learning a new culture and language” (p. 317). In addition to having to learn a different worldview, many Indigenous law students also must understand and accept a legal system that is oftentimes very different from their own.

In law school, students are taught that Canada’s legal system is bijuridical in nature; it is based on common law and civil law. In other words, it is grounded in Western legal theory. Law students are taught the fundamentals of these two legal systems by, for the most part, non-Indigenous faculty members trained in these two legal systems. Indigenous law students are often taught concepts that conflict with their ideas of “nationhood, property, and peoplehood”

(Lindberg, 1997, p. 317). Particularly challenging to understand and accept are the Canadian legal system's understanding of justice and property law. Law students are exposed to a curriculum that teaches them

that there are a complex series of rules that govern our daily interactions with each other and society, that disputes are dealt with in an adversarial fashion, with each side making its case and the outcome decided by an impartial arbitrator, be it a judge or a jury. Those who transgress the rules of society are punished and, in extreme cases, even segregated from the rest of society. (Law Society of British Columbia, 1998, p. 4)

Indigenous law students often find this conceptualization of justice confusing because, for many of them, their understanding of justice is based on a set of principles that focuses more on community healing and reparation than punishment (Hewitt, 2016).

Property law is also often a great source of conflict for Indigenous students. As Lindberg (1997) notes, "property law in the college is almost impossible for many Aboriginal students to study, let alone to accept and understand" (p. 317). In first-year property law classes, students learn about ownership and possession, interests in real and personal property, bailment, estates, and trusts. They are taught that land is something that humans own for their economic benefit. This belief is often a source of conflict for Indigenous students, who understand land as something given to them by the Creator to be shared with others. Devonshire (2014) notes that it is often challenging for Indigenous students to "reconcile their personal understandings with the formalised concepts of estates, title and interests in law" because, for them, "land belongs not only to those presently living but also to past and future generations. In some value systems, the land also belongs not only to humans but also to other living beings" (p. 315). In addition, it is difficult for many Indigenous students to accept the assertion, taught at most Canadian law schools, that the Crown has sovereignty over the land. As Monture (1990) notes, "[t]his concept is taught as fact. It is not questioned. It is the basic founding principle of European-based

property law systems. Yet, it is completely contrary to First Nations concepts of land ownership” (p. 202). These are just two examples of the many ways Canadian legal education marginalizes Indigenous Peoples and their legal traditions.

Canadian law schools embody a system of upper-middle class values and beliefs that privilege Western philosophy and legal theory over Indigenous worldviews and law. As Adjin-Tettey and Deckha (2010) argue, “unspoken, covert norms, values, and assumptions that characterize law school environments...create dominant cultures that privilege the racial majority” (p. 196). As an “imperial project” (Macdonald & McMorrow, 2014, p. 722), “the legal education establishment in Canada has been and remains thoroughly dominated by powerful exogenous forces in a manner that can be analogized to colonization” (Macdonald & McMorrow, 2014, p. 719). Western legal traditions are used to silence Indigenous Peoples’ legal orders and traditions. Commenting on the colonial nature of modern Canadian legal education, Chartrand (2015) notes that common law and civil law have been imposed on Indigenous Peoples despite the fact that they have used their own law for millennia. Law schools also privilege common law and civil law to reassert the Canadian legal system’s sovereignty over Indigenous Peoples. As Hewitt (2016) notes, “law schools...educate and graduate students solely in common and civil law to the exclusion of Indigenous legal orders and thereby contribute to ongoing colonization. Too often, course curriculum perpetuates the Canadian courts’ assumptions of sovereignty over Indigenous peoples” (p. 66).

The privileging of Western legal systems in Canadian law schools is not accidental or random. It is a form of “symbolic” violence in the sense that Bourdieu (2001) used the term: a “gentle violence” that is “imperceptible and invisible” (p. 1). This more nuanced form of violence against Indigenous law students is effective because it “lacks the intentional and

instrumental quality of brute and coercive physical force” (Thapar-Björkert, Samelius, & Sanghera, 2016, p. 149) characteristic of earlier settler colonial laws and policies. By using these more subtle forms of domination and violence, law schools represent a continuation of one of Canada’s most powerful strategies of elimination, namely, the use of education to systematically devalue and erase Indigenous Peoples’ cultures and experiences. The symbolic violence that Indigenous students encounter in law school is institutional and structural in nature, which makes it very difficult to change. Policies that focus on individual change are ineffective because the people who hold the most powerful positions in law schools benefit from the current system. As a result, what is needed is systemic change that transforms the settler colonial structure of Canadian legal education.

Challenging the Settler Colonial Structure of Legal Education

Colonized populations, including Indigenous Peoples in Canada and around the world, have been engaged in anti-colonial resistance for centuries. They have always borne the burden of transforming colonial institutions on their own. In the context of Canadian legal education, Indigenous faculty members, lawyers, and law students have worked tirelessly to transform the settler colonial structure of law schools. More than twenty years ago, Lindberg (1997) called on law schools and non-Indigenous legal educators and law students to participate in this process:

[W]e have accepted the responsibility of educating ourselves. We have risen to the challenge of remaining Aboriginal in the search for knowledge in a system that challenges our make-up. We respect the wisdom that we have gained. We honour the teachers who have tried to change a vision of their world in order to include other worlds. We have found ourselves immersed in a value system that is strange and foreign to many of us. We have struggled academically, personally, and in innumerable other ways to include, or at least to respect, your vision of the world. *It is your turn.* (p. 331; emphasis added)

Indigenous Peoples should not be responsible for transforming the colonial institutions that oppress them. Law schools must help transform legal education in supportive ways. Non-

Indigenous legal educators and law students must work with Indigenous faculty members and law students to radically transform the settler colonial structure and environment of Canadian legal education. As Craft and Regan (2020) note,

It is particularly important that non-Indigenous people, with critical thought and sustained kindness, engage in decolonial acts and processes of reconciliation in ways that do not place the burden of change or relationship building more heavily on Indigenous peoples. Non-Indigenous people must be responsible and accountable for undertaking their own decolonization. (p. xiii)

As discussed in chapter 1, Canadian law schools are using the framework of reconciliation to challenge the settler colonial structure of legal education. More specifically, they are formulating and implementing responses to calls to action 28 and 50. Before examining these responses and assessing their adequacy, it is necessary to discuss reconciliation in more detail. In the next section of this chapter, I explore two divergent approaches to reconciliation with Indigenous Peoples in Canada: the liberal approach and the transformative approach.

Reconciliation with Indigenous Peoples in Canada

Reconciliation is a contested concept with different definitions and approaches (Borrows & Tully, 2018; Miles, 2018). Reflecting on the different conceptualizations of reconciliation, Borrows and Tully (2018) write:

[S]ome say reconciliation between settlers and Indigenous peoples is an end state of some kind: a contract, agreement, legal recognition, return of stolen land, reparations, compensation, closing the gap, or self-determination. Others argue that it is more akin to an ongoing activity. Some say reconciliation embodies a relationship stretching back 12,000 years, an existential mode of being with one another and the living earth. It has also been associated with treaty relationships since early contact. For some it is the path to decolonization, for others a new form of recolonization. Some insist reconciliation must be resisted, while others see it as an essential process for ongoing relationality. (p. 4)

There are two broad approaches to reconciliation with Indigenous Peoples in Canada: (1) a liberal approach to reconciliation that promotes multiculturalism and seeks to make Indigenous

Peoples equal with settlers, all the while leaving the legitimacy and authority of the Canadian settler colonial state intact; and (2) a transformative approach to reconciliation that challenges state authority, promotes Indigenous sovereignty, self-determination, and resurgence, and seeks to transform existing settler colonial laws and institutions (Craft & Regan, 2020; MacDonald, 2020).

The Liberal Approach to Reconciliation

Grounded in liberal notions of equality and individual rights derived from Western European philosophy, the liberal approach to reconciliation seeks to repair the relationship between Indigenous Peoples and the Canadian state through the recognition of “soft” rights, including linguistic and cultural rights, and equal treatment and equal access to social and economic opportunities (MacDonald, 2020). While soft rights can address some of the problems facing Indigenous communities caused by centuries of racist and discriminatory laws and practices, the liberal approach to reconciliation is ultimately inadequate because it locates the harms of settler colonialism in the past, it allows settlers to feel good about themselves without having to acknowledge their own privilege or make any uncomfortable changes, and it leaves the settler colonial state intact (MacDonald, 2020; Coulthard, 2014).

The Transformative Approach to Reconciliation

A transformative approach to reconciliation is needed to adequately repair Canada’s relationship with Indigenous Peoples (Asch, Borrows, & Tully, 2018; MacDonald, 2020; Regan, 2018). Proponents of this approach reject a liberal approach to reconciliation that “perpetuate[s] unjust relationships of dispossession, domination, exploitation, and patriarchy” and seeks to “reconcile Indigenous people and settlers to the status quo” (Asch, Borrows, & Tully, 2018, p. 5). For them, reconciliation means to “conciliate *again*”—to transform relationships of conflict

into relationships of conciliation and sustainability (Tully, 2018, p. 95; emphasis in original). It is a multinational political, social, and historical project that goes beyond apologies and acts of forgiveness and requires a “transformation of consciousness” or “paradigm shift” (Ladner, 2018, p. 248-249). Proponents of this approach to reconciliation argue for restitution, a renewed focus on treaty relationships, the restoration of Indigenous lands, and the regeneration and resurgence of Indigenous languages, cultures, laws, and governing structures (Asch, Borrows, & Tully, 2018; MacDonald, 2020; Regan, 2018). Compared to “soft” rights, these “hard” rights are less compatible with the current structures of the Canadian state. Old colonial structures will need to be unsettled, and new political arrangements will need to be imagined—ones “where Indigenous Peoples self-determine their own futures either inside or outside of Canada, or some combination of both” (MacDonald, 2020, p. 8).

This means that transformative reconciliation requires decolonization. Decolonization refers to the “long-term process involving the bureaucratic, cultural, linguistic and psychological divesting of colonial power” (Smith, 2012, p. 101). Tuck and Yang (2012) argue that decolonization “require[s] a change in the order of the world” (p. 31) and thus cannot be treated as a social justice project. For them, decolonization entails the “repatriation of Indigenous land and life” (p. 21). A growing number of scholars recognize that in order for reconciliation to be effective it must involve decolonization (see, for example, Corntassel & Holder, 2008; Corntassel, Chaw-win-is & T’lakwadzi, 2009; Mussell, 2008; Regan, 2010; Rice & Snyder, 2008). Waziyatawin (2009) argues that “if Canadians, Americans, and Indigenous Peoples are going to create a peaceful and just society, all oppression must cease. Colonization, by its very nature, is antithetical to justice. Therefore, complete decolonization is a necessary end goal for a peaceful and just society” (p. 178). It makes sense that transformative reconciliation requires

decolonization as a first step. It is impossible to create a relationship between the Canadian state and Indigenous Peoples that is accountable to Indigenous sovereignty and futurity if the state, through its colonial laws and institutions, continues to hold power over Indigenous Peoples.

While decolonization calls for the divesting of colonial power, I do not believe this requires the total destruction of settler institutions and the separation of Indigenous Peoples from non-Indigenous society. Borrows and Tully (2018) note that some scholars argue that a healthy relationship between Indigenous Peoples and the state is not possible and, therefore, Indigenous resurgence must occur separate from settler society. While I agree that separation between Indigenous Peoples and non-Indigenous people and the Canadian state will sometimes be necessary to create a new relationship built on mutual respect, I agree with Borrows and Tully (2018) that separation is not a healthy strategy in all situations. It is possible to create positive change from within a society. Borrows (2010), for example, notes that secession is “largely a colonizer’s activity” and that instead of speaking about severing relations with others, Indigenous Peoples “usually speak of creating better relations” (p. 167). Creating better relations will sometimes involve making improvements to settler institutions rather than destroying them. As Borrows (2010) notes, “[a] hammer, saw, and backhoe are instruments of creation *and* destruction. It is possible to use these tools to undo or renovate the thing that has been created” (p. 167; emphasis in original).

Proponents of the transformative approach to reconciliation argue that the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP) can “[serve as] a road map for fundamental transformative change at all layers of Canadian government and society” (Lightfoot, 2020, p. 270; see also Craft & Regan, 2020; MacDonald, 2020; Regan, 2018). The TRC also called for UNDRIP to be the framework for reconciliation in Canada:

In its 2012 *Interim Report*, the TRC recommended that federal, provincial, and territorial governments, and all parties to the Settlement Agreement, undertake to meet and explore the *United Nations Declaration on the Rights of Indigenous Peoples*, as a framework for reconciliation in Canada. We remain convinced that the *United Nations Declaration* provides the necessary principles, norms, and standards for reconciliation to flourish in twenty-first-century Canada. (Truth and Reconciliation Commission of Canada, 2015, p. 21)

UNDRIP is an international instrument on the rights of Indigenous Peoples adopted by the United Nations on September 13, 2007 by a majority of 144 states in favour, 4 states against (Australia, Canada, New Zealand, and the United States), and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine) (United Nations, n.d.). All four countries that voted against have reversed their position and now support UNDRIP (United Nations, n.d.). UNDRIP recognizes that Indigenous Peoples have the right to self-determination, self-government, and the right to “maintain and strengthen their distinct political, legal, economic, social and cultural institutions” (Article 5), among many other important rights. UNDRIP does have one serious limitation in Article 46(1), which puts member states’ sovereignty first and foremost:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

Article 46(1) weakens UNDRIP’s transformative potential and is precisely the thing that Indigenous anti-colonial scholars have warned about the liberal approach to reconciliation. Using the principle of territorial integrity to deny Indigenous Peoples’ right to exercise authority over their lands would undermine transformative reconciliation and be contrary to UNDRIP as a whole. For UNDRIP to be an effective framework for implementing transformative reconciliation in Canada, the federal government must read Article 46(1) in the context of the

whole instrument and other international human rights laws, and must accept Indigenous Peoples' full right to self-determination without any discriminatory qualifications or conditions. In the final section of this chapter, I discuss what engaging with transformative reconciliation in Canadian legal education must involve.

Transformative Reconciliation in Canadian Legal Education

Implementing transformative reconciliation will require educational institutions to engage with a different kind of learning and teaching (Tully, 2018). As previously mentioned, the Canadian government has a very long history of using education as an instrument of oppression against Indigenous Peoples. It is unsurprising, then, that Canadian law schools have devalued Indigenous law. UNDRIP and the TRC's calls to action provide a useful framework for implementing transformative reconciliation in education. Articles 14, 15, and 21 of UNDRIP set out the educational rights of Indigenous Peoples. Article 14 says that Indigenous Peoples have the right to establish and control their own educational systems; the right to participate in the educational systems of the state without discrimination; and the right to an education provided in their own culture and language. Article 15(1) says that Indigenous Peoples have the right to have their cultures and traditions reflected in the educational systems of the state. Lastly, Article 21(1) says that Indigenous Peoples have the right to the improvement of their social and economic conditions, including in the area of education. All of these rights must be implemented in order for transformative reconciliation in Canada to occur.

The TRC's calls to action 6-12 specifically address education. They call on the federal government to eliminate educational gaps and discrepancies in funding between Indigenous Peoples and non-Indigenous people in all levels of education. In particular, call to action 10 calls

on the federal government to draft a new “Aboriginal education legislation” that would incorporate the following principles:

- i. Providing sufficient funding to close identified educational achievement gaps within one generation.
- ii. Improving education attainment levels and success rates.
- iii. Developing culturally appropriate curricula.
- iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.
- v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.
- vi. Enabling parents to fully participate in the education of their children.
- vii. Respecting and honouring Treaty relationships. (Truth and Reconciliation Commission of Canada, 2015, pp. 149-150)

These principles are “soft” rights that will address some of the education issues faced by Indigenous Peoples. However, because they simply make improvements to Canada’s colonial education system, they cannot on their own create transformative reconciliation between Indigenous Peoples and the Canadian state. For this to happen, they must be implemented in conjunction with the “hard” rights set out in Articles 14, 15, and 21 of UNDRIP. That is, for transformative reconciliation of education to occur, the federal government must support Indigenous Peoples in their efforts to establish their own educational institutions, grounded in their own cultures and languages, and must work with the provinces and Indigenous communities to make secondary and post-secondary schools healthy working environments for Indigenous students.

In the context of Canadian legal education, the TRC has two recommendations that will assist law schools in implementing transformative reconciliation. Call to action 28 obliges law schools to create a mandatory course in Aboriginal people and the law, while call to action 50 requires the federal government to work with Indigenous communities and organizations to fund the establishment of Indigenous law institutes. John Borrows (2010) has advocated for the

creation of “multi-juridical Indigenous law schools” where students “learn how to compare and contrast sources of authority within legal systems that are committed to unity through understanding, critiquing, and applying deep jurisprudential diversity” (p. 228). Multi-juridical Indigenous law schools would teach Indigenous law alongside common law and civil law. They would also work with local Indigenous communities “to ensure that law is taught in a way that is attentive to practical procedural and substantive concerns” (Borrows, 2010, p. 229). Establishing Indigenous law schools that are separate from settler law schools would be the strongest possible response to call to action 50. Transformative reconciliation requires settler law schools to provide support to local Indigenous communities interested in developing their own law schools.

Creating Indigenous law schools will require an enormous amount of resources. In 2019, the federal government announced it would be investing \$10 million over five years to support Indigenous law initiatives across the country through the Justice Partnership and Innovation Program (JPIP). Funding was used to support multi-year projects (up to four years) that sought to “[d]evelop Indigenous laws through research into traditional or customary practices, including in modern forms or as modified over time”; “[s]upport the use of Indigenous laws by Indigenous communities”; and “[i]ncrease the understanding of Indigenous laws within Indigenous communities and by all Canadians” (Government of Canada, n.d.). The funding was available to Bands, Tribal Councils, and self-governing First Nations, Métis and Inuit; Canadian not-for-profit and non-governmental organizations; and Canadian educational institutions (Government of Canada, n.d.). The deadline to apply for funding was November 1, 2019. In May 2021, the government announced that it would be using \$9.5 million to fund 21 projects that respond to call to action 50 (Government of Canada, 2021). To engage with transformative reconciliation,

settler law schools can assist local Indigenous communities to apply for similar funding to establish Indigenous law schools.

In the meantime, settler law schools can better engage with Indigenous law by establishing Indigenous law institutes (Borrows, 2010). Creating Indigenous law institutes within settler law schools can be a powerful response to call to action 50. Although they will operate within settler law schools, these institutes can make a significant contribution to the resurgence of Indigenous law if law school and university administrators support their development and allow them to operate with relative autonomy. That is, while these institutes will rely on university support and funding, Indigenous Peoples and communities must have control over how they are developed. This is the only way they will achieve their full potential.

In addition to implementing calls to action 28 and 50, transformative reconciliation requires law schools to make non-curricular changes to eliminate barriers in Canadian legal education. Engaging with Indigenous law will not effectively contribute to transformative reconciliation in legal education if Indigenous students continue to experience alienation and discrimination. Canadian law schools must make changes to their admissions policies, social environments, faculty hiring and student recruitment practices, teaching and evaluation methods, and student support systems to make law schools healthy environments where Indigenous students can succeed.

Chapter Summary

In this chapter, I set out the theoretical framework that I will use to guide my research analysis. Anti-colonial theory helps me to elucidate the settler colonial structure of Canadian legal education, foregrounding the fact that Canada is a settler colonial state that has oppressed Indigenous Peoples for centuries. One of its most powerful tools of oppression has been the

education system, which the Canadian state has used to eradicate Indigenous ontologies, epistemologies, languages, and cultures. In the context of post-secondary education, Indigenous students' cultures and experiences are often discounted, and they experience racism and discrimination in the classroom.

Although law schools have recently increased diversity and inclusion in their programs, Indigenous students continue to experience barriers that hinder their success. A common barrier is that Canadian legal education continues to be grounded in Western philosophy and the common law and civil law, to the exclusion of Indigenous worldviews and law. The privileging of common law and civil law in Canadian law schools is not accidental or random. It is a form of symbolic violence that is institutional and structural in nature and thus very difficult to change. To transform the settler colonial structure of Canadian legal education, law schools need to engage in systemic change rather than individual change.

Law schools are engaging with reconciliation to transform the settler colonial structure of Canadian legal education. In the second half of the chapter, I explored two different approaches to reconciliation, the liberal approach and the transformative approach. The liberal approach to reconciliation seeks to repair the harm caused to Indigenous Peoples by recognizing cultural and linguistic rights and increasing access to social and economic opportunities, while the transformative approach to reconciliation seeks to create a new relationship with Indigenous Peoples grounded in restitution, the restoration of Indigenous lands, and the regeneration and resurgence of Indigenous languages, cultures, laws, and governing structures. Because the liberal approach to reconciliation maintains the status quo by protecting the authority of the settler colonial state, it is ultimately unable to create transformative change.

In the final section of the chapter, I engaged with UNDRIP and the TRC's calls to action to argue that creating transformative reconciliation in Canadian legal education requires law schools to implement calls to action 28 and 50 and make non-curricular changes to their programs. They must respectfully incorporate Indigenous law into their curriculum, support the establishment of multi-juridical Indigenous law schools, and develop Indigenous law institutes that focus on the study, research, and application of Indigenous law. They must also implement non-curricular changes into their programs, such as making their admissions policies more equitable, hiring more Indigenous faculty members and recruiting more Indigenous students, updating their teaching and evaluation methods, and strengthening support systems for Indigenous students. In my data chapters, I will use this theoretical framework to explore whether law schools are engaging with the liberal or transformative approach to reconciliation. Before doing so, I outline my research methodology in the next chapter.

CHAPTER 2: METHODOLOGY AND METHODS

Chapter Overview

In this chapter, I discuss my study's methodological commitments and research methods. In the first two sections, I explore my study's methodology and ethical framework. In the third section, I outline the nuts-and-bolts of my research design. Subtopics in this discussion include sampling, pre-recruitment exploratory conversations, ethics clearance protocols, participant recruitment, and methods. In the fourth section, I explain my data analysis strategy. I conclude this chapter with a discussion of some of my study's methodological limitations.

Methodology

My study's methodology borrows from interpretive and critical paradigms. According to the interpretive paradigm, reality and knowledge are socially constructed and produced through social interaction (Tracy, 2013). Interpretivists believe that it is essential to analyze social action from the actors' perspective. This approach is consistent with German philosopher Wilhelm Dilthey's concept *verstehen*, which means "to understand" and refers to "the participatory approach of gaining empathic insight into others' viewpoints, beliefs, and attitudes" (Tracy, 2013, p. 41). In the context of conducting qualitative research, interpretivists assert that "the social world is not an entity in and of itself but is local, temporally and historically situated, fluid, context-specific, and shaped in conjunction with the researcher" (Bailey, 2007, p. 53). Rather than aiming to uncover objective truths, researchers using the interpretivist paradigm seek to explore "the meanings, symbols, beliefs, ideas, and feelings given or attached to objects, events, activities, and others by participants in the setting" (Bailey, 2007, p. 53). This requires inductive reasoning, which involves developing generalized meanings from empirical observations rather than starting with a theory or hypothesis to be tested (Creswell, 2014). The

goal of research, then, is to understand “why” and “how” and to provide opportunities for participants’ voices to be heard (Tracy, 2013). The interpretive paradigm is an appropriate methodology to investigate whether law schools’ responses to calls to action 28 and 50 are supporting or undermining transformative reconciliation because it allows me to gain insight into the viewpoints and beliefs of the faculty members responsible for implementing responses to calls to action 28 and 50 and the Indigenous law students experiencing them on the ground.

According to the critical paradigm, reality and knowledge are historically shaped and socially constructed through power relations (Tracy, 2013). The critical paradigm “brings power relations to conscious awareness and, by doing so, provides space for questioning and transformation” (Tracy, 2013, p. 42). Critical scholars see power relations as unstable and fluid and believe that researchers have an obligation to challenge injustice and help transform oppressive relations (Tracy, 2013). Research from a critical paradigm not only asks “what is?” but “what is better?”. That is, critical researchers move from merely describing a situation to trying to change it (Tracy, 2013). The critical paradigm is an appropriate methodology for this study because it allows me to examine and challenge the oppressive power relations that structure legal education in Canada.

Choosing one paradigm may preclude a researcher from using concepts and tools from another paradigm if the paradigms are not commensurable. This paradigmatic complexity is referred to as ‘incommensurability’ (Lincoln, Lynham, & Guba, 2018). Lincoln, Lynham, and Guba (2018) argue that it is only possible to use elements of different paradigms if the paradigms “share axiomatic elements that are similar or that resonate strongly” (p. 133). So, for example, a researcher should not blend elements of the positivist paradigm with elements of the interpretivist paradigm because “the axioms are contradictory and mutually exclusive” (Lincoln,

Lynham, & Guba, 2018, p. 133). I am able to use the interpretivist and critical paradigms in this study because, despite their differences, they “fit comfortably together” (Lincoln, Lynham, & Guba, 2018, p. 133).

Ethical Framework

Research has not benefitted all members of society equally. In the context of research with Indigenous Peoples, universities have played a significant role in the imperialist project (Smith, 2012). University researchers have conducted research on Indigenous Peoples that is Eurocentric, extractive, and violent. The natural sciences and, to a lesser extent, the social sciences were grounded in classical and Enlightenment philosophies, such as positivism and post-positivism, which “reproduce the epistemic privilege of the scientific paradigm” (Kovach, 2015, p. 47) and are antagonistic to Indigenous worldviews (Smith, 2012). Ethnographers working in social science disciplines like anthropology and sociology were also implicated in the imperialist/colonialist project (Smith, 2012). Working in universities, these researchers used quantitative and qualitative research methods grounded in a positivist paradigm that marginalized Indigenous Peoples and silenced their voices (Bishop, 1998). Researchers in Europe and North America also engaged in helicopter research, where they entered into Indigenous communities, extracted data, published “their” findings and walked away, showing little care for the people being studied and their knowledge systems (Ferreira & Gendron, 2011, p. 154; Kovach, 2015, p. 47; Kovach, 2018, p. 215). This type of research has resulted in a deep mistrust of researchers by Indigenous Peoples. Finally, in the process of carrying out research on Indigenous Peoples, “researchers played significant roles in the deliberate destruction and devaluation of intellectual, spiritual, and cultural resources in Indigenous communities,

contributing to the complete eradication of ways of thinking and being” (Strega & Brown, 2015, p. 6).

In settler colonial countries like Canada, the United States, Australia, and New Zealand, research continues to operate as a strategy to eliminate the Indigenous Other (Smith, 2012). Researchers conduct research on Indigenous Peoples that is exploitive and grounded in Euro-Western paradigms that devalue and ignore their voices and experiences, and show little care for their interests (Bishop, 1998). Much educational research has pathologized Indigenous populations by studying why “at risk” students are not performing as well as privileged white students, and suggesting possible avenues for intervention (Patel, 2014). While it is certainly important to address the educational needs of Indigenous students, this approach to research fails to explain how settler colonialism structures these students’ experiences. Instead of studying the “neediness of dispossessed populations” (Patel, 2014, p. 365), educational researchers should instead investigate how education systems are grounded in “[a] political, economic, and historical infrastructure of inequity” (Patel, 2014, p. 366). Instead of studying the needs of Indigenous law students through a “lens of damage” (Patel, 2014, p. 366), my doctoral research studies up by shedding light on the settler colonial structure of Canadian legal education. That is, rather than exploring how law schools can help Indigenous students succeed within the current law school model, I interrogate the inequities of the current model and investigate whether law schools are sufficiently engaging with transformative reconciliation.

As a doctoral student in the Department of Sociology and Anthropology at Carleton University, I have received training in quantitative and qualitative research methods. I have taken two undergraduate courses in statistics and undergraduate and graduate courses in qualitative research methods. My doctoral research uses traditional qualitative methods. Given the role that

quantitative and qualitative methods played in European and North American imperialism, it was important for me to develop an ethical research framework for my study that challenges oppressive relationships that have traditionally characterized research involving Indigenous Peoples. Reflecting on inspiration provided by Indigenous, anti-racist/anti-colonial, and feminist research approaches, I have incorporated the following six principles into my study: (1) Resistance to settler colonialism; (2) Self-location and reflexivity; (3) Respect, relevance, reciprocity, and responsibility; (4) Ownership, control, access, and possession (OCAP); (5) Participant and community involvement; and (6) Social action.

Resistance to Settler Colonialism

White settlers conducting research with Indigenous Peoples must confront settler colonialism and contribute to transforming colonial relations and institutions in supportive ways. This principle is grounded in anti-colonial theory, which, as discussed in chapter 1, challenges all relations of colonial domination (Dei & Asgharzadeh, 2001; Kempf, 2010). It is my hope that by elucidating the settler colonial structure of legal education and exploring whether law schools' responses to calls to action 28 and 50 are supporting or undermining transformative reconciliation, this research will help unsettle the colonial institution of legal education. Hopefully law schools find the conclusions and recommendations set out in my dissertation useful as they move forward with implementing their responses to calls to action 28 and 50. I also contested settler colonialism by interrogating the ways my research practices reinforce settler colonial relations, and by pushing back against institutional policies and practices that privilege "white supremacy, hierarchy and arrogance, abstraction, and individualism and ownership" (Carlson, 2016). I did this by supporting Indigenous-led efforts; reading,

understanding, and citing Indigenous-authored texts; and privileging the knowledge and experiences of the Indigenous Peoples with whom I worked.

Self-Location and Reflexivity

As previously mentioned, self-location is an essential component of Indigenous, anti-colonial/anti-racist, and feminist research. During this study, I was open with the research participants about who I am and why I am doing this research. I shared information about myself since I asked participants to share information about their own lives. Positioning myself in relation to my research worked towards establishing a relationship with participants that was founded on mutual trust, respect, and dialogue. Self-location was a process that continued throughout the life cycle of my study, including data collection, data analysis, authorship, and dissemination of results.

On its own, however, self-location does not guarantee accountability to Indigenous Peoples (Gillies, Burleigh, Snowshoe & Werner, 2014). In addition to positioning myself in relation to my research, I engaged in reflexivity to critically examine the impacts of my settler positionality on my research. Reflexivity refers to the process by which researchers “‘gaze back’ at their research as a socially situated project and explore the cultural assumptions that influence and historically situate it” (Deliovsky, 2017, p. 5). Reflexivity is a necessary component of research with Indigenous Peoples (Kwame, 2017). Engaging in reflexivity allowed me to explore my assumptions and biases, not in an attempt to overcome them, but as a way to examine their role in interpreting data and producing knowledge.

The primary way by which I engaged in reflexivity was through a process of reflexive journaling (Band-Winterstein, Doron, & Naim, 2014; Berger, 2015; Meyer & Willis, 2019). Reflexive journaling involves “describing unexpected, uncomfortable, or otherwise notable field

encounters – often through posing multiple “burning” questions – before reflexively exploring possible answers to these questions” (Meyer & Willis, 2019, p. 580).

Between November 2018 and May 2020, I wrote 40 journal entries where I reflected on my experiences during the research process by creating an “audit trail” of my reasoning, judgement, and emotional reactions (Berger, 2015, p. 222). The first 20 entries reflect on my experiences writing and defending my second comprehensive exam and research proposal and engaging in exploratory discussions with prospective research participants and interested stakeholders. The remaining entries reflect on my experiences obtaining institutional ethics clearance and conducting research in the field. Journaling was a rewarding process that allowed me to critically examine how my positionality as a white settler impacted my research. For example, I started my doctorate thinking I knew what my study should look like—what questions I should ask and what theoretical and methodological frameworks with which I should engage. However, after reading literature that I had not been exposed to previously, such as anti-colonial theory and theories and practices of reconciliation and decolonization, and after having exploratory conversations with prospective research participants and interested stakeholders, I better understood how my vision for my study was shaped by my own substantive, theoretical, and political interest in the topic and by my understanding of what was relevant and helpful.

My capacity to engage in reflexivity was limited by my inability to be completely transparent to myself about my own assumptions and biases. I minimized this limitation by extending the practice of reflexivity from one focused primarily on internal dialogue to one dedicated to having critical conversations with research participants, interested stakeholders, and my doctoral supervisor and committee members. These “external conversations” (Caetano, 2017)

brought up unidentified assumptions or biases and provided me with opportunities to work through them with others.

Respect, Relevance, Reciprocity, and Responsibility

In a 1991 article entitled “First Nations and Higher Education: The Four R’s – Respect, Relevance, Reciprocity, Responsibility”, Kirkness and Barnhardt (1991) articulate a guideline for higher education that I used in my study. Research involving Indigenous Peoples must be premised on respect, relevance, reciprocity, and responsibility. I demonstrated the principle of respect by showing respect for Indigenous Peoples’ knowledge, cultural values, and traditions. I fostered respectful relationships with Indigenous participants by taking the time to learn about their knowledge and experiences and by using a research framework that fostered trust and dialogue. The principle of relevance asserts that research must be of interest and relevant to Indigenous Peoples, and researchers must seek engagement and contributions from the community (Kovach, 2009). As part of my study’s development stage, I spoke with Indigenous faculty members and students at law schools and relevant legal organizations to confirm that my study was relevant to their needs. For example, in January 2019, I had a conversation with the President of the Indigenous Bar Association in which he expressed support for my study and provided me with valuable feedback. I continued having these conversations throughout the research process to ensure that my study continued to reflect community needs. The principle of reciprocity is an important element of Indigenous and anti-colonial/anti-racist research which asserts that researchers must give back to Indigenous communities for sharing their knowledge. I demonstrated reciprocity by acknowledging participants’ contributions and giving back to them in meaningful ways. I gave back to participants by giving them a \$30 honorarium, reporting back to them, and sharing knowledge gained from the research (Carlson, 2016; Max, 2005). Finally,

the principle of responsibility asserts that researchers must identify their role and responsibilities in the research relationship and carry out their obligations in an ethical manner (Wilson, 2008). I demonstrated responsibility by honouring my commitments and being accountable to the research topic and the participants and communities with whom I worked.

Ownership, Control, Access, and Possession (OCAP)

The principles of ownership, control, access, and possession (OCAP), created in 1998 by the National Steering Committee of the First Nations and Inuit Regional Longitudinal Health Survey, are a set of standards that determine how First Nations data should be collected, protected, used, and shared (Schnarch, 2004). Although these principles originate from a First Nations context, “many of the insights and propositions outlined are relevant and applicable to Inuit, Métis and other Indigenous peoples internationally” (Schnarch, 2004, p. 81). The principle of ownership asserts that Indigenous communities own information collectively in the same way that individuals own personal information (Schnarch, 2004, p. 81; Kovach, 2009, p. 145). As a result, researchers require Indigenous communities’ consent to use their knowledge (Kovach, 2009, p. 145). The principle of control asserts that Indigenous communities control all aspects of research that impact them (Schnarch, 2004, p. 81; Kovach, 2009, p. 145). The principle of access asserts that Indigenous Peoples and their communities must have access to information and data about themselves (Schnarch, 2004, p. 81; Kovach, 2009, p. 145). Finally, the principle of possession asserts that Indigenous communities must have physical custody of data about them (Schnarch, 2004, p. 81).

I worked with the Carleton University Research Ethics Board CUREB-A and my doctoral supervisor and committee members to comply with the OCAP principles to the best of my ability. I incorporated the principle of ownership into my study by obtaining participants’

informed consent to use their contributions in my doctoral dissertation, the summary report (discussed below), and any other publications or presentations produced from the research. I incorporated the principle of control into my study by seeking feedback and input from research participants and interested stakeholders during each stage of the research project. I incorporated the principles of access and possession by giving participants access to, and physical possession of, the audio recording and transcript of their interview, my doctoral dissertation, and any other report or publication produced from the research.

Participant and Community Involvement

Anti-colonial and anti-racist methodologies challenge the dominance of individuality and personal acclaim in the academy by prioritizing participant and community involvement throughout the research process (Carlson, 2016). Anti-racist researchers give primacy to Indigenous Peoples' understanding and experiences of colonial oppression, and provide them with opportunities to participate in the research process (Dei, 2005). I took multiple steps to make my study more collaborative and participatory at each stage of the research process. First, I had exploratory conversations with potential participants and interested stakeholders about the research topic and study design. These individuals gave me valuable feedback on my research questions, theoretical framework, and research methodology and methods. I also tried having conversations with an Elder at each law school to receive culturally-relevant advice and guidance on matters relating to study development, research ethics protocols, and community outreach. I contacted the Elder-in-Residence at the law school at the University of Ottawa and the Elder-in-Residence program at Dalhousie University and the University of Victoria. Unfortunately, I did not receive a response. This is not particularly surprising given how over-burdened many Indigenous community members, faculty members, and staff are today. To mitigate this

limitation, I had important conversations about research ethics with my doctoral supervisor and committee members, the Carleton University Research Ethics Board CUREB-A, and participants and interested stakeholders. In addition to finding opportunities for participant and community involvement during the study development stage, I also provided research participants with opportunities to participate during the data analysis stage of my study (see the ‘Data Analysis Strategy’ section, below, for an in-depth discussion of how I did this).

Social action

Anti-racist and anti-colonial methodologies seek to create positive change through social action. Anti-racist research is action oriented; it puts theory into practice in order to proactively respond to oppression and domination (Dei, 2005). Anti-racist researchers act on the results of their research in a way that is beneficial and relevant to participants. In the context of research with Indigenous Peoples, anti-colonial research seeks to create decolonial change (Carlson, 2016). This is consistent with the first principle, which asserts that white settler researchers must contribute to transforming colonial relations and institutions in supportive ways. The role of the white settler researcher, then, is to develop concrete actions that can be taken to mobilize change and social justice. I hired a graphic designer and marketing consultant to help me create a summary report that outlines my study’s findings and recommendations.⁶ This report will be shared with national Indigenous organizations, Canadian law schools, and the CCLD, with the purpose of generating institutional change. A copy of this report is attached to my dissertation as a supplemental file.

⁶ Katie Wilhelm is an award-winning graphic designer and marketing consultant. Based in London, Ontario, Katie is a proud Indigenous woman from Chippewas of Nawash Unceded First Nation.

Research Design

My study took a ‘phronetic approach’ (Tracy, 2013) to research by using qualitative research methods to address a real-world problem—namely, the settler colonial structure of Canadian legal education. Qualitative research offered many benefits to my study, including the ability to focus on participants’ lived experiences and the power to generate rich data (Tracy, 2013). My qualitative study employed one-on-one semi-structured interviews with faculty members involved in responding to calls to action 28 and 50⁷ and Indigenous law students at the University of Ottawa, Dalhousie University, and the University of Victoria. I adopted a case studies method for my study whereby I took each law school’s engagement with reconciliation as a specific case or unit of analysis. The case studies method involves “an in-depth analysis of a case, often a program, event, activity, process, or one or more individuals” (Creswell, 2014, p. 43). Cases can be located at the micro (individual), meso (organization, institution), or macro (communities, societies) levels (Swanborn, 2010). Since I am studying law schools’ engagement with reconciliation, I locate my study at the meso level of analysis. Using a case studies method with three cases allows me to analyze cases individually and in dialogue with each other to identify similarities and differences. I used one-on-one interviews because they “provide[d] opportunities for mutual discovery, understanding, reflection, and explanation via a path that [was] organic, adaptive, and oftentimes energizing” (Tracy, 2013, p. 132).

⁷ After the TRC report and calls to action were published, many Canadian law schools created a specific ‘TRC Committee’ comprised of faculty members and sometimes students and staff to respond to calls to action 28 and 50. However, not all law schools created a formal TRC Committee. Some law schools created reading groups where faculty members regularly meet to read the TRC report and discuss how calls to action 28 and 50 can be implemented at their institution. Some law schools used a committee created before the TRC report was released to discuss how their institution should respond to calls to action 28 and 50.

Sampling

A critical stage in the research process is developing a sampling plan. This stage involves deciding what participants are most appropriate given the topic and research question(s) (Tracy, 2013). My study used purposeful and snowball sampling. Purposeful sampling is when research participants are selected because they “fit the parameters of the project’s research questions, goals, and purposes” (Tracy, 2013, p. 134). Faculty members play an important role in shaping how law schools respond to calls to action 28 and 50. Conducting interviews with them helped me explore these responses, as well as their strengths and limitations. The decisions that these faculty members make have a profound impact on Indigenous law students. Including Indigenous law students in my study allowed me to investigate how these decisions are being experienced on the ground. Conducting interviews with Indigenous law students allowed me to explore their experiences in law school; their thoughts on reconciliation and calls to action 28 and 50; and their opinions of the quality of their institution’s response to calls to action 28 and 50. My study also used snowball sampling. Snowball sampling proceeds by “identifying several participants who fit the study’s criteria and then ask[ing] these people to suggest a colleague, a friend, or a family member” (Tracy, 2013, p. 136). During the interviews, I asked participants if they knew other faculty members or Indigenous law students who they thought would like to participate in my study. Several participants gladly suggested colleagues for potential interview participation. The participants either provided me with their contact information or provided their colleagues with the letter of invitation and my contact information.

There are currently 24 law schools in Canada: seven in Western Canada⁸, fourteen in Central Canada⁹, and three in Atlantic Canada¹⁰ (Federation of Law Societies of Canada, n.d.). I chose to conduct one-on-one interviews with faculty members involved in responding to calls to action 28 and 50 and Indigenous law students at the University of Ottawa, Dalhousie University, and the University of Victoria. When selecting the research sites, factors that I considered included engagement with the TRC's calls to action, geographical location, class size, and Indigenous representation. To present a cross-section of Canadian legal education, it was important for me to include one law school from each region of Canada. First-year class sizes are relatively small at the University of Victoria (113 students in 2017¹¹) and Dalhousie University (167 students in 2017¹²) compared to the University of Ottawa (320 students in the English Common Law Section in 2017¹³). According to the 2016 Census, there were 21,815 Aboriginal Peoples¹⁴ in Ottawa (Statistics Canada, 2016a), 15,190 in Halifax (Statistics Canada, 2016b), and 3,625 in Victoria (Statistics Canada, 2016c), representing 2.3%, 3.8%, and 4.2% of the population, respectively.¹⁵ National statistics on the amount of Indigenous representation in Canadian law schools do not currently exist. However, I was able to obtain some information concerning Indigenous student representation at the University of Victoria and Dalhousie University. The University of Victoria admitted 2 first-year Indigenous students into their 2020

⁸ University of Victoria, University of British Columbia, Thompson Rivers University, University of Alberta, University of Calgary, University of Saskatchewan, and University of Manitoba.

⁹ Lakehead University, University of Western Ontario, Queen's University, University of Windsor, University of Toronto, Ryerson University, York University, University of Ottawa (Common Law and Civil Law), McGill University, Université de Montréal, Université du Québec à Montréal, Université de Sherbrooke, and Université Laval.

¹⁰ University of New Brunswick, Université de Moncton, and Dalhousie University.

¹¹ Law School Admission Council, n.d.-a.

¹² Law School Admission Council, n.d.-b.

¹³ Law School Admission Council, n.d.-c.

¹⁴ I use the term 'Aboriginal' here because this is the term used by Statistics Canada.

¹⁵ Census data provides an imperfect snapshot of the level of Indigenous presence in the cities in which the three law schools are located. For example, Aboriginal identity is based on self-identification, and data only exists for individuals residing in private households.

JD class and 13 first-year Indigenous students into their 2020 JID class. Dalhousie University admitted 8 first-year Indigenous students into their 2020 JD program. The University of Ottawa did not provide me with information regarding Indigenous student representation. However, according to the Law School Admissions Council, Indigenous students make up approximately 1% of the student body at the University of Ottawa (Law School Admission Council, n.d.-c).

Pre-Recruitment Exploratory Discussions

Prior to recruitment, I needed to gain access to law schools and prospective participants. To gain access to faculty members involved in responding to calls to action 28 and 50, I sent an email to the Dean of Law at each law school explaining the purpose of my study and asking them to put me in contact with the relevant faculty members. In April, 2019, the Dean of Law (Common Law Section) at the University of Ottawa forwarded my email to members of the Indigenous Legal Traditions Committee (ILTC).¹⁶ I spoke with one member of the ILTC in May 2019. He expressed interest in my study and advised me to contact the Chair of the ILTC to get more feedback on my study and discuss the data collection phase in more detail. I did not hear back from the Chair before I began the recruitment process. In April 2019, I received an email from the Dean of Law at University of Victoria informing me that she had forwarded my email to faculty members and the graduate student administrator. I did not hear back from these individuals before I began the recruitment process. In April and July 2019, I sent emails to the Dean of Law at Dalhousie University asking her to put me in contact with faculty members involved in responding to calls to action 28 and 50 to have exploratory discussions about my study. I did not hear back from the Dean before I began the recruitment process. I did, however, have the opportunity to meet two faculty members at the Canadian Association of Law Teachers

¹⁶ The University of Ottawa does not have a TRC Committee. One of the ILTC's responsibilities is implementing a response to the TRC's calls to action. The ILTC is discussed in more detail in chapter 3.

conference at the University of British Columbia in June 2019, where they presented on their law school's efforts to implement calls to action 28 and 50. I followed up with one of the faculty members in July 2019. She provided me with valuable feedback on my study and offered to connect me with other committee members when I was ready to proceed with data collection.

To gain access to Indigenous law students, I reached out to Indigenous law student associations on Facebook at each law school in July 2019. The purpose of these early discussions was to gauge interest and obtain feedback on my study. One member of the Indigenous Law Students Association (ILSA) at the University of Ottawa provided me with the name of the President. After messaging her on Facebook to provide her with information about my study, she forwarded my message to other executive members of ILSA. I never heard back from other executive members. The President of the Dalhousie Indigenous Law Students' Association (DILSA) responded to my Facebook message and agreed to let me post a message about my study on DILSA's Facebook page. I never heard back from any members of DILSA. Finally, I sent multiple emails to the Indigenous Law Students Association (ILSA) at the University of Victoria. I never received a response to my emails. Although they did not generate much interest in my research, these early discussions made the recruitment process easier because I mentioned it to prospective participants, which helped me build trust.

Institutional Ethics Clearance

The ethics protocol for my study was reviewed by the Carleton University Research Ethics Board CUREB-A and approved on November 27, 2019. I submitted my ethics clearance certificate and supporting documents to the University of Victoria, Dalhousie University, and the University of Ottawa for expedited review in December 2019. I received ethics clearance on December 4, 2019, December 5, 2019, and December 20, 2019, respectively. In the process of

obtaining ethics clearance from the Carleton University Research Ethics Board CUREB-A, I completed the TCPS 2: Core online training tutorial. In June 2018, I participated in the Carleton University Institute on the Ethics of Research with Indigenous Peoples (CUIERIP), a week-long program where I learned about Indigenous customs and codes of research practice, as well as the importance of seeking engagement with appropriate Indigenous communities and organizations throughout the research process. This training provided me with skills that helped me interrogate the research process and safeguard against oppressive relationships that have traditionally characterized research involving Indigenous Peoples.

Although this process was valuable for both the design and execution of my study, complying with institutional ethics protocols did not guarantee that my research would be conducted with respect and integrity. As a result, I was required to demonstrate reflexivity at each stage of the research process. As Guillemin and Gillam (2004) note, because “procedural ethics is unable to inform and guide all aspects of research practice” (p. 277), researchers must exercise reflexivity throughout the research process by “acknowledging and being sensitized to the microethical dimensions of research practice and in doing so, being alert to and prepared for ways of dealing with the ethical tensions that arise” (p. 278). As previously mentioned, I engaged in reflexive journaling between 2018 and 2020.

Recruitment

I used multiple methods to recruit participants for my study. In mid-December 2019, I sent a letter of invitation to each law school for distribution to faculty members involved in responding to calls to action 28 and 50. I sent the letter of invitation to the faculty member at Dalhousie University with whom I spoke in July 2019. She forwarded the letter to other members of the TRC Committee who contacted me to participate in my study. I sent the letter of

invitation to a faculty member at the University of Victoria with whom I had previously spoken about my study. She forwarded the letter to another faculty member with knowledge of the law school's TRC reading group.¹⁷ This faculty member forwarded the letter to other members of the reading group who contacted me to participate in my study. While conducting interviews at the University of Victoria in February 2020, I was further assisted by a staff member who sent the letter of invitation to faculty members and Indigenous law students. Finally, I sent the letter of invitation to the faculty member at the University of Ottawa with whom I spoke in May 2019. He agreed to participate in an interview and provided me with contact information for the Chair of the ILTC. I sent the letter of invitation to the Chair at the end of December but did not receive a response. I was able to recruit more faculty members from the University of Ottawa because the first interviewee provided me with a list of current ILTC members. I sent the letter of invitation to these individuals in January 2020.

To recruit Indigenous law students, I posted a recruitment poster on the University of Ottawa's ILSA's Facebook page and DILSA's Facebook page. Recruiting Indigenous law students at the University of Victoria was more difficult because I was unable to locate a Facebook page for their ILSA. I sent two emails to the University of Victoria's ILSA in December 2019 and January 2020 but received no response. In December 2019, I sent the letter of invitation to the President of the University of Victoria Law Students' Society (LSS). She informed me that she could allot a portion of LSS's Law School Newsletter to recruiting Indigenous students for my study. I do not know if information about my study was ever published in the newsletter. In January 2020, I sent a Facebook message to the University of

¹⁷ The University of Victoria does not have a TRC Committee. Instead, the law school created a reading group where faculty members regularly meet to discuss the TRC report and calls to action (Council of Canadian Law Deans, n.d., p. 20).

Victoria Faculty of Law asking if they would be willing to help me recruit students by sharing a poster about my study on Facebook and/or Twitter. In mid-February 2020, I was informed via Facebook that the poster had been shared on Facebook and sent to Indigenous law students and faculty members involved in implementing the TRC. I received emails from interested students shortly thereafter. I also used snowball sampling to recruit participants. Faculty members and Indigenous law students at each law school told others about my study and provided me with contact information for colleagues they thought might like to participate in my study. I sent these individuals the letter of invitation to provide them with more information about my study.

Interviews

I conducted 24 one-on-one semi-structured interviews with faculty members and Indigenous law students between January and May 2020. I did 16 face-to-face interviews and 8 telephone interviews. I originally obtained ethics clearance to conduct face-to-face interviews. However, while conducting face-to-face interviews at Dalhousie University in mid-February, I realized that I would not be able to conduct all of the interviews during my short stay in Halifax. I used telephone interviews because, as a graduate student, I did not have the financial resources to return to Halifax and Victoria a second time. I obtained ethics clearance to conduct telephone interviews at the end of February. Before beginning each telephone interview, I asked participants to read and sign a revised consent form that explained the privacy concerns associated with conducting telephone interviews with a mobile application. With the spread of COVID-19 restricting non-essential travel beginning in March, it was good that I transitioned to telephone interviews. Before deciding on telephone interviews, I contemplated conducting asynchronous interviews via email where I would email the interview questions to the participants and ask them to take approximately 60 minutes to answer the questions and send me

their answers. Conducting the interviews by email would have eliminated the need to transcribe interviews and would have allowed for “space for participants to thoughtfully consider the question[s], reflect on their response[s], and compose...thorough answer[s]” (Tracy, 2013, p. 164). However, using email interviews would have meant missing rich verbal cues such as tone of voice and laughter (Tracy, 2013). In addition, I might have experienced participant attrition if participants became too busy (as faculty members and law students often do) and forgot to respond to the interview questions. At this point in my study, I had already experienced this and did not want to miss the opportunity to obtain valuable insights from these participants.

The interviews lasted between 30 minutes and 1.5 hours. At Dalhousie University, I conducted five interviews with faculty members and four interviews with Indigenous law students. At the University of Victoria, I conducted seven interviews with faculty members and two interviews with Indigenous law students. At the University of Ottawa, I conducted three interviews with faculty members and three interviews with Indigenous law students. In April 2020, I received an email from a member of the ILTC at the University of Ottawa informing me that because the committee is in the middle of working through what their response to the TRC will be, and that is being done collectively, the remainder of the committee wants to provide me with feedback collectively, rather than be interviewed separately. After careful consideration and discussion with my supervisor, I accepted the committee’s offer to provide me with a collective response to my interview questionnaire. I sent the committee a copy of my interview questionnaire and received confirmation that I could use the data from the three interviews that I had already conducted. Therefore, in addition to conducting six interviews at the University of Ottawa, I also obtained a collective response from the ILTC.

Before conducting the interviews, I obtained informed consent from the research participants. The consent form explained the purpose of my study, the research process and time commitment, the voluntary nature of my study, and confidentiality. Participants were reminded that they could end the interview at any time and withdraw from my study up to two weeks after the interview and still receive the \$30 honorarium. Participants were asked to review and sign the consent form.

I used one-on-one semi-structured interviews to explore participants' understanding of reconciliation and what it means in the context of legal education; their thoughts on the TRC's calls to action 28 and 50, their institution's response to them, and whether call to action 28 goes far enough towards contributing to transformative reconciliation in Canadian legal education; and their recommendations for improvement. There were many benefits of using semi-structured interviews for my study. They were flexible and organic in nature, they encouraged creativity, and they allowed for the emergence of more nuanced data (Tracy, 2013). Interviews were organized into two sections. In the first section, participants were asked to define reconciliation and explain what it means to them in the context of legal education. The goal of the first part of the interview was to have participants develop thoughts on reconciliation and the best structure and learning environment for law students. The second part of the interview was broken up into three discussions. First, participants discussed how their institution has responded to the TRC's calls to action¹⁸ and the successes and challenges they have encountered in implementing their response. I then asked participants to evaluate how well call to action 28, and their institution's response to it, contributes to transformative reconciliation. Finally, I asked participants to discuss how their institution can improve its response to better contribute to transformative

¹⁸ I asked participants to describe their institution's response because public information is not always up-to-date and does not always explain the reasoning behind an institution's policy decision.

reconciliation. I concluded each interview with a debrief where I asked participants for feedback on the interview and provided them with my contact information, should they want to get in touch with me. Once the interview ended, I reviewed my notes and confirmed that participants' comments were captured properly. I also wrote down summary comments of the discussions and important themes that emerged in response to the key questions.

Data Analysis Strategy

Interview recordings were transcribed in a three-step process. First, each interview was transcribed verbatim. Real names were deleted and replaced with assigned pseudonyms. Second, research participants were given the opportunity to participate in the transcription process by reviewing their transcripts and making corrections or additional clarifications to their contributions using 'track changes'. This process helped to "validate the transcripts, to preserve research ethics, and to empower the interviewees by allowing them control of what [is] written" (Mero-Jaffe, 2011, p. 231). Participants had three weeks to complete this process. Fifteen participants indicated on the consent form that they wanted to review their transcript for accuracy and completeness, but only ten participants responded to my email invitation. Lastly, I edited the transcripts to make sure the documents read coherently. This step involved eliminating repetitive words and most non-lexical conversational sounds such as "um", "hm", or "uh". Transcription is a political process; what we as researchers choose to include and exclude, from spelling, grammar, and punctuation to tone, facial expressions, and emotions, is the result of our positionality and our interest in the research. To reconcile this, I endeavored to preserve the words of the research participants throughout the transcription, analysis, and writing processes.

After completing the transcripts, I identified relevant themes based on the research and interview questions. To do this, I engaged in an iterative analysis whereby I grounded my

analysis in the current literature and the interview data (Tracy, 2013, p. 184). Before organizing or coding the data, I read through the interview transcripts to get a sense of what was happening. After the “data immersion phase” (Tracy, 2013, p. 188), I began organizing the data. To do this, I used a computer-aided process (Tracy, 2013, p. 188) whereby I colour-coded the interview transcripts using certain colours to correspond with specific themes. After colour-coding almost 350 pages of interview data, I kept these coded documents open and created a new document titled “Doctoral Study Analysis”. I then created a bolded heading for each theme and copied and pasted under each heading the relevant colour-coded data.

Limitations

All research projects have methodological limitations. I would like to discuss three methodological limitations of my study. My study sought input from faculty members involved in responding to the TRC’s calls to action and Indigenous law students at the University of Ottawa, Dalhousie University, and the University of Victoria. The first limitation concerns the number of law schools included in my study. I conducted my research at three of Canada’s 24 law schools. Consequently, my findings and recommendations may not reflect the thoughts and experiences of faculty members and Indigenous students at other law schools. Future research should examine how these other law schools are responding to the TRC’s calls to action.

The second limitation concerns the legal traditions of the three law schools under investigation. I conducted my research at law schools that teach the common law legal tradition. The University of Ottawa offers a degree in civil law. I did not interview faculty members or Indigenous students in the Civil Law Section because I do not speak French. Future research should examine how law schools that teach civil law are responding to the TRC’s calls to action.

The third limitation concerns the lack of non-Indigenous students in my study. I specifically decided to seek input only from Indigenous law students for two important reasons. First, because research on Indigenous Peoples has historically been extractive and violent, I wanted to help unsettle the institution of research by placing Indigenous students' voices and experiences at the centre of the research process. Second, while all law students, Indigenous and non-Indigenous alike, are experiencing their institution's response to the TRC's calls to action on the ground, Indigenous law students are in a particularly unique position to comment on the adequacy of their response as they have historically been excluded from and marginalized by the Canadian legal profession.¹⁹ Future research should explore what non-Indigenous students have to say about how their law schools are responding to the TRC's calls to action. This is consistent with anti-colonialism, which, as Simmons and Dei (2012) note, asserts that the dominant population "must be prepared to invoke and act on their complicities and responsibilities through a politics of accountability in order to bring about change" (Simmons & Dei, 2012, p. 76). It will of course be important for researchers to find ways for non-Indigenous students to contribute in meaningful ways that do not reassert their power and privilege over Indigenous Peoples.

Chapter Summary

In this chapter, I outlined my study's methodology and research methods. In doing so, I justified the use of two different methodological paradigms, namely the interpretive and critical paradigms. Despite their differences, combining these two paradigms allows me to gain insight into participants' viewpoints and beliefs and challenge the settler colonial structure of Canadian legal education. The hybridization of these two paradigms influenced the development of my

¹⁹ Other racialized groups have also been excluded from and marginalized by the Canadian legal profession. However, the TRC report, and calls to action 28 and 50 in particular, seek to right the perpetual wrongs done to Indigenous Peoples by the Canadian state.

ethical framework, research design, and data analysis strategy. My engagement with the critical paradigm influenced my decision to develop an ethical framework inspired by Indigenous, anti-racist/anti-colonial, and feminist research approaches. My engagement with the interpretive paradigm influenced my decision to use qualitative interviews. Finally, my engagement with both paradigms shaped the development of my data analysis strategy.

Data Chapters

My research findings are divided into four data chapters. The first three chapters examine each of the three law schools as separate cases. In Chapters 3, 4, and 5, I explore how each law school defines reconciliation, both as a general concept and in the context of legal education; how each law school has responded to the TRC's calls to action; and, most importantly, whether these law schools are engaging with the liberal or transformative approach to reconciliation. In Chapter 6, I make comparisons between the three law schools and put forward recommendations that law schools can consider when formulating responses to the TRC's final report and calls to action.

CHAPTER 3: UNIVERSITY OF OTTAWA

Chapter Overview

In this chapter, I will outline the University of Ottawa Faculty of Law's ("UOttawa Law") reconciliation journey to date. In the first section of the chapter, I discuss UOttawa Law's engagement with Aboriginal law and Indigenous law before the Truth and Reconciliation Commission's (TRC) final report and calls to action were released. In the second section, I briefly describe how the law school's Indigenous Legal Traditions Committee (ILTC) was formed. In the third and fourth sections of the chapter, I explore how participants explain reconciliation, both as a general concept and what it means in the context of legal education. In the fifth section, I discuss how UOttawa Law has responded to calls to action 28 and 50. In the sixth section, I detail some of the challenges of engaging with reconciliation that were identified by the participants. In the seventh and eighth sections of the chapter, I examine participants' views on whether and how call to action 28, and their institution's response to it, contributes to reconciliation. I end this chapter with a discussion of what participants suggest better contributes to reconciliation.

UOttawa Law's Engagement with Reconciliation Pre-TRC

UOttawa Law started offering courses in Aboriginal and Indigenous law long before the TRC's final report and calls to action were released. In 1978-1979, UOttawa Law started offering CML 2301 Native Rights. The University of Ottawa academic calendar for that year provides the following description of the course:

This course will involve an examination of the unique legal position of Native People in Canadian Society. The following particular areas will be considered: Native land claims, hunting and fishing rights, the constitutional position of native people, treaty rights, the Indian Act, customary family law and governmental jurisdiction of the band Council, the reserve system, and the function of the Department of Indian Affairs and Northern Development. (University of Ottawa, 1978)

This course was offered each year between 1978 and 1985. In 1986, UOttawa Law changed the title of the course to CML 2301 Aboriginal Peoples and the Law. The University of Ottawa academic calendar for the 1986-1987 academic year provides the following description of the course:

This course involves an examination of the unique legal position of the Indian, Métis, and Inuit peoples in Canada law. Specific issues to be considered in domestic law are: the land claims process and agreements; aboriginal and treaty rights; special constitutional status; entrenched constitutional rights; hunting, fishing; trapping and gathering rights; self-government; customary law; special federal legislation (Indian Act, etc.) and administrative arrangements (Department of Indian Affairs and Northern Development etc.); taxation; Crown trusteeship; economic development and Aboriginal peoples; reserve land tenure and others. The importance of international law in relation to indigenous peoples will be reviewed as will the legal experience in selected countries. (University of Ottawa, 1986)

In 1995, UOttawa Law also started offering CML 3162 Studies in Aboriginal Law. The course description in the University of Ottawa academic calendar for 1995-1997 is very brief:

“Examination of specific topics of current importance in the area of Aboriginal law” (University of Ottawa, 1995).

The course descriptions for Aboriginal Peoples and the Law and Studies in Aboriginal Law have changed over the years. For example, the 2001-2003 course description for Aboriginal Peoples and the Law indicates that students will study new topics like Aboriginal title and the “recognition of traditional and customary laws and institutions” (University of Ottawa, n.d.-a).²⁰ The 2001-2003 course description for Studies in Aboriginal Law provides more information about the course compared to the course description for 1995-1997. According to the updated course description, students will study specific topics in Aboriginal law, including “Aboriginal

²⁰ In 2018-2019, CML 2301 was renamed “Indigenous Peoples and the Law”.

Justice issues, comparative analysis of Aboriginal law in other countries, and international Aboriginal rights law” (University of Ottawa, n.d.-a).

UOttawa Law started offering new courses in Aboriginal and Indigenous law in the early 2000s. The undergraduate studies calendar of 2001-2003 lists the following new courses: CML 3125 National Aboriginal Law Moot²¹ Kawaskimhon: “Speaking with Knowledge”, CML 3901 Selected Problems in Aboriginal Peoples and the Law²², and CML 4162 Advanced Aboriginal Law. In the National Aboriginal Law Moot Kawaskimhon, two or three law students are selected to “represent the Faculty in a non-competitive aboriginal law moot” (University of Ottawa, n.d.-a). Unlike traditional moot competitions, this moot “occurs in a consensus circle decision-making format” (University of Ottawa, n.d.-a). In Selected Problems in Aboriginal Peoples and the Law, students examine specific topics not necessarily covered in Aboriginal Peoples and the Law and Studies in Aboriginal Law, such as “settlement implementation” and “native self-government and administrative law” (University of Ottawa, n.d.-a). Advanced Aboriginal Law exposes students to complex topics that they did not learn about in introductory Aboriginal law courses, such as “the comparative legal treatment of Aboriginal issues among common law countries, negotiating new treaties, and inter-governmental relations between provincial, federal, and Aboriginal jurisdictions” (University of Ottawa, n.d.-a).

In 2010-2011, UOttawa Law added a course called CML 4163 Comparative Indigenous Rights. According to the undergraduate studies calendar for this year, this seminar course “concentrates upon a selection of critical issues affecting indigenous peoples arising within Canada, the United States, Australia, New Zealand and other countries in which the similarities

²¹ A “moot” or “moot court” is a competition at most law schools where students participate in a simulated court proceeding.

²² CML 3901 Selected Problems in Aboriginal Peoples and the Law was not offered between 2007-2008 and 2009-2010.

and differences in domestic law and indigenous aspirations are explored in detail from a comparative perspective” (University of Ottawa, n.d.-b). Some of the critical issues discussed in this course are “the discovery doctrine, aboriginal and treaty rights, self-determination and jurisdiction, domestic constitutional structuring of the relationship, fiduciary/trustee obligations, community recognition processes, economic development, taxation, land claims, religious freedom and natural resources” (University of Ottawa, n.d.-b).

In addition to courses in Aboriginal and Indigenous law, students have also been able to take courses that examine legal issues affecting Indigenous Peoples. Examples of these courses include: CML 3112 Theory and Practice of Social Justice Law, added in 2006-2007 (University of Ottawa, n.d.-c); CML 3183 Women and the Legal Profession, added in 2008-2009 (University of Ottawa, n.d.-d); CML 3353 Children and the Law, added in 2011-2012 (University of Ottawa, n.d.-e); and CML 3144 Defending Battered Women on Trial, added in 2012-2013 (University of Ottawa, n.d.-f). Some of the topics explored in these courses include systemic discrimination against Indigenous Peoples, specific barriers confronted by Indigenous women, and the experiences of Indigenous children.

Beginning around 2006-2007, students have also had opportunities to take legal aid clinic courses that focus on Aboriginal law and Indigenous legal issues (University of Ottawa, n.d.-g). Examples of these courses include CML 3248 Introduction Legal Aid Clinic Course, CML 3250 Advanced Clinical Course in Community Law, and CML 3449 Clinical Legal Aid II (University of Ottawa, n.d.-c). Although these courses were created before the early 2000s, they did not specifically address Aboriginal law and Indigenous legal issues until more recently.

Background About the ILTC

According to its collective response, the ILTC was created around 2012, when an Aboriginal Advisory Committee was in place to “ensure consideration of aboriginal issues and issues related to aboriginal students in the law school”. This Committee was renamed the Indigenous Legal Traditions Working Group because the entity was to play more than an advisory role in reform. Before the release of the TRC’s final report and calls to action, a former Dean of the Common Law Section was exploring ways to indigenize the law school’s curriculum. Most members of the ILTC are law faculty appointed as part of their administrative duties under the collective agreement, but many are also appointed for their expertise and interest in Indigenous law, Aboriginal law, or allyship. Some of its members have participated since the ILTC’s creation, while others have become involved within the last three years. While the seniority of its members varies, the most senior member of the ILTC has been on faculty for more than 20 years.

In its collective response, the ILTC describes its purpose as “decolonizing the Law School and building respectful relations with Indigenous Peoples and Indigenous Legal Traditions”. In addition to fulfilling the TRC’s calls to action 26, 27, and 28, the ILTC is, according to its collective response, also committed to “work[ing] to meaningfully incorporate, integrate, and make space [for] Indigenous law and to build healthy, respectful, reciprocal relationship[s] with Indigenous people and peoples and the nations on whose land the Faculty is situated”. In its collective response to my research questions, the ILTC drew my attention to the “Indigenous Pathways Statement” made by Adam Dodek, former Dean of the Common Law Section, in July 2019. In his statement, Dean Dodek expresses a commitment to implementing the TRC’s calls to action and the United Nations Declaration on the Rights of Indigenous

Peoples (2007) (UNDRIP), as well as advancing an education “that is multi-juridical including Indigenous laws and legal orders, common law, and civil laws” (University of Ottawa, 2019-a).

What is Reconciliation?

Most UOttawa Law faculty members and law students that I interviewed described reconciliation, both generally and in the context of legal education, in a manner that is consistent with the transformative approach to reconciliation. According to its collective response, the ILTC does not use the term *reconciliation*. Instead, it advocates for *decolonization*. This is consistent with Dean Dodek’s 2019 statement wherein he says that the law school is committed to providing “decolonizing spaces, pedagogies, and knowledge in order to prepare our learners, staff and faculty for participation in respectful and reciprocal relationships with Indigenous peoples and communities” (University of Ottawa, 2019-a). In its collective response, the ILTC does not define reconciliation or decolonization or explain the distinction that it makes between these two terms. Fortunately, my interviews with UOttawa Law faculty members and Indigenous law students allowed me to fill in the gaps.

Most of the participants indicated that they use the term *reconciliation*. In defining the term, they said that it is a relationship between Indigenous Peoples and non-Indigenous people and the Canadian state that is process-oriented. As one faculty member put it, “reconciliation is a relationship; it’s not necessarily a goal or place to reach. It’s something that constantly needs to be worked on. It’s something that is very difficult, and something that is aspirational in terms of how we interact with each other in the community” (Participant #2). Participants said that this relationship must be grounded in truth—truth about the historical relationship between Indigenous Peoples and settler governments and peoples, as well as truth about past and ongoing harms committed against Indigenous Peoples and their communities, including treaty violations,

the residential school system, harmful child welfare policies, and the overincarceration of Indigenous Peoples in the Canadian criminal justice system. Two participants—a faculty member and a student—said that true reconciliation cannot be achieved without understanding and addressing these harms:

I don't think you can have true reconciliation without some ability to address past wrongs. The residential school settlements and those types of things are in the right direction, but there is the whole issue of the impact of assimilation policy generally beyond the residential schools and the harms created by them. The child welfare system...[and] the prison system [are examples of how] there are so many areas that need addressing in terms of the impact of past wrongs. (Participant #1)

I like to say we cannot look at reconciliation until we actually accept truth. Canada needs to know what the truth is. The people of Canada, not the government. The people of Canada, they do not know. They do not know that these lands were Indigenous Peoples' territory. We lived here. Because we lived here, there was a functioning society here. That means we have lost. We had our way, and that was assimilated. That was taken away. So, non-Indigenous people of Canada don't know the truth. (Participant #5)

Of course, understanding these past and ongoing harms and how they structure the relationship between Indigenous Peoples and non-Indigenous people and the Canadian state is not enough. Settlers and colonial governments must act on this knowledge to transform this relationship from one based on prejudice and violence to one based on respect and reciprocity. As one student put it, “reconciliation means that the government of Canada fixes what they broke...through acknowledgement of past wrongdoings and continued wrongdoings” (Participant #5).

Participants used a variety of concepts to describe this transformation process. One student talked about the importance of recognizing Indigenous autonomy and sovereignty, and a faculty member discussed the need to “understand the history of Indigenous Peoples and settler communities and try to, through self-determination and nation-to-nation contact, come to new understandings of how that relationship can move forward” (Participant #3). Another faculty member discussed the idea of using treaty federalism as a framework for reconciliation:

I think we need to embrace the principle of treaty federalism much more rigorously. The idea of nation-to-nation treaties that are in a sense constitutional documents. That kind of recognition of Indigenous sovereignty as an equal, third order of government to the federal and provincial governments within their spheres of authority, however that may be negotiated. (Participant #1)

Treaty federalism refers to the nation-to-nation relationships created by written treaty agreements between First Nations and the Crown (Henderson, 1994). Treaty federalism “requires structural and institutional changes in the idea of federalism and representative governments” (Henderson, 2019, p. 41) and involves at least eight goals:

(1) recognizing of the legal personality of Treaty Nations already acknowledged by imperial treaties; (2) consolidating and implementing the existing treaties; (3) the immediate vesting of the specific power of self-determination of Treaty Nations; (4) including Treaty Nations in the national equalization formula; (5) limiting the powers of federal and provincial governments over Treaty Nations to those that were formally delegated to the Crown in the treaties; (6) broadly acknowledging the right of Aboriginal nations to enter into new treaties where there are no existing treaties; (7) including the Treaty Nations in the electoral apportionment of federal and provincial governments; and (8) filling gaps in the old treaties in accordance with UN human rights covenants. (Henderson, 2019, p. 41)

Treaty federalism is a bold initiative that forms an essential part of the reconciliation process.

The importance of treaty relationships is recognized by the TRC and UNDRIP. The TRC’s call to action 45 calls on the federal government to work with Indigenous Peoples to create a Royal Proclamation of Reconciliation (Truth and Reconciliation Commission, 2015, p. 4). Call to action 45(iii) says that one of the commitments to be included in this Proclamation is the “[renew[al] or establish[ment] [of] Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future” (Truth and Reconciliation Commission, 2015, p. 5). Similarly, Article 37(1) of UNDRIP says that “Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and another

constructive arrangements” (United Nations, 2007, p. 25). As discussed in chapter 1, a renewed focus on treaty relationships is an important component of transformative reconciliation.

Not all participants, however, used the term *reconciliation*. One student criticized this concept for placing the burden of change on Indigenous Peoples’ shoulders:

Honestly, it’s such a brutal term. Reconciliation is something that is not for us, you know? It’s something that is required of other people, but for some reason, the burden seems to be put on Indigenous Peoples. The burden seems to be that Indigenous Peoples must reconcile with the state in order to allow for this country to continue. (Participant #6)

Instead of reconciliation, this participant advocated for engaging with the recognition of human rights and human dignity and decolonization, which they defined as “the dismantling of the settler state to allow for more positive and healthy relationships among people” (Participant #6).

This participant’s criticism of reconciliation is consistent with the work of transformative reconciliation scholars and decolonial scholars, both of whom argue that reconciliation that demands Indigenous Peoples to reconcile themselves to the state is a form of recolonization (see, for example, Asch, Borrows, & Tully, 2018; Coulthard, 2014).

What is Reconciliation in the Context of Legal Education?

In their collective response, the ILTC describes what reconciliation means in the context of legal education by referring me to Dean Dodek’s 2019 statement wherein he talks about the importance of engaging with “Indigenous knowledge, legal orders, governance, nations, communities and people” and “creating and maintaining an institution of legal pedagogy that amplifies and features Indigenous pedagogy, methodology and research” (University of Ottawa, 2019). This was reiterated in my interviews with faculty members and law students. Participants talked about how placing Indigenous laws alongside the common law and the civil law is a necessary step in the reconciliation process. One faculty member noted that for law schools to

fully engage with reconciliation, they need to become “juridical system[s] that really recognize not just the civil law system and common law system but the numerous Indigenous laws that are present and evolving” (Participant #3). Another faculty member reiterated the need to ensure that law students do not receive a legal education that ignores Indigenous laws:

I think all students, if they’re going to be a lawyer in this country, need a strong grounding in not only the issues of Aboriginal community relations, but also an understanding that Indigenous Peoples have law. They’ve been marginalized and made obsolete, but that’s not right, and so we need to change that. And as lawyers, as legal educators, educators about the law, we are not fulfilling our duty as legal educators if we’re missing a whole source of law that’s Indigenous to this territory. (Participant #1)

Several students said that law schools lack perspectives on Indigenous laws, and that this content is often glossed over or taught from an Aboriginal law/Indigenous-Crown perspective. For them, reconciliation in legal education means, first, acknowledging that Indigenous Peoples have complex laws that have existed for millennia, and, second, incorporating that content into the law school curriculum. As one student put it, “we all had our own legal orders. So, law school reconciliation, to me, is that law school[s] teach that” (Participant #5).

All participants indicated that learning about Indigenous law must be a mandatory component of the law school curriculum, and that this needs to occur at the beginning of law school. All participants advocated for a standalone mandatory first-year course in Indigenous law. As the ILTC notes in its collective response, “[a]s for the mandatory first-year course content, Indigenous law needs to be treated equally with other mandatory content, like Torts”.

The importance of treating Indigenous law equally with other mandatory content was reiterated by one student:

Yes, I think they should [have a mandatory course in Indigenous law]...I think it would have to be a first-year course and probably taught at least mostly by Indigenous professors, I would say, and I think that way it’s just more recognized on a level that’s like other basic 1L courses that you have to go through, like Crim and Torts and all that. It would just be held at the same level of respect, I guess. (Participant #4)

Several participants noted that the development of this course should be Indigenous-led and involve active consultation and collaboration with local Indigenous communities. As one student put it, “it would have to be an Indigenous law course. It wouldn’t be an Aboriginal law course. It would be an Indigenous law course, and it would be taught by the people whose land we are on” (Participant #6). Similarly, one faculty member talked about the importance of “learning from elders directly or forming relationships [with them] that takes a lot of time and effort” (Participant #2). While participants indicated that having a standalone mandatory first-year course in Indigenous law is necessary, many of them acknowledged that it will be difficult, if not impossible, to include everything in call to action 28 in a single course, and that other courses, whether mandatory or optional, will be needed to achieve this. As one student said after reading call to action 28 aloud, “[h]ow are they even going to do those things? How can we even teach that? It does seem like a huge list for one course” (Participant #6). Similarly, one faculty member said “[y]ou can’t teach all of that in one mandatory three-credit course” (Participant #6), and another said that law schools should consider several options, including standalone courses, “mini courses throughout the year” and “components built into one of the [other mandatory] courses” (Participant #2). Another student said that, “I think we should have our own class, Indigenous laws and legal orders, and then also [include Indigenous law content] within the curriculum of Contracts, Torts, Crim, Property, Constitutional law, etc.” (Participant #5).

All participants indicated that they believe law schools can engage in reconciliation by changing the current curriculum to include Indigenous law alongside common law and civil law. However, one faculty member also advocated for decolonization as the creation of Indigenous law schools:

Decolonization... means changing the law school quite a bit. It's still a very Eurocentric institution. Law is categorized according to common-law principles. Law is understood from a positive liberal democracy perspective, with very little room for Indigenous perspectives and philosophies of law. Because there are some pretty serious incompatibilities between the two systems. I mean, they can be addressed, but there are some pretty serious incompatibilities. So, you can do a fair bit within the existing institution, but to really get at it you need...[t]o embrace an Indigenous law school that is...framed around Indigenous approaches to organizing law, not Western approaches....To me it means fully embracing the value of Indigenous culture in law by breaking down the colonial nature of legal education as much as possible, by being truly inclusive of Indigenous law, not just as an add-on or an interesting cultural perspective, but as a core. If you have Indigenous law as a part of the core of law, I think it would be respected more, and valued more, but that's a pretty serious attitudinal change within the legal profession of academia. Most schools think including a course and maybe adding other events and activities is enough, or even sometimes they just have the traditional land acknowledgement, that's enough. You know, that's a start, but to really decolonize Canadian law would mean overturning, really, the entire corpus of Aboriginal law doctrine. I mean, if you really want to be serious about it, there should be no Aboriginal law doctrine. (Participant #1)

This is consistent with transformative reconciliation, which, as discussed in chapter 2, must involve advocating for the creation of Indigenous law schools.

All participants agreed that reconciliation must involve more than making changes to the law school curriculum to include Indigenous law. Law schools must also make changes to the law school environment and to how they teach and evaluate students. As one faculty member put it, reconciliation "has to infiltrate every aspect of the way in which we conduct ourselves" (Participant #3). Several participants said that reconciliation means law schools need to organize frequent events that highlight Indigenous Peoples' laws and cultures, and that these events need to become an engrained part of the law school culture. They also said that law schools need to include more Indigenous art in their buildings. As one faculty member put it, "I'd like to see welcoming cultural art, not a bunch of white judges sitting with their photos on the wall, if you know what I mean? So, I'd like to see something like that, just to make it more welcoming" (Participant #1). Students talked about how reconciliation means reconfiguring the physical

space of the law school to be more accessible, inclusive, and inviting. They also said that reconciliation requires law schools to create spaces on campus where Indigenous students can study, socialize, and participate in academic and cultural programming. Participants also talked about the need for more Indigenous administrators, faculty members, and support staff. For example, one faculty member talked about how these individuals can support Indigenous students who experience alienation and/or discrimination:

[T]he more culturally grounded the students are, the more alien and uncomfortable law school will be. And so, having somebody to support students to work their way through that alienation is important. And also, to navigate the issues of discrimination and racism that does exist in the law school from students and everyone else. So, having that support's important as well. And then a lot of the students come in through the Indigenous category, which is less competitive, but their academic preparedness may not be as good because of the importance of trying to get more Indigenous Peoples into the profession. And so, supporting them to get at the level needed to pass is important as well. (Participant #1)

In addition to changing the culture and environment of legal education, many participants talked about how reconciliation requires law schools to develop different pedagogies and methods of evaluation. One faculty member commented that they “think the way in which courses are taught, the content of what is in the courses, should be implicated by our thinking of what reconciliation is”, and that they try to “have a variety of different evaluative and teaching methods...recognizing that people learn in different ways” (Participant #3). Several students talked about how law schools need to incorporate methods of evaluation other than in-class high-stakes exams, including take-home exams, oral exams, research papers, and class projects. For example, one student said “I think oral exams would be really beneficial” (Participant #5), and another said “[y]es, I’ve had to do course papers. I think it’s almost my preference” (Participant #4).

Many participants said that to fully engage with reconciliation, law schools need to incorporate Indigenous pedagogies into the classroom. One faculty member talked about stories and how “stories can be a source of law” (Participant #3), and one student said, “I see the value of incorporating Indigenous protocol into classes and having talking circles and that sort of thing. And from my experience, I think that’s kind of where more valuable learning probably occurs” (Participant #4). Another faculty member commented on how changes need to be made to course format and classroom space to allow for Indigenous pedagogies to be used:

See, we’re stuck with the overall structure of the university and there’s some maneuverability there. But just even the three-hour class times, or the one-and-a-half-hour class times, that imposes a certain structure that isn’t necessarily consistent with Indigenous styles of learning and mastering material.

[...]

Well, structurally, you’d have to change the law school. For classrooms...I prefer traditional protocols in teachings. So, I like to have...talking circles as part of my pedagogy, and in order to do that, you need classrooms that you can sit in a circle. (Participant #1)

Several participants indicated that reconciliation also requires law schools to place a greater emphasis on experiential, community, and land-based learning. One faculty member commented on the need for more experiential learning:

I mean, a lot of classes are 100% exams, [and] that’s not ideal obviously. You know, but having said that, I think a lot of professors are incorporating different ways to evaluate students in more experiential ways, giving them more experiential learning environments and learning opportunities. But also providing mechanisms for which evaluation is not a primary focus of the course. (Participant #2)

Another faculty member talked about the importance of “learning on the land that we are on” and how “wonderful [it would be] one day to see people learning on the land” (Participant #2).

Similarly, several students talked about the importance of land-based learning. One student said

that reconciliation requires land-based learning and “relations with the nations near Ottawa and the Algonquin people” (Participant #4), and another said the following:

I just like outdoor experiences, environmental experiences, interactive experiences. Those are really helpful and useful, and I think that’s way better than sitting in a classroom being lectured at...Everything gained from those types of experiences would be better than sitting and taking notes or watching whatever you are on your screen. (Participant #6)

Engagement with Reconciliation Post-TRC

UOttawa Law has taken some steps to engage more with Indigenous Peoples and their laws. This section will outline those steps and discuss some of the successes and challenges encountered along the way. UOttawa Law does not yet have a mandatory first-year course in Indigenous law. However, the ILTC notes in its collective response that it is “currently working to modify the first-year curriculum to ensure space for a mandatory Indigenous law course as a standalone offering”. Although there is no mandatory course in Indigenous law, there is a first-year thematic course in Indigenous law for students registered in the English Common Law Program. During the 2021-22 academic year, the course was CML 1105 Indigenous Women and the Law. The online course description says that students will learn about “how Indigenous women experience colonial law” (University of Ottawa, n.d.-g). In past years, UOttawa Law has offered a first-year thematic course in Indigenous Laws & Legal Orders. UOttawa Law started offering a first-year thematic course in 2008-2009 (University of Ottawa, n.d.-d), but it is not clear when a thematic course in Aboriginal or Indigenous law was first offered. It does, however, appear that UOttawa Law has developed new thematic courses in Aboriginal and Indigenous law since the TRC’s final report and calls to action were released.

UOttawa Law offers the same optional upper-year courses in Aboriginal and Indigenous law that it did in the early 2000s. For example, the following optional courses were offered

during the 2021-2022 academic year: CML 2301 Indigenous Peoples and the Law, CML 3162 Studies in Aboriginal Law: Beadwork and the Law, and CML 3162 Studies in Aboriginal Law: Worldview, Language & Legal Concepts. In Studies in Aboriginal Law: Beadwork and the Law, students selected for the course will

explore both historic links between beadwork and law and the contemporary use of beadwork as a tool for revitalizing Indigenous legal orders...[,and will] engage in learning relating to contemporary Indigenous legal issues and will consider the use of beadwork as a tool for mobilizing Indigenous legal knowledge and centring Indigenous lived experience of law. (University of Ottawa, n.d.-h)

In Studies in Aboriginal Law: Worldview, Language & Legal Concepts, students study topics such as “Aboriginal Justice issues, comparative analysis of Aboriginal law in other countries, and international Aboriginal rights law” (University of Ottawa, n.d.-i). In addition, this year students are also able to take courses that address Indigenous legal issues similar to those offered in the early 2000s, such as CML 3112 Theory and Practice of Social Justice Law and CML 3353 Children and the Law. Finally, this year students can take legal aid clinic courses that focus on Aboriginal law and Indigenous legal issues similar to those offered in the early 2000s, such as CML 3248 Introduction Legal Aid Clinic Course, CML 3449 Clinical Legal Aid II, and CML 3450 Clinical Legal Aid III.

In addition to the first-year thematic course in Indigenous law and optional upper-year courses in Aboriginal and Indigenous law, UOttawa Law also has an Aboriginal Law and Indigenous Legal Traditions Option for “JD students wishing to gain in-depth and practical experience in Aboriginal law including some exposure to Indigenous peoples’ legal traditions” (University of Ottawa, n.d.-j). Students registered in the Option are required to take 3 units from the following courses: CML 2301 Aboriginal Peoples and the Law, CML 2701 Les autochtones et le droit, or DRC 4762 Droit des autochtones, and 15 units from the following optional courses:

Group A

CML 1105 Aboriginal Legal Mechanisms
CML 3162 Studies in Aboriginal Law
CML 3901 Problèmes choisis de droit autochtone / Selected Problems in Aboriginal Peoples
CML 4162 Advanced Aboriginal Law
CML 4163 Comparative Indigenous Rights
DRC 4596 L'ordre juridique Innu
DRC 4763 Traditions juridiques autochtones

Group B

CML 1105 Food Security and Sustainability (Note: This is a first year thematic course)
CML 1105 Global Intellectual Property and Social Justice (Note: This is a first year thematic course)
CML 2321 Alternative Dispute Resolution Processes
CML 3112 Theory and Practice of Social Justice Law
CML 3131 Public International Law
CML 3135 International Law and Developing Countries
CML 3137 Critical Race Theory
CML 3144 Defending Battered Women on Trial
CML 3150 Race, Racism and the Law
CML 3307 Trusts
CML 3315 Negotiation
CML 3343 Poverty and the Law
CML 3374 Law and Society (with approval of the option coordinator)
CML 3398 Human Rights Laws in Canada
CML 3399 Human Rights (International Protection)
CML 4113 Foundation Legal Writing Skills
CML 4131 Multicultural Rights in Liberal Democracies
CML 4382 Feminist Legal Issues

Group C

Moot Course:

CML 3125 Moot Court Competition (Kawashimhon Moot, or other Moot with approval of Option Coordinator)

Internship:

CML 3171 Student-Proposed Internship (with approval of Option Coordinator)
CML 3173 Law-Related Internship (with approval of Option Coordinator)

Clinical:

CML 3248 Introduction Legal Aid Clinic Course (with approval of Option Coordinator)
CML 3250 Advanced Clinical Course in Community Law (with approval of Option Coordinator) (University of Ottawa, n.d.-j)

For students registered in the Option through the English Common Law Program, at least 3 units must be from Group A and 3 units from Group B.

UOttawa Law once had the small group *Mudjimushkeeki/Torts* (Council of Canadian Law Deans, n.d., p. 16). All first-year JD students are required to take one of their substantive courses in a small group format. The purpose of the small group format is to ensure “that all students have the opportunity to get to know their colleagues well, to participate in meaningful classroom discussions and to enjoy continuous feedback from the professor” (University of Ottawa, n.d.-n). The small group *Mudjimushkeeki/Torts* gave students the opportunity to study “non-voluntary obligations to others from an Indigenous perspective”, and it was part of a first-year Indigenous course stream that incorporated Indigenous law into common law courses (Council of Canadian Law Deans, n.d., p. 16). It appears that the small group *Mudjimushkeeki/Torts* and the first-year Indigenous course stream no longer exist.

In addition to offering course content in Aboriginal and Indigenous law, UOttawa Law has also taken steps to improve the culture and environment of the law school and provide greater support to Indigenous students. In its collective response, the ILTC notes that, under the leadership of Indigenous faculty members, it has created “a heightened consciousness and awareness amongst faculty and students” by offering events like “Indigenous led teach-ins, lectures series, film series, [and] reading groups focusing on Indigenous law and epistemology”. Several participants, particularly students, had positive things to say about these events. For example, one student member of the law school’s Indigenous Law Students Government

commented on the high number and quality of the events, and how 2019-2020 was “a really good year [with] a lot of important events” (Participant #4).

Besides hosting events to provide faculty members, students, and staff with opportunities to learn more about Indigenous law, UOttawa Law hired more Indigenous faculty members and staff and established a program to support Indigenous law students. The Common Law Section has been home to several leading Indigenous legal scholars, including Professors Larry Chartrand, Tracey Lindberg, Darren O’Toole, and Sarah Morales. In 2017, Aimée Craft was hired as an Associate Professor. In 2020, UOttawa Law posted a recruitment poster on its website inviting applications for a tenure-track or tenured position in Indigenous law and a tenure-track position in Indigenous legal affairs. In 2021, it was announced that Signa Daum Shanks had joined UOttawa Law as Associate Professor. Several students talked about the importance of having a “bigger presence [of Indigenous Peoples] in the faculty” (Participant #4).

UOttawa Law also hired Elder Claudette Commanda and Dr. Danielle Lussier. Elder Commanda currently works as Special Advisor to the Dean on Reconciliation. In the past, she has worked as the Faculty of Law’s Elder-in-Residence, a member of the University of Ottawa Board of Governors, and a professor in the Institute of Women’s Studies, Faculty of Education, and Faculty of Law. Dr. Lussier is a researcher who currently works as a part-time professor and the Director of Community & Indigenous Engagement, where she supports Indigenous students and fosters awareness and consideration of Indigenous matters within and outside the law school. She has also held positions as Advisor, Indigenous Relations, and Indigenous Learner Advocate. In 2019, UOttawa Law received a \$1 million donation to support Indigenous students through scholarships, bursaries, and emergency funding (University of Ottawa, 2019-b). Dr. Lussier also spearheaded a beading project where students, faculty, and staff can attend beading circles and

“learn beadwork techniques developed by the Métis, who are known for beading garments with intricate designs that represent berries, flowers, and vines” (University of Ottawa, 2019-c). The beadwork has been featured on academic robes worn by law students and faculty members at convocation (University of Ottawa, 2019-c).

Many participants commented on the important impact that Dr. Lussier is having on the law school environment. One faculty member noted that “[a] big thing has been Danielle Lussier, who was hired. That I think is a big positive step. And I had been advocating for that position since I started here. So, finally, they got it. That’s always nice to see” (Participant #1). Another faculty member commented on the amazing work that Dr. Lussier is doing through her beadwork project:

And the other thing that they’ve done is...we have like a beading project where...students and professors will get together in beading circles and bead and what they’re beading are sashes that students and professors and all of the executives at the faculty wear at convocation. So, it has a real presence and, you know, the work is absolutely stunningly gorgeous...[a]nd so different from the attire that we’re supposed to wear at this convocation. And then the dean talked about it at convocation, you know, where there are thousands of students and their families and talked about the importance of this beading project and, you know, it’s ongoing. It hasn’t been a sort of one-time thing and it’s not unusual to be at a faculty council meeting and have professors listening but beading at the same time. It’s kind of amazing, really. (Participant #2)

Two students offered similar comments:

I think since I’ve been there [the environment has] really changed a lot. When I was in first year, I would say that it was just maybe getting going and it probably took until the second term of that year to really get going. But I think that they have done a really good job, compared to schools that I’ve looked into. I think that it really started, I guess there was the position, Indigenous Student Advocate, I think is the position title, but there was a person in that position the years before me, but I think it was just kind of, not much came of it. And then a new person was put in that position, Danielle Lussier-Meek, and she’s in that position now. I think she’s doing a very good job of kind of...I think it kind of connects more with what the students want from their experience with the faculty directly. Because she’s like, everybody can be in her space, a big office and a table, and there’s a sense of community there. So, I think that’s been really important and probably the biggest difference. (Participant #4)

You know, another thing that was really good, and I should probably add, [is] Danielle...[H]ow the school answered TRC 28 is having Danielle. Speaking of all the other law students that I know across Canada, they don't have her. They even ask for her. Our friends from USask will email Danielle and ask for advice and help because she is an Indigenous learner advocate. Her role is just a big role. So, I think Ottawa doing that is another way that we are lucky in a sense. We don't have a class, but we have a Danielle. I see her as amazing. (Participant #5)

Although these changes do not specifically address calls to action 28 or 50, they are critically important to reconciliation because they help create a culturally and academically supportive environment for Indigenous students.

Challenges Responding to TRC's Calls to Action

The ILTC and individual faculty members identified several challenges associated with engaging with reconciliation and decolonization. In its collective response, the ILTC identifies resistance to learning and funding constraints as two primary challenges:

We have witnessed resistance to learning, both by some students and some faculty. Indigenous students have often borne the brunt of that close-mindedness. Hiring and retaining Indigenous faculty adequately to offer a complete complement of Indigenous law courses continues to be an issue. Funding for initiatives continues to be a challenge (current pandemic will create obstacles, we anticipate, particularly for events like previous teach-ins held on campus and at Kitigan Zibi).

Individual faculty members identified other challenges, including differences of opinion between faculty members over what changes should be made and how, and having to navigate a bureaucratic university system that makes implementing change complex and time-consuming.

Is the TRC's Call to Action 28 Enough?

The ILTC, individual faculty members, and law students all indicated that while the TRC's call to action 28 is an essential component of reconciliation, the law school must go further. One faculty member said that while having the mandatory course "would be a good step in the right direction", it does not go far enough because "it is just a recommendation for a course" (Participant #1). Similarly, another faculty member commented that "just having a

mandatory course on its own is probably not enough” and that “there has to be more support for cultivating Indigenous researchers and scholars to enter the academy. In the ideal situation, there’d be resources to hire Indigenous elders or knowledge keepers to come in and to broaden the scope of who can teach Indigenous legal traditions and institutionalize that” (Participant #2). Law students made similar comments. For example, one student noted that the requirement for a mandatory course does not go far enough, and that the law school should focus on creating a “space and community” for Indigenous law students (Participant #4). Another student said that a mandatory course is “just the beginning” and that it does not address everything that should be happening in the law school (Participant #5). Lastly, one student commented that while a mandatory course “would make a change,” on its own, it will not decolonize the law school (Participant #6).

How Well Does UOttawa Law’s Response to the TRC’s Calls to Action Contribute to Reconciliation?

When asked to evaluate how well the law school’s response to the TRC’s calls to action contributes to reconciliation, the ILTC gave this answer in its collective response: “[o]ur work is incomplete, and we have yet to achieve our ideal vision of a decolonized law school. Even when we are closer to that goal, the institution must be committed to continual evolution and improvement”. Participants made similar comments, acknowledging that while the law school is moving in the right direction, it needs to do more to make a meaningful contribution to reconciliation. One faculty member said “I don’t think we’ve really done a stellar job” and “I’m not sure that a lot has changed yet but I think that there is hope that the conversations are being had” (Participant #3). Another said “we’re not in the ideal situation yet, but I think we are aspiring towards that” (Participant #2). Students made similar comments. One student noted that the law school’s response is “a drop in the bucket” and that “law schools are slow to react”

(Participant #6), while another student said “I think they are doing a really good job. Only because we can compare it to other law schools. That is the only reason why” (Participant #5).

What More can UOttawa Law do to Better Contribute to Reconciliation?

When asked whether the law school has more that it can do to better engage with reconciliation, the ILTC said “undoubtedly” but gave no details. Fortunately, individual participants had some suggestions. Participants said that the law school should work to obtain funding to hire more Indigenous faculty members and elders. One faculty member said, “[i]n an ideal world there’d be more Indigenous knowledge keepers, elders, and scholars that have the capacity to come and do this work. And with more resources we could do that” (Participant #2). Similarly, another faculty member said “I think we need to hire more Indigenous professors” and “I think we need to find financial support now to do the things that we know need to be done” (Participant #3). In addition to hiring more Indigenous faculty members and elders, participants also spoke about the need to recruit more Indigenous students. One faculty member said “I think we need to have more Indigenous students and create an environment that’s attractive enough for those Indigenous students to come to our law school” (Participant #3). Similarly, one law student said that the law school needs to be “especially focusing efforts on just having a bigger population [of Indigenous students] at Ottawa because really there’s not a huge population of us at Ottawa, it’s probably just a handful per year” (Participant #4).

In addition to hiring more Indigenous faculty members and recruiting more Indigenous students, participants also said that the law school can better engage with reconciliation by making changes to its curriculum. For example, participants said that the law school needs to develop a mandatory first-year course in Indigenous law. One law student said that they would like to see a mandatory course in Indigenous law, as well as more “experiential learning

opportunities” and land-based learning to strengthen relations with Indigenous nations near Ottawa (Participant #5). Another law student said that they would like to see the law school create an Indigenous law clinic where students can get “practical, experiential work with Indigenous people in Indigenous communities” (Participant #6).

Chapter Summary

Based on the ILTC’s collective response and my conversations with individual faculty members and Indigenous law students, participants defined reconciliation, both as a general concept and in the context of legal education, in ways that align with the transformative approach to reconciliation. For them, reconciliation is a process that requires Canadians to learn about the historical and contemporary relationship between the Canadian state and Indigenous Peoples as well as the past and ongoing harms committed against Indigenous Peoples. It then requires Canadians to act on this knowledge to transform this historically oppressive relationship into one that is healthy and grounded in respect and reciprocity, treaty federalism, and Indigenous autonomy and sovereignty.

In the context of legal education, the ILTC and individual participants said that reconciliation requires Canadian law schools to respectfully engage with Indigenous knowledge and law in order to place Indigenous law properly alongside common law and the civil law. More specifically, they said that students must learn about Indigenous law and other important content included in call to action 28. For them, this content must be taught throughout the three-year program in both mandatory standalone courses and optional courses. One participant said that reconciliation requires the establishment of Indigenous law schools, designed and operated by and for Indigenous Peoples. The ILTC and individual participants also recognized that for law schools to fully engage with reconciliation, they need to do more than make changes to their

curriculum. Law schools need to amplify Indigenous pedagogies and include more space for experiential and land-based learning. Finally, they need to hire more Indigenous faculty members and staff, recruit more Indigenous students, and make the social environment and physical space more welcoming and culturally relevant.

Two participants advocated strongly for decolonization in legal education (Participant #1 and Participant #6). They recognized that even if law schools implement the changes discussed above, they will continue to exist and operate on stolen land and within universities built and controlled by colonizers on their terms. Participant #1 argued for the creation of Indigenous law schools created by and for Indigenous Peoples, on their lands, in their languages, and for their purposes.

Based on my interviews and my review of UOttawa Law's website and University of Ottawa academic calendars, UOttawa Law has not made significant changes to its program since the TRC's final report and calls to action were released. Many of the courses in Aboriginal and Indigenous law were offered to students in the 1980s, 1990s, and early 2000s. UOttawa Law did create the Aboriginal Law and Indigenous Legal Traditions Option, which provides students with an opportunity to gain an in-depth knowledge of Aboriginal and Indigenous law. However, the Option is not a mandatory component of the program and many of the courses offered were created many years before the TRC's final report and calls to action were released.

It is obvious from my discussions with individual faculty members and Indigenous law students that UOttawa Law has taken important steps to improve the culture and environment of the law school and provide greater support to Indigenous students. For example, it is hosting more events to provide faculty members, students, and staff with opportunities to learn more

about Indigenous law; it has hired more Indigenous faculty members and support staff; and it has obtained significant funding to support Indigenous students.

There are many things that UOttawa Law can do to better engage with transformative reconciliation: (1) implement a mandatory curriculum requirement that covers the material included in call to action 28²³; (2) incorporate Indigenous law into all other mandatory courses, and offer appropriate training to faculty members to help them teach this content; (3) create an institute for the study, research, and application of Indigenous law; (4) reconfigure the physical space of the law school to be more accessible, inclusive, and inviting²⁴; (5) create a space where Indigenous students can study, socialize, and participate in academic and cultural programming; (6) work with local Indigenous communities to create opportunities for community and land-based learning; (7) offer support to faculty members who wish to incorporate Indigenous pedagogies into the classroom; (8) secure more funding to support current Indigenous students and faculty members and recruit new Indigenous students and hire new Indigenous faculty members; and (9) build stronger relationships with local Indigenous communities.

UOttawa Law is already working on many of these things. In its 2019-2024 Strategic Plan, UOttawa Law identifies “reconciliation, Indigenization, and decolonization” as one of its “strategic priorities” for the future. This strategic priority contains the following four components and associated commitments:

A. Student Support and Experience

We will support our Indigenous learners and ensure all students are given the tools to succeed as culturally aware professionals.

²³ Given the breadth of call to action 28, the law school should seriously consider participants’ recommendation to incorporate mandatory requirements throughout the duration of the JD program.

²⁴ The law school can, for example, make changes to classroom design and include Indigenous art and displays with information about local Indigenous communities, Indigenous law, and Indigenous legal professionals.

1. Support the critical role of the Indigenous Learner Advocate in protecting and promoting the well-being of Common Law students.
2. Develop an Indigenous Space which allows for culturally informed activities, collective Indigenous community attendance and engagement, ceremonial and community specific activities, and teaching/sharing of Indigenous pedagogy.

B. Teaching

We will work to centre Indigenous legal traditions and perspectives within our curriculum, to ensure students have a firm grounding in the diversity of Canada's founding legal orders and the law as lived, understood by and applicable to Indigenous peoples.

3. Implement the Indigenous Talent Recruitment Plan (including Indigenous faculty cluster hiring, affirmative action and equity group hiring proposals, development and implementation).
4. Develop Indigenous legal knowledge programming including core JD courses, the development of specialties in Indigenous legal knowledge, and developing in-house education and resources for faculty, staff and learners.

C. Research

We will support cutting-edge scholarship and Indigenous pedagogies and research methodologies to address critical issues facing Indigenous peoples and communities.

5. Create an Indigenous Nationhood, Governance and Laws Institute.

D. Community

We recognize that our law school can and must play a leading role in the ongoing transformation of the legal profession and the broader community.

6. Build relationships with Indigenous Nations and communities, community members and territorial land holders to address meaningfully: the land which the law school sits on, the responsibility of the law faculty as settlers on Indigenous lands, the building and renewing of relationships with Indigenous Nations and peoples, the decolonization and Indigenization of existing course materials and curriculum, and the reciprocal, respectful and relational agreements and partnerships to be developed with Indigenous Nations locally and internationally.
7. Develop Indigenous community-drive and supported Legal Research Practice Group. (University of Ottawa, n.d.-k, pp. 18-19)

Successfully implementing these commitments will put UOttawa Law on the path to engaging with transformative reconciliation. However, doing so will require a large amount of funding. If one does not already exist, UOttawa Law should establish a sub-committee comprised of administrators, faculty members, staff, and students whose sole responsibility is developing creative proposals to obtain grants and donations to fund these commitments.

CHAPTER 4: DALHOUSIE UNIVERSITY

Chapter Overview

In this chapter, I will outline Dalhousie University Faculty of Law's ("Dal Law") reconciliation journey to date. In the first section of the chapter, I discuss Dal Law's engagement with Aboriginal and Indigenous law before the Truth and Reconciliation Commission's (TRC) final report and calls to action were released. I also briefly describe how the law school's TRC Committee was formed. In the second and third sections of the chapter, I explore how participants explain reconciliation, both as a general concept and what it means in the context of legal education. In the fourth section, I discuss how Dal Law has responded to calls to action 28 and 50. In the fifth section, I detail some of the challenges of engaging with reconciliation that were identified by the participants. In the sixth and seventh sections of the chapter, I examine participants' views on whether and how call to action 28, and their institution's response to it, contributes to reconciliation. I end this chapter with a discussion of what participants suggest better contributes to reconciliation.

Dal Law's Engagement with Reconciliation Pre-TRC

Dal Law has been working with Indigenous Peoples and communities and engaging with Indigenous law since before the TRC's final report and calls to action were released. Their efforts in this regard date back to at least 1989 when the law school established the Indigenous Blacks & Mi'kmaq (IB&M) Initiative "to increase representation of Indigenous Blacks and Mi'kmaq in the legal profession in order to reduce discrimination" (Dalhousie University, n.d.-a). The IB&M Initiative was in part a response to issues identified in the *Royal Commission on the Donald Marshall Jr. Prosecution* report, which recommended that the Governments of Canada and Nova Scotia provide financial support to the IB&M Initiative (Hickman, T.A.,

Poitras, L.A., & Evans, G.T., 1989). The IB&M Initiative supports Indigenous and Black students by providing financial scholarships and “promoting the hiring and retention of graduates” (Dalhousie University, n.d.-a). By 2018, more than 200 students admitted through the IB&M Initiative had graduated from the law school, and graduates are working as lawyers across the country (Council of Canadian Law Deans, n.d., p. 2).

According to Dalhousie University’s academic calendars²⁵, Dal Law has been offering optional courses in Aboriginal law since before the TRC’s final report and calls to action were released. In the 2000-2001 academic year, for example, Dal Law offered LAWS 2119/2120 Aboriginal Peoples (Dalhousie University, n.d.-b). The Dalhousie University academic calendar for that year provides the following description of the course:

This class will examine the unique legal position of the aboriginal peoples of Canada. Problems abound in developing appropriate responses within the majority society to the needs and aspirations of Canada's Indian, Metis and Inuit populations. The objective of the class is to sensitize students to the legal and policy issues surrounding these problems. Thus, in addition to standard legal materials, the class will expose students to aspects of Colonial history, aboriginal conditions and culture, and government programmes and policies. Particular topics may include sources of law on aboriginal peoples, unique constitutional provisions, the special position of Indian reserves, the nature of aboriginal title and rights, Indian treaties, fiduciary obligations, taxation, and self-government/self determination. (Dalhousie University, n.d.-b, p. 50)

Dal Law has offered a version of this course since then.²⁶ In 2003-2004, it was renamed to First Nations and the Canadian State for two years (Dalhousie University, n.d.-c, p. 61; Dalhousie University, n.d.-d, p. 60). The course title was changed back to Aboriginal Peoples in 2005-2006 and stayed that way until 2014-2015, when it was changed to Aboriginal Peoples and the Law (Dalhousie University, n.d.-e, p. 70). In 2008-2009, Dal Law started offering LAWS 2206 Kawaskimhon Aboriginal Rights Moot (Dalhousie University n.d.-f). According to the

²⁵ I was only able to access academic calendars online from 2000 to present.

²⁶ Given Dal Law’s commitment to Indigenous students through the IB&M Initiative since the late 1980s, this course was likely offered before 2000.

Dalhousie University academic calendar for that year, this course “involves participating in a national moot competition, which is typically based on a high profile case where Aboriginal rights are at issue” (Dalhousie University n.d.-f, p. 67). During the course, students are required to conduct research, attend regular meetings, participate in moot exercises, draft a factum, and participate in the moot (Dalhousie University n.d.-f, p. 67).

In addition to optional courses in Aboriginal law, students have also been required to take courses that address Indigenous legal issues. For example, since at least the early 2000s, students were required to take LAWS 1005 Property in its Historical Context and LAWS 2009 LAWS 2062 Constitutional Law. According to the Dalhousie University academic calendar for 2000-2001, students in Property in its Historical Context “explore[d] the doctrines of aboriginal title and the principles of real property” (Dalhousie University, n.d.-b, p. 50), while students in Constitutional Law studied “[the] Charter and Aboriginal rights discussion to highlight both points of overlap and points of departure” (Dalhousie University, n.d.-b, p. 50).

In addition to courses in Aboriginal and Indigenous law, students have also been able to take courses that examine legal issues affecting Indigenous Peoples since at least the early 2000s. Dal Law students have been able to take optional courses that explore Indigenous legal issues. In 2000-2001, students could take a course called LAWS 2009 Comparative Criminal Law, which “explore[d] issues of Canadian Aboriginal justice” (Dalhousie University, n.d.-b, p. 53). In 2001-2002, Dal Law added a course called LAWS 2122/2123 Legal History, which explored the “history of Canadian law from the time of the First Nations to the present” (Dalhousie University, n.d.-g, p. 50). The following year the course title was changed to Canadian Legal History (Dalhousie University, n.d.-h, p. 61), and it has been offered every year since then. In 2003-2004, Dal Law started offering a course called LAWS 2159 Health Systems: Law and

Policy, which explored “why the present [healthcare] system fails Aboriginal peoples” (Dalhousie University, n.d.-c, p. 62).

In 2004-2005, Dal Law added two courses that examine Indigenous legal issues: LAWS 2079 Oil and Gas Law and LAWS 2194 Critical Race & Legal Theory I: A Survey of “Race” & Law in Canada. Oil and Gas Law explored “aboriginal rights” (Dalhousie University, n.d.-d, p. 57) and Critical Race & Legal Theory I used “legal instruments dating from the Colonial to Contemporary Periods” to examine how “[I]aw has both corrected and created deficits for racialized Communities that are notably, Aboriginal, African Descended and Asians” (Dalhousie University, n.d.-d, p. 65). In 2008-2009, Dal Law created two new courses that focused on Indigenous legal issues: LAWS 2018 Children, Youth and the Law and LAWS 2020 Fisheries Law. Children, Youth and the Law examined “aboriginal child welfare” (Dalhousie University, n.d.-f, p. 58) and Fisheries Law explored “aboriginal rights” (Dalhousie University, n.d.-f, p. 64). In 2009-2010, Dal Law created a new course called LAWS 2219 Regulatory Systems in Environment and Health, which examined “health and environment in relation to First Nations and other aboriginal communities” (Dalhousie University, n.d.-i, p. 65). In 2013-2014, Dal Law created a new course called LAWS 2132 Health Law, which investigated “the health of indigenous peoples” (Dalhousie University, n.d.-j, p. 70). Finally, in 2014-2015, Dal Law created a new course called LAWS 2214 Energy Law, which explored “a range of law and policy issues dealing with electricity, including the regulatory process, implications for environmental, aboriginal, property, and trade law issues” (Dalhousie University, n.d.-e, p. 75). Dal Law continues to offer these courses to students today.²⁷

²⁷ Children, Youth and the Law was renamed Youth and the Law in 2010-2011, changed back to Children, Youth and the Law in 2017-2018, and renamed Youth and the Law in 2020-2021.

Background about the TRC Committee

In April 2016, faculty at the law school participated in a professional development day with John Borrows that focused on how the law school can implement the TRC's calls to action. In October 2016, a TRC Committee was formed with faculty, students, and the Dean (Schulich School of Law TRC Committee, 2019). The Committee's mandate is to address the TRC's calls to action, including call to action 28. Most members of the Committee were appointed as part of their administrative duties, but many were also appointed for their expertise and interest in Indigenous laws, Aboriginal law, or allyship. Some of its members have continuously participated since the Committee's creation, while others have participated periodically. The seniority of the Committee's members varies; the most senior member has been on faculty for more than 30 years, and the most junior member joined faculty in the last five years.

What is Reconciliation?

Most Dal Law faculty members and law students that I interviewed described reconciliation, both generally and in the context of legal education, in a manner that is consistent with the transformative approach to reconciliation. Most of them indicated that they use the term *reconciliation*. In defining the term, they said that reconciliation is a process that involves creating a new relationship between Indigenous Peoples and non-Indigenous people and the Canadian state. As one faculty member put it, “[r]econciliation is a process rather than a set of goals or objectives that once met, we can claim that reconciliation is achieved” (Participant #4). Several participants noted that this process does not involve asking Indigenous Peoples to reconcile themselves to the state. For example, one faculty member made the comment that “some people think that reconciliation means you, Indigenous Peoples, reconcile yourself to Crown sovereignty and Canadian control, which is not reconciliation” (Participant #2).

Participants were adamant that reconciliation is about asking the Canadian state and non-Indigenous people to take responsibility for our past and ongoing harmful actions towards Indigenous Peoples. One faculty member said that reconciliation “means that for those of us who are settlers, we have to take responsibility for our occupation of the space here and try to find ways to atone for our past historic practices and our current ongoing problematic practices” (Participant #3). Another faculty member talked about how reconciliation means taking time to reflect on how they are connected with Indigenous Peoples:

I think for me at least...[reconciliation] is about trying to make sense in a very broad way of the way I've related to and connected with Indigenous Peoples that I've seen both directly, in terms of the human beings in my life and social circles, as well as the cultural history and narrative in the way we relate to each other as we understand our cultural history and narrative as a collective of people with sometimes shared values and sometimes not. (Participant #8)

This same faculty member then spoke about how reconciliation is also about trying to be more open-minded about Indigenous knowledges and ways of being. They provided the following example of how they try to be more open-minded in their own work:

I'm pretty rigid about secular space in public institutions. That kind of a value I hold sort of strong. And the spirit of reconciliation for me requires me to build some cynicism about my own stance on that. So, the spiritual nature of beginning things with a prayer, for example, that's a real stretch for me. Some part of me just finds that very hard to handle. But I think that the spirit of reconciliation requires at least suspending your own cynicism. And trying to be open-minded about what kind of space gets created because someone else is doing something different than you would do. And maybe you wouldn't choose it but it might be important for the community as a whole to be able to create a space where that's accepted and celebrated. And not have it have to be how you would do it. Like that's a small example but it requires, I think, an open-mindedness about your own narrow-mindedness and it's hard to do that because it's hard to see where you're narrow-minded. And then trying to be open and not offended when people point out how you're narrow-minded, [that's] also hard. But that's part of it for me on an individual level and then I think on a systemic level it's about appreciating that what you know about the world is so constrained by how it's been taught to you and the limited nature of that. And so, it's got a much bigger piece to it too, I think. (Participant #8)

When asked what will be required of us to create this new relationship between Indigenous Peoples and the Canadian state and non-Indigenous people, participants said that it must be grounded in an accurate understanding of the relationship between Indigenous Peoples and the Canadian state, including historical and contemporary injustices, and a commitment to a more positive future. One faculty member said that because “Canadians know so little about Indigenous Peoples in Canada”, reconciliation must involve truth about Indigenous Peoples’ histories as well as “contemporary issues that still continue to impact the well-being of Indigenous Peoples in significant ways” (Participant #2). Similarly, one law student said that reconciliation means “acknowledging the awful things that happened and trying to make reparations for those things, recognizing the future that we want to strive for, and then realizing the practicableness of where we are right now” (Participant #6).

Participants insisted that reconciliation must involve more than learning about the histories of Indigenous Peoples in Canada and the injustices they have experienced and continue to experience. For them, reconciliation means “creating a legal and political order that’s legitimate...[to replace the current one] that exists by force and coercion” (Participant #1). For this new order to exist, the Canadian state must “see Indigenous Peoples...as hav[ing] the ability and the fundamental human right to have control over [their] destinies in terms of decision-making and self-determination” (Participant #2). One law student spoke about the relationship between reconciliation and decolonization and how both are needed to create this new relationship. For this student, reconciliation is only possible once decolonization has occurred:

So, I think reconciliation goes hand-in-hand with decolonizing Canadian society. That’s a requirement. It’s part of it. I feel like decolonizing is the first step and then reconciliation would be the next [step]. When I think of reconciliation, I think of a coming together. You’re uniting, and not forcefully. You know what I mean? And, I feel like the only way to do that is to decolonize the mind-set first because you’re not going to get anywhere unless that’s done. (Participant #5)

This is consistent with Waziyatawin's (2009) understanding of reconciliation, which, as discussed in chapter 1, calls for decolonization as a necessary step in the reconciliation process.

This new legal and political order must respect Indigenous Peoples and support the resurgence of their cultures, languages, legal traditions, and governance structures. One faculty member put it this way:

I think the more foundational issues are about recognizing and creating or giving support for resurgence...[R]esurgence puts the emphasis on there's something extremely powerful and important happening within Indigenous academic and non-academic communities that is completely independent of what's going on over in the settler zones, and which needs room to flourish without non-Indigenous interference. (Participant #1)

Not all participants used the term *reconciliation*. One law student criticized this concept for creating a false narrative that the relationship between Indigenous Peoples and the Canadian state was once peaceful, and argued instead for *conciliation*:

Okay, I hate the word reconciliation. I just feel like to reconcile means to return to a relationship, and I can't point to a period of time in settler colonialism where I would be like, yes, let's return to this point. Where do you want to return to? So, to me, I think conciliation is a more accurate description. We want to conciliate and create a better relationship. I agree with that, and I think that's something to strive for, but I don't think, necessarily, there's anything to reconcile. I think conciliation is about accepting the fact that there are two structural forms of knowledge at play on Turtle Island, and I don't think there can be anything further until there is an acceptance of just that, of acknowledging it, not a hierarchy but a partnership of, yes, two forms of knowledge, two systems of governance, two forms of law [exist]. (Participant #7)

What is Reconciliation in the Context of Legal Education?

Dal Law participants had much to say about what reconciliation means in the context of legal education. A common theme was that Canadian law schools need to critically reflect on the role that law plays in reproducing inequality and unjust relations of power. One faculty member said that law schools need to "use legal education as a way to encourage students to identify how law is often part of the problem and not part of the solution and how law acts as a legitimizing

force for inequality” (Participant #3). This same faculty member noted that because lawyers exercise power, law schools “should be sensitizing and encouraging students to become aware of how they exercise that power [and] how they embody power” (Participant #3). Another faculty member said that this reflection needs to focus specifically on the ways in which “the law school has created systemic bias against the recognition of Indigenous law and perspectives” (Participant #4). Because law has been used to perpetuate inequality, several participants said that law schools must teach students that they have an obligation to practice law in ways that do not create harm. One faculty member, for example, said that they must teach students “how we have an ethical obligation and a political obligation as lawyers to take responsibility for our decisions and our conduct and use law to the extent it can be used to do less harm” (Participant #3). This view was shared by another faculty member, who said that reconciliation means “creating a generation of legal professionals who will not continue to perpetuate harm.” (Participant #1).

Another central theme was that Canada is a multi-juridical country founded on Indigenous law, and as such, Canadian law schools need to respectfully engage with this content. One faculty member noted that reconciliation requires “creating a space where Indigenous legal orders are recognized as legitimate, and more than customs or traditions or values, and that requires a shift within the curriculum, as well as within the mindset of our student body, and our judges and existing legal professionals” (Participant #1). Another faculty member said that reconciliation requires legal educators to think about how they teach law and how they can incorporate Indigenous law into the curriculum:

For me a big focus has been in thinking about how we teach law to our law students and how they understand what law is. And what it means to think about Canada as a multi-juridical or plural legal space. And so, I’m not an Indigenous legal scholar but I think that I have learned a lot from those who are. I take seriously this idea that there are real

possibilities and real ways in which we can make progress in thinking about Indigenous legal systems and bringing that more fully into the law school curriculum. And so, certainly I think the TRC work has been one conduit to do more of that. (Participant #4)

Similarly, one law student spoke about the need to normalize Indigenous law in our classrooms:

I think it [reconciliation] inspires a duty on legal professionals at all levels, and particularly on law schools. Because they're the point of educating our next generations. So, I think that duty needs to be taken more seriously, and needs to be substantive to where content within the law school has Indigenous practice in there, and that it's become normalized. That it's not something people are like, "oh my god, what's happening?" (Participant #6)

One faculty member said that it is important for students to learn about Indigenous law and to "spend a little bit of time thinking about our relationships with Indigenous Peoples, cultures, and practice" (Participant #8).

All participants said that learning Indigenous law must be a mandatory component of the law school curriculum, and that it needs to occur throughout a law student's education. The law students that I interviewed felt very strongly about this. For example, when asked if law schools should have a mandatory component in Indigenous law, one student said, "It [having a mandatory component] almost seems obvious or like it should be. If you know anything about Canada's history, it's like, well, shouldn't it be here? This is an important chunk that people need to know" (Participant #5). Similarly, another law student said, "I think it's [a mandatory course in Indigenous law] a must-have. I think there's rationally no reason to fight against it. It's involved in every area of law" (Participant #7), and another one commented that "I think you definitely need to have a mandatory first-year introductory course [in Indigenous law]" (Participant #9). One faculty member spoke about the need for a "spiralling curriculum" where students add to knowledge gained in the previous year:

So, in terms of TRC implementation, I would like to see a spiralling curriculum where built into the mandatory curriculum at different points students revisit and take concepts deeper or to new points as they go through law school. So, you get a baseline level of

introduction in first year, which could either be through standalone courses or through committed portions of existing courses. And then in second year as they move into other mandatory courses that already exist, we embed these things further. (Participant #1)

Another faculty member spoke about the importance of incorporating Indigenous law into other courses, noting that reconciliation requires “encouraging our colleagues to include more material [on Indigenous law] in their classes, both the mandatory courses but also the optional courses” (Participant #2).

Many participants said that reconciliation must involve more than engaging with Indigenous law. For them, law schools must also make changes to the admissions process and to how legal educators teach and evaluate students. Several participants spoke about the importance of promoting access and equity in legal education. For example, one faculty member said that they would like to see “a law school with a diverse conception of merit that considers things other than GPA and LSAT, and an unshackling of legal education from the parochial concerns of the legal profession” (Participant #3). One faculty member discussed the need to “think about how we might admit people who we think will be great in the practice of law with a different lens” (Participant #8), and another said that law schools need to be “accessible to everyone and reduce barriers to admission” (Participant #6).

Participants also said that reconciliation requires that changes be made to the law school environment and to how law schools teach and evaluate students. Concerning the law school environment, one law student spoke about the importance of having spaces for Indigenous students:

Indigenous spaces tend to be a very safe space for vulnerable conversations, for stress. Whether it’s the medicines and smudging and having a safe smudging space, to having an outdoor space, to having a Zen space, to having a space that’s just full of Indigenous artwork, it’s just generally very calming for Indigenous and non-Indigenous students alike. (Participant #7)

Regarding law school pedagogy and evaluation, one faculty member spoke about the importance of “teaching different styles of classes, lectures, seminars, and lecture-based survey courses”, as well as incorporating Indigenous pedagogies, land-based learning, and guest lectures into the classroom (Participant #2). Similarly, another faculty member explained how they include multiple assignments in their course to help students learn the material better:

So, I always do distributed evaluation, so four, five things over the course of the term. In the context of [area of law], for example, there’s short memos, two or three pages, and we just do them over and over again. And so, the idea is at least I’m trying to help people learn how to organize their thinking and communicate with me in a way that I can then give them feedback on. And then they can try it again, the same thing so that there’s a repeated pattern of something. (Participant #8)

The need for different classroom structures and non-traditional methods of teaching and evaluation was reiterated by several law students. One student said that law schools need more “circular classrooms” that are less “stadium-style” and more outdoor learning where students can “interact with the earth” (Participant #6), and another spoke about the need for more roundtable and small group discussions that involve consensus-building:

I love roundtable discussions, I love consensus-building, things of that nature...I find when we do smaller stuff, like ethics and intensives that we get broken down into smaller groups, I find those a lot more productive....Whether you do your readings or not, you get there and you’re going to learn just as much about it. You’re forced to partake in a very small group and have these conversations and get to know each other, understand those dichotomies between morality and loyalty and ethics and professionalism. And I think that has to be discussed a little bit more. (Participant #7)

One law student explained why it is also necessary to ensure that course materials are accessible in Indigenous languages:

I think materials need to be accessible in different languages because we have Mi’kmaq students whose first language is not English. We have materials in French and English, but do we have materials in Mi’kmaq? No, we don’t. Do we have any support for language? No, we don’t. So, I think that needs to be seriously considered. (Participant #6)

Several students said that they would like to see law schools use diverse methods of evaluation and rely less on 100% final exams. For example, when asked what methods of evaluation they would like to see more of, one law student said, “Not 100% finals, that’s for sure. I think it would be incredible if there could be oral evaluations or other forms of evaluation that are not structured in academia. And also, more practical engagement components” (Participant #6). Similarly, another student spoke about why they prefer writing papers over 100% final exams:

Law school teaches you how to write a three-hour exam; that’s what’s happening. So, the necessity of it seems pretty arbitrary. People talk about it all the time, about how if you’re practising law, you’re working together to come up with the best ideas, you’re researching. There’s a lot of different mechanisms that way. So, to be really limited to just how much word vomit can you get out that hits off a number of points of the test... It’s so, I think, arbitrary and irrelevant at the end of the day. Do I know better ways to do it? Not really. I’m too new. I do know as you get into your second and third year, you have a lot more paper course options. I’m a paper-writer, for sure, that’s what I prefer. (Participant #7)

Engagement with Reconciliation Post-TRC

Beginning in December 2016, the Committee received input from various stakeholders, including students and Mi’kmaq alumni at Kwilmu’kw Maw-klusuaqn Negotiation Office (KMKNO) in Millbrook, Nova Scotia (Schulich School of Law TRC Committee, 2019). Over the next six months, the Committee developed a plan for a staggered approach to curriculum reform that combined a mandatory standalone course and integrating relevant themes across their existing curriculum (Schulich School of Law TRC Committee, 2019). In May 2016, the Faculty Council approved a mandatory two-credit course for first-year students called Aboriginal and Indigenous Law in Context (Schulich School of Law TRC Committee, 2019). Between 2017 and 2019, the Committee met to make changes to the mandatory course and develop other elements of its response to the TRC’s calls to action (Schulich School of Law TRC Committee, 2019). The

TRC Committee did not contemplate an optional approach because, as one faculty member put it, “we collectively felt that if we are driven by the goal of professional competency, as opposed to political correctness, then it needs to be [mandatory]. This isn’t about being nice. This is about professional competency and not doing harm. And hopefully doing better. So, it’s just like all of our students need to learn a certain amount of professional competency in things like fiduciary law because you can do such great harm if you don’t” (Participant #1).

According to Dalhousie University’s academic calendar for 2021-2022, the mandatory course “provides an introduction to both Aboriginal Law and Indigenous Law, and the historical and contemporary context that is fundamental to understanding these areas of law” (Dalhousie University, n.d.-k, p. 149). The course is broken up into two parts, one in September (LAWS 1019 or “AILC I”) and one in January (LAWS 1029 or “AILC II”). The objective of AILC I is to “expose students to Mi’kmaq people and to teach them about things that are important to Mi’kmaq people – places, language, culture, spiritual practices, traditions, stories, art, historical and contemporary issues” (Council of Canadian Law Deans, n.d., p. 2). This objective is achieved through classroom instruction, a blanket exercise, special guest speakers, and fieldtrips to Mi’kmaq communities and places of historical significance to the Mi’kmaq (Council of Canadian Law Deans, n.d., p. 2). For example, in 2017-2018, students visited the Sipekene’katik Residential School site, Five Islands, and Partridge Island (Schulich School of Law TRC Committee, 2019). In 2018-2019, students visited Sipekene’katik First Nation, Millbrook First Nation, and the Mi’kmaq Native Friendship Center in Halifax (Schulich School of Law TRC Committee, 2019). Students are evaluated on the basis of a two-page reflection paper that “demonstrates a knowledgeable and thoughtful engagement with the component parts of the

experiential learning exercises” (Dalhousie University, n.d.-k, p. 149). In 2017-2018, students were given the following instructions for the reflection paper:

In your reflection piece, you are asked to write about what were the major points you took away from the activities you participated in and how you think it will impact your legal studies. You may also use the paper to pose questions for yourself, the legal community and Canadian society more generally. (Schulich School of Law TRC Committee, 2019)

In 2018-2019, students were asked to answer the following initial self-reflection questions:

1. How knowledgeable would you say you are about Indigenous people in Canada: their history, communities and cultures and the current issues they face?
2. What are the sources of your information on Indigenous people: elementary and high school, university, media, self-study, personal experience with Indigenous peoples, other?
3. What do you understand to be the relationship between Indigenous peoples and Canadian law?
4. What do you understand to be the biggest challenges Indigenous people face in Canada today?
5. Do you know anything about the laws of Indigenous peoples?
6. As a future lawyer, what do you think you should know about Indigenous peoples to make you are an ethically responsible lawyer? (Schulich School of Law TRC Committee, 2019)

In their reflection paper, they were asked to use their answers to these questions to “identify and critically analyse two or three key insights that you gleaned from AILC I” (Schulich School of Law TRC Committee, 2019). After reviewing students’ responses, the Committee identified 18 insights from the reflection papers:

1. Law is a social construct
2. Law is not necessarily about protecting rights but can be an instrument of oppression
3. Knowledge is culturally specific
4. That the past has intergenerational and current impacts
5. That the land we inhabit has historical indigenous names & significance
6. That try[ing] to step inside the shoes of others is vital
7. Cultural competence is essential
8. That we are all treaty people
9. That language is vital, but not necessarily translatable

10. That Indigenous/Aboriginal issues can affect all areas of legal practice
11. That legal education & practice is a privilege accessible [to] some and denied to others
12. That law has been, and continues to be, part of the problem
13. That listening is vital, and that we should not always be ready with a retort
14. That sameness of treatment may promise false equality
15. That it is ok to be emotional as a lawyer
16. That we are responsible for the choices we make and that we can be held accountable
17. Imperative that all lawyers should know something about indigenous legal systems
18. That legal pluralism & multi-juralism is a professional competency (Schulich School of Law TRC Committee, 2019)

The second part of the course, AILC II, “explores how law applies to, and is applied by, Indigenous people,” and “demonstrate[s] that areas of intersection pervade many areas of law” (Council of Canadian Law Deans, n.d., p. 2). Students receive two days of teaching on topics like the Marshall Inquiry, Indigenous/Mi’kmaq law, the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP), water rights, and treaties and section 35 of the *Constitution Act* (1982) (Schulich School of Law TRC Committee, 2019). After receiving instruction on how to give an effective presentation, students are put into groups and asked to present on one of the following topics:

1. Introduction to UNDRIP
2. Loss of language and culture and intergenerational harms as non-compensable loss in residential school class action
3. Sentencing circles and Restorative Justice initiatives
4. Indian status, membership and Indigenous citizenship
5. Property issues on reserve (Indian land regime and possibly also housing issues on reserve)
6. Indigenous conceptions of property and relationship with environment (link to duty to consult and accommodate)
7. Royal Proclamation [of 1763] & Aboriginal title
8. The *Caring Society* case, the systemic underfunding of services on reserve and human rights
9. Repeal of s. 67 of the CHRA [Canadian Human Rights Act] and its impact on Canada and FN [First Nation] governments, *Matson [Matson et al v Indian and Northern Affairs Canada]*, 2013 CHRT 13] case
10. Introduction to modern day treaty and self-government and negotiation processes (Schulich School of Law TRC Committee, 2019)

This mandatory first-year course is graded on a pass/fail basis, and students must pass both parts of the course (Dalhousie University, n.d.-k, p. 149). Student evaluations were very strong in the first two years the course was offered, and in May 2019, members of the Committee received the Class of 1967 Teaching Award for the course (Schulich School of Law TRC Committee, 2019). The Committee identified several success factors, including having a supportive Dean and collaborative colleagues, access to funding and research assistants, the Chancellor's Chair in Aboriginal Law and Policy (discussed below), and community and alumni connections (Schulich School of Law TRC Committee, 2019).

In addition to the mandatory first-year course Aboriginal and Indigenous Law in Context, Dal Law also developed several optional upper-year courses in Aboriginal and Indigenous law. In 2017-2018, Dal Law created a new course called LAWS 2270 Indigenous Governance. The Dalhousie University academic calendar for that year provides the following description of the course:

This seminar course is intended for students who want to obtain a deeper appreciation of governance systems and structures that currently apply to First Nation communities pursuant to the Indian Act and other federal legislation and policy, spanning areas such as elections, the exercise of Band Council authority through resolutions and by-laws, membership, essential services program devolution, land issues and economic development, employment and human rights issues on reserve, and dispute resolution mechanisms. This course will also examine systems beyond the Indian Act, including systems that First Nations communities are currently engaging in and aspiring towards, such as self-government and greater implementation of customary and Indigenous law. This course will be useful for students who intend to work closely with First Nations communities or organizations and government departments servicing those communities. As opposed to being a general survey of the legal and policy issues affecting Indigenous Peoples in Canada, like the Aboriginal Peoples and the Law course, this course will make governance issues affecting First Nations communities its focal point. (Dalhousie University, n.d.-l, p. 150)

Dal Law has offered a version of this course since then. The following year, Dal Law created a new course called LAWS 2290 Advanced Aboriginal Peoples and the Law. According to the

Dalhousie University academic calendar for that year, this course “familiarize[s] students with the current moment in Aboriginal law” and exposes them to advanced topics in Aboriginal law such as

Aboriginal equality and human rights claims, the revitalization of Indigenous Law, the Truth and Reconciliation Commission Final Report, the United Nations Declaration on the Rights of Indigenous Peoples, Aboriginal rights and title, consultation, the criminal justice system and self-governance, sources of law, unique constitutional provisions, the special position of Indian reserves, the nature of aboriginal title and rights, Indian treaties, fiduciary obligations, taxation, and self-government/self determination. (Dalhousie University, n.d.-m, p. 191)

Dal Law continues to offer this course to students today.²⁸ In 2019-2020, Dal Law added a new course called LAWS 2289 Indigenous Law. According to the Dalhousie University academic calendar for that year, students enrolled in this course “examine Indigenous legal principles, rules, processes and values” and “identif[y] and appl[y] substantive Mi’kmaq law to promote the resurgence of Indigenous social, political, cultural and economic success” (Dalhousie University, n.d.-n, p. 126). Dal Law has offered this course each year since then.²⁹

In addition to the first-year mandatory course Aboriginal and Indigenous Law in Context and optional upper-year courses in Aboriginal and Indigenous law, Dal Law also created new optional courses that address Indigenous legal issues. For example, in 2019-2020, Dal Law created a new course called LAWS 2276 Imprisonment and Penal Policy, which explores “specific issues that incarceration raises as it interacts with other aspects of law and society, including family, aboriginality, labour, property, end of life planning etc” (Dalhousie University, n.d.-n, p. 125). Dal Law has offered this course each year since then.

²⁸ In 2021-2022, this course was renamed Special Topics in Aboriginal Law (Dalhousie University, n.d.-k, p. 179).

²⁹ In 2020-2021, this course was renamed Indigenous Law as Practice: Applying Mi’kmaq Legal Traditions (Dalhousie University, n.d.-o, p. 179).

In 2021, Dal Law started offering a Certificate in Aboriginal and Indigenous Law. The Certificate provides students with the opportunity to obtain an in-depth understanding of Aboriginal and Indigenous law. In order to obtain the Certificate, students must complete the following three courses: LAWS 1019 & 1029 Aboriginal and Indigenous Law in Context, LAWS 2062 Constitutional Law, and LAWS 2280/2282 Aboriginal Peoples and the Law (Dalhousie University, n.d.-p). They must obtain an additional three credits by taking one or more of the following courses:

LAWS 2290 Special Topics in Aboriginal Law
LAWS 2270 Indigenous Governance
LAWS 2282 Indigenous Law as Practices: Applying Mi'kmaq Legal Traditions
LAWS 2227 Dealing with the Past: The Indian Residential Schools Settlement
LAWS 2006 Kawaskimhon Aboriginal Rights Moot (Dalhousie University, n.d.-p)

Students also have the option of completing the additional three credits through a major research paper on a topic related to Aboriginal or Indigenous law and approved by the TRC Committee (Dalhousie University, n.d.-p). The Certificate is supported by several faculty members who specialize in Aboriginal and Indigenous law or work as allies in these areas.

In addition to making changes to their curriculum, the law school also responded to the TRC's calls to action by creating an Elder-in-Residence position in 2015 and the Chancellor's Chair in Aboriginal Law and Policy in 2016 (Council of Canadian Law Deans, n.d., p. 2). The Chancellor's Chair was awarded to Professor Naiomi Metallic for a five-year term with the following four expectations:

- Contribute to teaching and research in the area of Aboriginal Law;
- Identify opportunities to collaborate with scholars from other Dalhousie University faculties to offer interdisciplinary courses and to conduct interdisciplinary research in the area of Aboriginal Law;
- Build the profile of the Schulich School of Law and Dalhousie University in Aboriginal Law and Policy teaching and research; and
- Contribute to building relationships between the university and Aboriginal communities in the Maritimes (Dalhousie University, 2016, p. 1)

The law school also added more Indigenous art to the law school and worked with the Nova Scotia Barristers' Society to develop the Ku'TawTinu: Mi'kmaw Shared Articling Initiative, which allows graduates to create an articling experience that focuses on Aboriginal and Indigenous law (Council of Canadian Law Deans, n.d., p. 2).

Challenges Responding to TRC's Calls to Action

Individual faculty members identified several challenges associated with engaging with reconciliation. The biggest challenge was getting buy-in from students and other faculty members. One faculty member said that students sometimes feel that the new courses being added to the curriculum "duplicate things that they already know or that it's forcing them to do something they don't really want to learn about" (Participant #8), and another said that the Committee experiences some resentment from students if they do not see the relevance of studying Indigenous law:

Whenever you introduce a mandatory course to a law school you are carving time out of something else. And so that's a constant issue, right? Where does this fit in and what gets lost, and are we making that decision correctly? Each wave of incoming students will, at some point, see what we're doing as being about being nice, or apologetic, as opposed to doing something that's about professional competency.

And so, there's then resentment, and a sense of why are you forcing us to do this. And because something is mandatory, students feel upset if they don't see the relevance of it for their own career path. And we encounter that with this topic in a way that we don't when I, say, teach contract law as a mandatory course. They just assume it's what you've got to do to be a lawyer, even though the person wants to practice in personal injury, and contracts are never going to be a part of it. (Participant #1)

Another faculty member spoke about how some students are more interested in consuming Indigenous culture than doing the hard work of learning Indigenous laws:

It's very dangerous to generalise with students. I'm normally very careful here. But there may be a sense where students want to be interested in Indigenous stuff in terms of rituals, eating, and dancing. But when they have to do the hard work of law as it relates to Indigenous peoples, that's more of a "whoa, is that what we're signing up for here?" So, there may be some resistance for that. (Participant #3)

One faculty member said that it is important to “communicate a level of priority to students” to reduce the resistance and resentment (Participant #2).

Faculty members also said that they experience resistance from some faculty members who feel as though they are being asked to direct their energy away from the content they normally teach. As one faculty member put it, “staffing the courses means because we’re building up all of these extra courses, or new courses, it means that you’re pulling people away from the courses they were teaching that might have been in the traditional core” (Participant #1). Similarly, another faculty member said that one of the challenges has been “around issues of professors protecting their own discretion to decide what they want in their own courses” (Participant #3). One faculty member also raised the issue of “non-responsiveness” from some faculty members. They said that this limits their ability to have honest conversations about the work that they are doing:

So that’s been a challenge of figuring out how to read non-responsiveness....That then impedes on our ability to feel confident that we have as much support and consensus as we believe we do. Because we really think the integrity of the whole thing turns on people having very honest conversations about their actual reasons for being involved or not being involved, or their concerns. And if people aren’t being honest then you can’t have meaningful dialogue about it. So that makes you worry. (Participant #1)

Another faculty member also identified unresponsiveness as a challenge:

What other challenges? Some people don’t respond to our emails. And so, we don’t know if that’s because they’re opposed to what’s going on, or they’re just busy and they don’t respond to emails. Or if they’re interested and we just caught them at a bad time. (Participant #3)

Two related challenges identified by faculty members were finding space in the curriculum for new courses and building consensus about what these courses should look like. One faculty member said that finding space in the curriculum for new courses is a “huge challenge”

(Participant #3), and another spoke about the challenge of “getting some consensus around the upper year components” and “finding something that is a good fit” (Participant #4).

Another challenge identified by faculty members relates to the need to hire more Indigenous faculty members. Faculty members indicated that responding to the TRC’s calls to action requires expertise in Indigenous law, which means that this work falls disproportionately on the shoulders of Indigenous faculty members. One faculty member described the workload that Indigenous faculty members experience as “enormous” (Participant #3). This becomes a problem because many law schools have only one or two Indigenous faculty members. Several faculty members said that law schools need to meet this challenge by hiring more Indigenous faculty members and encouraging non-Indigenous allies to assist them. One faculty member put it this way:

I think another challenge that I see, and I don’t have personal experience of it, but I would see is that in terms of the expertise that is often needed to develop the materials to implement this [response to the TRC’s calls to action] falls disproportionately on the shoulders of a few Indigenous faculty members. And so, that is a real challenge, and knowing how to meet that I think...[means] hiring more Indigenous faculty and having others really neatly positioned to do that work and be here. (Participant #4)

Hiring more Indigenous faculty members requires money. Several participants said that one of the biggest challenges they face is gaining access to financial support. One faculty member, for example, spoke about how obtaining more money will help them achieve their goals:

I guess a big challenge would be financial support for what we want to do....So, while we have the Chancellor’s Chair in Aboriginal Law and Policy...it’s actually really a very small amount of money. And so, we do need to have better access to resources, but resources are very limited in the university. And so, significantly more resources in terms of hiring faculty, hiring research associates, hiring people to maybe offer more courses, etc....So, getting genuine amounts of money as opposed to symbolic money would be helpful. (Participant #3)

Is the TRC's Call to Action 28 Enough?

Faculty members and law students said that although the TRC's call to action 28 is a necessary component of reconciliation, law schools must go further to create lasting structural change. Faculty members told me that law schools are not engaging with reconciliation unless they require all students to learn about Indigenous law. As one faculty member said, "I do think it's hard for me to imagine not having that mandatory first-year component and claiming that we're kind of successful working toward reconciliation" (Participant #4). Other faculty members said that call to action 28 is "a catalyst for some real big changes in universities" (Participant #2) and helpful for "advancing curricular change or societal change" (Participant #1). Similarly, law students said that call to action 28 "does a lot" (Participant #5) and that "it's great that we have more Aboriginal content" (Participant #6).

Despite the importance of call to action 28, many participants said that on its own it does not go far enough towards creating transformative reconciliation in legal education. One faculty member said that on its own call to action 28 is inadequate because "learning a number of content areas" and "being able to recite a test about what an aboriginal right is" will not address the "internalized systemic racism" that exists in many Canadian law schools (Participant #1). Similarly, another faculty member said that call to action 28 is "not actually achieving that much" (Participant #3). This faculty member said that the TRC Committee "recognized [this] from day one" and, as a result, agreed on a response to call to action 28 that would include more than just a single mandatory standalone course in Indigenous law. Every law student that I interviewed agreed that call to action 28 does not go far enough towards creating transformative reconciliation. Two law students spoke about how call to action 28 does not increase diversity or eliminate barriers to success for Indigenous students:

It [call to action 28] does a lot but I feel like things won't be ideal in my world until there's more of a proportionate group of Indigenous law students. Dal has done a lot to try and get some diversity in its students but it can be hard. (Participant #5)

I mean, it's [call to action 28] almost like a little titbit. Like almost like an appetiser, but you're still waiting for the main meal and dessert and all the other stuff to come....It's great that we have more Aboriginal content that's coming out, but where are our Indigenous students? How come our population's so small? How come we still have all these systemic barriers in place? (Participant #6)

Participants said that in order for call to action 28 to be effective, it must be read in conjunction with the TRC's other 93 calls to action. One faculty member said that call to action 28 is "a very targeted task" that needs to be read "in the context of the whole instrument, the whole report" (Participant #1), and another commented that "there's 93 others and then about a thousand other recommendations from other commissions and inquiries [that need to be examined when exploring how law schools can engage with reconciliation]" (Participant #2). Several law students agreed with these faculty members. For example, one law student said that call to action 28 cannot be responded to in isolation because "the TRC has so many calls to action" that require consideration (Participant #6), and another said that call to action 28 will only create meaningful change "if it's [implemented] in connection with all the other recommendations [because] putting one piece down of a puzzle is a very fractured picture at the end of the day" (Participant #7).

How Well Does Dal Law's Response to the TRC's Calls to Action Contribute to Reconciliation?

When asked to evaluate how well the law school's response to the TRC's calls to action contributes to reconciliation, most participants said that the law school is on the right path but that it is too early to tell how powerful and effective their response will be. One faculty member said that the law school's response "is a start" and that "we need to see what happens when these students graduate" (Participant #1), and another said, "I think it moves the dial a bit. It's better

than not doing it” (Participant #8). Similarly, another faculty member said “we’re learning lots as we go and I think it creates a basis for continuing to push that forward” (Participant #4). This faculty member also spoke about the need to work with the momentum created by the TRC when the final report and recommendations were released. Regarding the release of the TRC’s final report and calls to action, they noted that “[i]t was very palpable when those first came out that there was real openness and appetite in leadership and faculty and students to really do that work”. According to this participant, an ongoing challenge for the TRC Committee has been maintaining that momentum while responding to the TRC’s calls to action. While they do not know how long this momentum will last, they are encouraged by the law school’s commitment:

[A]s we went forward and we tried to implement this kind of staged approach, I think it was also the ongoing challenge of maintaining that momentum. I think it connects here in the sense that the idea of implementing a course and then saying good, we’re done, was a real worry. And I don’t know how that’s played out to be honest with you. I think there is the danger that we stall, that we’ve done all of those things and that over the course of the next few years there will be some sense that we’ve done what we needed to do—that we’ve responded to what we needed to respond to and that that momentum will just kind of slow down. Now that’s maybe true. I think that’s not a foregone conclusion by any means.

...The other courses that we’ve seen come up over the last couple of years, I think all of that contributes to the sense that the law school does have a commitment. That the students who are really interested in doing this work and maybe developing specializations, it feels like they are well supported in doing that. That Indigenous students are well supported in this work and they’ll carry that momentum forward. (Participant #4)

These comments were reiterated by several law students who said that it is too early to tell how effective the law school’s response has been. For example, one law student said, “I think because they’ve just really started working on this the past two years, and I’ve been here three years, so I’ve only seen the baby stages of it really” (Participant #6). This law student also said that the changes that the law school has made to date are “not a change that I really feel day-to-day” (Participant #6).

What More can Dal Law school do to Better Contribute to Reconciliation?

Participants had many recommendations for how the law school can better engage with reconciliation. Participants had recommendations for how to improve the law school curriculum. One faculty member said that the law school should “have a full semester first-year course for students, which a number of law schools have done” because it “normalizes the structure” (Participant #1). Similarly, one law student said that it is important for the law school to develop a mandatory course in Indigenous law because “that’s the only incentive I can see that’s going to make [students want to learn the content]” (Participant #5). In addition, one faculty member said “we certainly need more courses in the area [Indigenous law]” (Participant #3), and another spoke about the importance of “creat[ing] more flexibility in our existing credit courses” (Participant #4).

In addition to making changes to the undergraduate curriculum, participants also said that the law school needs to make changes to its graduate programs. One faculty member said the law school needs to make its graduate programs “as flexible as possible in order to home grow” Indigenous and non-Indigenous faculty members who can teach and conduct research in the area of Indigenous law (Participant #2), and another said that “It would be great if we could do more with our graduate program as opposed to our JD program” (Participant #3). Participants said that the law school can also better engage with reconciliation by doing “more law school off campus, closer to some of the communities” (Participant #3) and doing more “land-based learning as part of a curriculum that really engages with Indigenous legal systems and communities” (Participant #4).

Participants said that creating transformative reconciliation will require the law school to advance Indigenous law revitalization. One faculty member said the law school can do this by

creating an Indigenous legal clinic like the Indigenous Community Legal Clinic at the University of British Columbia—one that will provide “legal information and support or do project-driven work” (Participant #1). Another faculty member said the law school can do this by creating a “sister unit to the Wahkohtowin Law and Governance Lodge at the University of Alberta”, which will allow them to better “serv[e] communities in the Atlantic region in terms of revitalization of Indigenous laws” (Participant #2).

Doing this work requires access to funding and dedicated faculty members. Participants said that the law school needs to hire more Indigenous faculty members. One faculty member said, “[i]nstitutions can do more in terms of ensuring dedicated funding. I would really, really want to see more hiring [of Indigenous faculty members]” (Participant #2), and another said “[w]e need the money to hire people and we need the money to create scholarships for people to come, particularly Indigenous people who come from historically disadvantaged communities” (Participant #3).

Chapter Summary

Based on my interviews with individual faculty members and Indigenous law students, participants defined reconciliation, both as a general concept and in the context of legal education, in ways that align with the transformative approach to reconciliation. For them, reconciliation is a process of creating a new relationship between Indigenous Peoples and non-Indigenous people and the Canadian state. This process does not demand that Indigenous Peoples reconcile themselves with the settler colonial state. Instead, non-Indigenous people and the Canadian state must take responsibility for our past and ongoing harmful actions towards Indigenous Peoples. Participants said that to create this new relationship, non-Indigenous people must gain an accurate understanding of the relationship between Indigenous Peoples and the Canadian state, which involves learning about historical and contemporary injustices. However,

learning the truth about this relationship is not enough; reconciliation requires us to use this knowledge to create a new legal and political order—one that supports the resurgence of Indigenous cultures, languages, laws, and governance structures. One participant said that this new legal and political order is only possible if we decolonize institutions that have harmed Indigenous Peoples for centuries.

In the context of legal education, participants said that reconciliation requires Canadian law schools to critically examine how law has been used as an instrument of the ruling class and a tool to perpetuate inequality. By extension, participants said that law schools need to acknowledge the role they have played in the process and teach students to practice law in ways that do not perpetuate harm. In addition to learning to practice law in ways that improve society, participants also said that because Canada is a multi-juridical country founded on Indigenous law, law schools need to respectfully engage with this content. All participants said that law students must be required to learn about Indigenous law and that it needs to occur throughout their legal education. Many participants said that students should learn this content in a mandatory first-year course that addresses the content in call to action 28. Other participants said that law schools should include this content in other mandatory courses and offer a spiralling curriculum where students add to knowledge gained in previous years. Finally, participants said that in addition to engaging with Indigenous law, reconciliation requires law schools to make their admissions process more accessible for Indigenous students. They also said that reconciliation requires law schools to create more spaces for Indigenous students to study and socialize and to empower faculty members to use creative methods of evaluation and engage with experiential learning, land-based learning, and Indigenous pedagogies.

Based on my interviews and my review of Dal Law's website and Dalhousie University academic calendars, Dal Law has made important changes to its program since the TRC's final report and calls to action were released. It created a short mandatory first-year course in Aboriginal & Indigenous Law in Context, established a Certificate in Aboriginal and Indigenous Law, and developed optional upper-year courses in Aboriginal and Indigenous law and courses that address Indigenous legal issues. It also made broader changes to advance education on Indigenous law and improve the culture and environment of the law school by, for example, creating an Elder-in-Residence position and the Chancellor's Chair in Aboriginal Law and Policy. All of these changes are contributing to transformative reconciliation at Dal Law.

There are some things that Dal Law can do to better engage with transformative reconciliation: (1) develop a full semester or full year first-year course that covers material included in call to action 28³⁰; (2) incorporate Indigenous law into all other mandatory courses, and offer appropriate training to faculty members to help them teach this content; (3) work with local Indigenous communities to create opportunities for community and land-based learning; (4) strengthen its graduate programs to home grow scholars who can teach and conduct research in the areas of Aboriginal and Indigenous law; (5) create an institute for the study, research, and application of Indigenous law; and (6) establish an Indigenous community legal clinic.

Dal Law is already working on many of these things. During my interviews, faculty members indicated that the TRC Committee is working hard to develop another mandatory requirement. At the time of the interviews, faculty members were not sure if this would be a standalone course or a basket of courses to allow for greater flexibility. Professor Naiomi

³⁰ Currently, the course runs for a few weeks in September and January. Several participants said that it should be a semester or year-long course.

Metallic has entered her second term as the Chancellor's Chair in Aboriginal Law and Policy and Dal Law has hired two Indigenous faculty members who will be joining her on the TRC Committee (Lean, 2021). Professor Metallic is also working on developing an Indigenous Law and Governance Lodge (an "Lnuwey Tpludaqann Wikuom"), with the goal of "mak[ing] Dalhousie a hub for supporting Mi'kmaq and other Indigenous communities in the Atlantic region in revitalizing their own laws, while educating members of the legal communities about ongoing developments in the areas of Indigenous laws and governance practices" (Lean, 2021). Creating another mandatory requirement, establishing an Indigenous Law and Governance Lodge, and implementing the other action items listed above will put Dal Law on the path to creating transformative change. Of course, implementing these changes will require significant funding. If one does not already exist, Dal Law should establish a sub-committee comprised of administrators, faculty members, staff, and students whose sole responsibility is developing creative proposals to obtain grants and donations to fund these commitments.

CHAPTER 5: UNIVERSITY OF VICTORIA

Chapter Overview

In this chapter, I will outline the University of Victoria Faculty of Law's ("UVic Law") reconciliation journey to date. In the first section of the chapter, I discuss UVic Law's engagement with Aboriginal and Indigenous law before the TRC's final report and calls to action were released. In the second section, I briefly describe how the law school's TRC reading group was formed. In the third and fourth sections of the chapter, I explore how participants explain reconciliation, both as a general concept and what it means in the context of legal education. In the fifth section, I discuss how UVic Law has responded to calls to action 28 and 50. In the sixth section, I detail some of the challenges of engaging with reconciliation that were identified by the participants. In the seventh and eighth sections of the chapter, I examine participants' views on whether and how call to action 28, and their institution's response to it, contributes to reconciliation. I end this chapter with a discussion of what participants suggest will better contribute to reconciliation.

UVic Law's Engagement with Reconciliation Pre-TRC

UVic Law started offering courses in Aboriginal and Indigenous law long before the TRC's final report and calls to action were released. In 1986-1987, UVic Law started offering LAW 341 Native Legal Issues. The academic calendar for that year provides the following description of the course: "[t]his seminar introduces students to treaties, common law, constitutional and statutory law in relation to aboriginal title and native rights. Specific reference will be made to reserve lands, property interests, hunting and fishing, family law, culture and religion" (University of Victoria, n.d.-a, p. 242). In 1993-1994, this course was renamed

Historical Foundations of Aboriginal Title and Government. Along with the name change, the description of the course also changed:

This seminar introduces students to the issues of aboriginal title and self-government in their historical context. The focus is upon common law, constitutional and statutory law in relation to aboriginal title and rights, but reference is also made to the treaty process, reserve lands and hunting and fishing. Although the course deals with all parts of Canada, the emphasis is upon British Columbia. (University of Victoria, n.d.-b, p. 340)

This course was offered each year until 2013-2014 when it was changed to LAW 341

Introduction to the Legal History of “The BC Indian Land Question”. According to the academic calendar for that year, this course introduces students to “common law and Indigenous concepts of title and governance in the context of the legal history of British Columbia” and explores topics such as “the fur trade, colonization, law enforcement, treaty-making, reserve creation and the role of governments and aboriginal organizations in the campaign for title and rights from the fur trade era to the *Calder* decision in 1973” (University of Victoria, n.d.-c, p. 349).

In 1998-1999, UVic Law introduced a course called LAW 340 Indian Rights, Land and Governments. The academic calendar for that year provides the following description of the course:

This is a course in modern Canadian native law (or “aboriginal law”)—the laws which relate to the special status and capacities of aboriginal peoples and to their distinctive institutions—as part of the Canadian legal system. The emphasis is on current problems in the field of law as it is found and practiced today. The course covers such topics as: the extent to which provincial laws may extend to Indian reserves and Indian people; aboriginal rights over Crown lands; the relationship between bands and neighbouring municipalities; exemptions and other similar issues of importance to aboriginal people and non-aboriginal people alike. (University of Victoria, n.d.-d, p. 239)

This course has been offered each year since then. In 2004-2005, UVic Law designed a course called LAW 368 Indigenous Women and the Law. According to the academic calendar for that year, this course “examines the unique historical and contemporary place of Indigenous women within the constructs of Canadian law and society” (University of Victoria, n.d.-e, p. 389). In

doing so, it covers topics like “marital property, colonialism, government, membership, human rights, criminal justice, sexuality, employment and children” (University of Victoria, n.d.-e, p. 389). This course was offered each year until 2013-2014 when it was changed to LAW 368

Indigenous Feminist Legal Studies. According to the academic calendar for that year, this course

[t]akes an interdisciplinary and intersectional approach to selected legal issues concerning indigenous women in Canada and elsewhere. [It] [c]ritically examines a range of legal and political issues and perspectives (i.e., indigenous feminisms, indigenous feminist legal theories, citizenship, nationhood and political collectivities, governance, aboriginal rights and title, Charter rights and freedoms, human rights, *Indian Act*, indigenous legal traditions, and criminal justice). (University of Victoria, n.d.-c, p. 350)

This course has been offered each year since then.

In addition to courses in Aboriginal and Indigenous law, students have also been able to take courses that address Indigenous legal issues. In 1986-1987, UVic Law created a course called LAW 361 Historical Foundations of Canadian Law, which examined, among other topics, “the impact of law enforcement upon native Indians” (University of Victoria, n.d.-a, p. 242).

This course was only offered until 1988-1989, when it was changed to LAW 361 Historical Foundations of the Common Law, which, according to academic calendars since then, does not address Indigenous legal issues. This course is still being offered today. In 1997-1998, UVic Law added a new course called LAW 358 Race, Ethnicity, Culture and the Law, which explores many topics including “First Nations justice” (University of Victoria, n.d.-f, p. 310). This course is still being offered today. The following year, UVic Law started offering a course called LAW 362 Colonial Legal History: Law, State, Society and Culture in Canada and Australia. Although the description for this course does not mention Aboriginal or Indigenous law or Indigenous Peoples, it very likely addressed Indigenous legal issues. This course was last offered in 2016-2017. In 1999-2000, UVic Law introduced a course called LAW 353 Environmental Law Centre Clinic. Students in this course “engage in environmental law research projects for lawyers acting

for community-based environmental groups and First Nations” (University of Victoria, n.d.-g, p, 250). This course is still being offered today. In 2003-2004, UVic Law started offering a course called LAW 373 International Human Rights, which “explores the nature of civil and political rights and social and economic rights, the rights of women, of indigenous peoples and ethnic and cultural minorities, and of children” (University of Victoria, n.d.-h, p. 367). This course is now being offered under the revised title LAW 373 International Human Rights and Dispute Resolution. The following year, UVic Law designed a new course called LAW 375 Law, Constitutionalism and Cultural Difference. Topics covered in this course include “the constitutions of culturally diverse societies, indigenous self-government, separate schools, and the international protection of human rights” (University of Victoria, n.d.-e, p. 389). In 2005-2006, UVic Law introduced a course called LAW 374 Forest Law and Policy, which examined “emerging topics such as forest certification and First Nations forestry” (University of Victoria, n.d.-i). This course was last offered in 2019-2020.

UVic Law has also engaged with Aboriginal and Indigenous law in other ways. The Aboriginal Cultural Awareness Camp, the Akitsiraq Law School in Nunavut, and the Indigenous Law Research Unit are three examples. The Aboriginal Cultural Awareness Camp was started in 1995 when a group of UVic Law students and faculty members, RCMP and municipal police officers, and Tsartlip elders met on their reserve at Brentwood Bay to exchange ideas about law and engage in a process of cultural learning (University of Victoria, n.d.-j) The Camp continues today with the participation of a much larger number of UVic Law students and students from other universities. It has recently involved activities like “ocean canoe voyages, traditional sweat lodge ceremonies, pit cooking, singing and drumming, cedar-bark weaving and a lot of group

discussions, with this year's focus on Indigenous legal traditions" (University of Victoria, n.d.-j).

The Akitsiraq Law School was created in 2001 as a law degree program for Inuit students in Iqaluit, Nunavut. The purpose of the program was to fill the growing need for Inuit lawyers by offering Inuit students the opportunity to earn a law degree from UVic Law by using the facilities of the Nunavut Artic College (Canadian Forum on Civil Justice, n.d.). Courses were taught by faculty members from UVic Law and other Canadian law schools (Canadian Forum on Civil Justice, n.d.). The program lasted four years and graduated 11 students (Nunatsiak News, 2016). In 2010, there were plans to re-open the program to 25 students in partnership with the University of Ottawa but the Government of Nunavut rejected the Akitsiraq Law School Society's request for the \$3.57 million needed to fund the program (Bell, 2010). In March 2016, the Government of Nunavut announced plans to re-launch a law school program in 2017 for up to 25 students (Rohner, 2016). That August, a proposal was announced by the Government of Nunavut to partner with the law school at the University of Saskatchewan to create an Iqaluit-based law program at Nunavut Artic College (Nunatsiak News, 2016). Classes began in September 2017 and students completed the program in the spring of 2021 (University of Saskatchewan, n.d.).

In 2012, UVic Law established the Indigenous Law Research Unit (ILRU). The ILRU was created as a single project in partnership with the TRC, the Indigenous Bar Association, and the Law Foundation of Ontario (Indigenous Law Research Unit, n.d.-a). The project, "Accessing Justice and Reconciliation", was led by UVic Law professors Hadley Friendland and Val Napoleon and coordinated by Renée McBeth Beausoleil (Indigenous Law Research Unit, n.d.-a). Professor Napoleon is now Director of the ILRU, supported by Professor Rebecca Johnson as

Associate Director, Jessica Asch as Research Director, and a small team of researchers (Indigenous Law Research Unit, n.d.-b).

The ILRU works with Indigenous communities on community-led research projects “aimed at producing law reports and other legal materials that support community laws and governance, as well as public education” (Indigenous Law Research Unit, n.d.-c). The research projects focus on four subject areas: social, environmental, political, and economic (Indigenous Law Research Unit, n.d.-c). The ILRU’s approach to re-articulating Indigenous laws has five main phases (Indigenous Law Research Unit, n.d.-c). During phase one, the ILRU works with the community to create a research partnership agreement. This involves clarifying the community’s needs, developing and refining research questions, and obtaining ethics approval (Indigenous Law Research Unit, n.d.-c). Phase two involves conducting preliminary research. During this phase, the ILRU engages with the community’s legal resources to “develop a preliminary outline of legal principles and processes from that legal tradition” (Indigenous Law Research Unit, n.d.-c). During phase three, the ILRU uses engagement sessions and focus groups with the community to have discussions about the research on their law (Indigenous Law Research Unit, n.d.-c). Phase four involves drafting a final report for the community and meeting with them to receive their feedback (Indigenous Law Research Unit, n.d.-c). During the final stage of the research process, the ILRU presents the revised report to the community for implementation (Indigenous Law Research Unit, n.d.-c). Here is a list of some of the ILRU’s current and past research projects:

- GroundWork: Revitalizing Indigenous Land Laws in Treaty 8 Territory (2019-2022)
- Articulating Indigenous Human Rights (2019-2022)
- Nl̓eʔkəpmx and Syilx Laws of Water and Watershed Governance (2019-2021)
- Indigenous Law in the British Columbia (BC) Professional Legal Training Course (2020)

- Kipimoojikewin (“the things we carry with us”): How Anishinaabe Law Upholds Community Governance (2019-2020)
- Tracking Change: The Role of Local and Traditional Knowledge in Watershed Governance (2018-2020)
- NIETU, O Child and Caregiver Safety and Nurturance Toolkit (2018-2020)
- Sagayt k’üülm goot (“Of One Heart”): Inter-Nation Co-operation and Dispute Resolution in the Tsimshian Legal Traditions (2017-2020)
- Water Laws: Lessons from Indigenous and Colonial Stewardship (2016-2020)
- Secwépemc-kt ell k’weselktnéws-kt (“we are all Secwépemc and we are all related”): Secwépemc Citizenship Law (2017-2019)
- Indigenous Governance and Citizenship: Developing a Collaborative ILRU Methodology (2017-2019) (Indigenous Law Research Unit, n.d.-c)

In addition to conducting community-led research on Indigenous laws, the ILRU also offers workshops and training courses (Indigenous Law Research Unit, n.d.-d) and produces educational resources (Indigenous Law Research Unit, n.d.-e). For example, UVic Law offers LAW 388A Indigenous Law Research, Method and Practice, a one-month summer intensive course for students, lawyers, and researchers that introduces participants to the ILRU’s legal methodologies (University of Victoria, n.d.-k). The ILRU’s work was instrumental in the development of call to action 50. As one faculty member put it, “[w]e knew we had to do this work [Indigenous law revitalization] and what was wonderful was that the TRC’s report, the full report on recommendation number 50, is based on our work. It’s based on the establishment of this research unit” (Participant #1).

Background About the TRC Reading Group

UVic Law was one of the first law schools in Canada to respond to the TRC’s final report and recommendations. UVic Law does not have a TRC Committee. Instead, the law school created a TRC reading group not long after the final report and calls to action were released (Council of Canadian Law Deans, n.d., p. 20). The reading group was made up of Indigenous and non-Indigenous faculty members who met regularly to read the final report and calls to action. One faculty member explained the reading group’s informal mandate:

We have something called the TRC reading group...[P]retty much every week we met and there was no sort of administrative agenda for that committee, but we had the summary reports and we basically read like ten pages a week or something very small like that. And we ended up talking about it. Things that came out of that were not formal policies though but definitely teaching ideas and kind of ideas of how to think differently about the work that we've been doing. (Participant #3)

In addition to reading the report and calls to action, the reading group was created to develop ideas for responding to calls to action 28 and 50. Participants told me that the reading group often worked collectively with other committees, including the Curriculum Committee, the JD/JID Committee, and the Equity and Diversity Committee, and some of the participants were members of one or more of these committees.

Faculty members indicated that they joined the reading group because they knew that something important was happening with the publication of the TRC's final report and calls to action. For example, one faculty member said "[w]hen the TRC report was published in the summer of 2015, I kind of got the sense that there was something really important happening... [T]here was a broader quality to the public debate in that moment that I felt was really kind of inspiring" (Participant #3). In addition to joining the reading group out of a sense of being inspired by the TRC's work, this participant also joined because "some of the calls to action spoke directly to lawyers and legal educators, [so] I thought it was really incumbent to learn about it" (Participant #3). Another faculty member expressed similar reasons for joining the reading group. This participant noted that they joined because the TRC's final report and calls to action "specifically mentioned the law societies and the law schools" and, as a faculty member, "you have to transform the way you teach. You have to have an inclusive environment. You have to address differences that exist because of different ways that people have experienced colonialism" (Participant #4). The seniority of the reading group's members varies; the most

senior member has been a faculty member for 30 years, and the most junior member joined faculty in the last five years.

What is Reconciliation?

Most UVic Law faculty members and law students that I interviewed described reconciliation, both generally and in the context of legal education, in a manner that is consistent with the transformative approach to reconciliation. Nearly all of them indicated that they use the term *reconciliation*. Participants said that reconciliation is about creating a new relationship between Indigenous Peoples and non-Indigenous people and the Canadian state. For example, one faculty member explained that reconciliation means “finding ways in law to understand the complexity of our relationships and allow for us to be different from one another and disagree with one another even as we try to find ways to disagree agreeably” (Participant #2). This faculty member also spoke about “possibilities of still living with some peace and friendship and goodwill even if we’re not all on the same page, seeing things in the same way”. Similarly, another faculty member defined reconciliation as “the creation and maintenance of good relationships” (Participant #3). One faculty member said that reconciliation is “the creation of new respectful relationships” where people “have continuing obligations to each other based on this relationship that constantly need to be renewed” (Participant #5). This faculty member also connected reconciliation to principles that guide the Coast Salish people and their laws, including “living the good life”, “kinship and relationality”, “trust and humility”, and “sharing and love”. Finally, one faculty member said that reconciliation is “about finding a mutually respectful relationship that acknowledges the settler colonial history and its impact and [ensures] our institutional relationships are on a nation-to-nation basis” (Participant #6). These comments were reiterated by law students. For example, one law student said that reconciliation is about

“working together, listening and creating plans together” (Participant #9), and another said that it involves non-Indigenous people “coming to Indigenous people with an open mind and honesty to work towards something together” (Participant #8).

Participants had much to say about what this new relationship between Indigenous Peoples and non-Indigenous people and the Canadian state should look like. Participants said that reconciliation requires non-Indigenous people and the Canadian state to be honest about the history of Canada and the experiences of Indigenous Peoples. One faculty member, for example, said, “[t]o me I think it [reconciliation] means taking recognition, not only of the legacies of colonialism, of residential schools in the past, of understanding and being accountable, but paying absolute attention to how that exists today and will continue on into the future” (Participant #4). In addition, one law student commented that “truth needs to come up first before anything can be reconciled” (Participant #8), and another law student said that it is important to know that “residential schools did happen here, what happened at residential schools, and that this was the aim of our government policies at the time” (Participant #9). In addition to being honest about Canada’s relationship with Indigenous Peoples, participants also said that this new relationship must involve “restorative justice” (Participant #6) and “effort on the part of non-Indigenous people” to work with Indigenous Peoples to create transformative change (Participant #8). Finally, some participants discussed the role that law plays in reconciliation. For example, one faculty member spoke about the importance of “working across legal orders in a way that’s productive” (Participant #1), and another faculty member talked about Indigenous resurgence and the need to “find ways to reinvigorate both the common law and Indigenous legal traditions” (Participant #2).

Participants said that this new relationship must be process-oriented. One faculty member said that there is “no arrival” to reconciliation and expressed concern with an approach to reconciliation that uses a checklist:

My worry with the language of reconciliation is that it suggests that it’s one thing you can do and then it’s done. And I don’t believe that that’s the case. If you have a relationship, if that relationship is going to be healthy you have to work at it and it’s a multiple-angled process that isn’t just... There’s always going to be complexities to work out and learning. And if a relationship stops that learning and appreciation of the complexities, then you have, it’s no longer productive, I think. (Participant #1)

Similarly, one faculty member noted that reconciliation is “dynamic” and an “ongoing process” (Participant #4), and another said “when I’ve written about it, I always talk about it more as being a process rather than an end result” (Participant #5). Finally, one faculty member commented that reconciliation is “a process that’s ongoing and is going to be engaged over years and years” (Participant #7).

Not all participants felt comfortable using the term *reconciliation*. One faculty member said that they think it is important to talk about *decolonization*. While discussing the similarities and differences between reconciliation and decolonization, this participant said that reconciliation “has a dichotomous thinking that maybe even risks putting non-Indigenous folk at the heart”, whereas decolonization “centres Indigenous people and thinks about how what we’re doing is inclusive, respectful, engaged, [and] forward-looking” (Participant #4).

What is Reconciliation in the Context of Legal Education?

Participants had a lot to say about what reconciliation means in the context of legal education. One common theme was that Canadian law schools need to teach students the settler colonial history of Canada and its contemporary realities for Indigenous Peoples. For example, one faculty member who teaches family law said that it is important for students to understand how “colonialism has impacted families” (Participant #4), and another faculty member spoke

about the importance of learning about “Indian residential school trauma” and “the ways in which our current [social] structure[s] also disembed people from community, break things down, create toxicity” (Participant #7). This theme was reiterated by law students. For example, one law student said that students need to be “educated on the history of colonialism in Canada” (Participant #8), and another student commented, “I think they [law schools] would definitely have to focus on what are First Nation realities today. Like I said, the history is important to understand, however, I think it should be more focused on today’s reality” (Participant #9).

Another very common theme was that Canadian law schools must be multi-juridical spaces where students critically engage with Indigenous law alongside common law and civil law. For example, one faculty member commented that law schools must “not just [be] multi-juridical, working with common law, civil law, and Indigenous law, but [must also be] multidisciplinary [and include] accountants, psychologists, engineers, and of course lawyers, so that you would get a sense of law as a human activity, a social process that has to take account of a diversity of possibilities” (Participant #2). Similarly, another faculty member said “I’m teaching transsystemically so I’m not only teaching Coast Salish law but I’m teaching the common law” (Participant #5). This faculty member also said that reconciliation requires law schools to “build in more opportunities for students to understand the nuances or interdisciplinary nature of legal issues. So, we’ve talked here at UVic about instead of thinking that there’s these watertight compartments of our curriculum, like Crim or Tort, but to focus on an issue and then show how that issue interplays with different laws” (Participant 5). One faculty member explained how they teach property law from Gitxsan and common law perspectives:

So, I teach Gitxsan land and property law along with common law of property. And so, part of it is looking at what are patterns that are similar and what are patterns that are different within the approaches. Law derives from a particular society’s history, different points in time, according to the economic ordering of those people and the political

ordering of those people. And so, the purposes of property, there's some similarities with common law but there're also a lot of differences. A lot of state or common law property has developed because people live in small places on small bits of property and there's a lot to fight over. And that's very different than lots of Gitksan land and property, which is managed through the kinship group system. But there are some similarities. There is trespass, there's succession, there's accretion. There're all kinds of stuff that's very, very similar. There's personal property and real property. Alienation is completely different so it's not just holding them up side by side and then figuring out differences and similarities. It doesn't work like that. It takes a much more intensive process to think through the different concepts within each society. (Participant #1)

Faculty members also spoke about how Indigenous law needs to be fully integrated into the curriculum rather than being treated as an "add-on". As one faculty member put it, it is important for law schools to "think about how to teach those issues [Indigenous legal issues] in a way that isn't an add-on but that's integral to the course" (Participant #4). The need for a transsystemic approach to legal education was reiterated by law students. For example, one law student spoke about the importance of "learning from Indigenous scholars, reading Indigenous textbooks written by Indigenous people, and reading Indigenous law like Gitksan law" (Participant #8).

All participants said that law students must learn about Indigenous law. Unlike at the UOttawa Law and Dal Law, faculty members did not believe that students should be required to take a mandatory first-year course in Indigenous law. One faculty member, for example, said that "mandatory courses can generate as many problems as they're trying to solve" (Participant #1), and another faculty member commented "I personally feel that a mandatory course is not the right approach. I respect what the TRC says and I think we have obligations and responsibilities. I wonder if even Senator Sinclair would say that that's what he meant. That we should all do mandatory courses" (Participant #4). Two faculty members expressed concern that a standalone mandatory course will not be able to capture all of the content contained in call to action 28:

I would be in the camp of saying that a mandatory course...doesn't go far enough, but part of that is I don't think you can capture all of those things in a mandatory course. (Participant #6)

What I mean is that it is truly impossible to imagine one course that could possibly touch on the number of topics listed in this supposedly mandatory class. I don't think it is a joke to create the section, there is something importantly aspirational there, but it is a bit of a joke to imagine that offering such a course could possibly be sufficient or even do-able. (Participant #7)

Instead of creating a standalone mandatory course in Indigenous law, faculty members said that the focus should be on ensuring that law students “do not graduate from law school without having been introduced to, or having engaged with, the key things that are in call to action 28” (Participant #4). Many of them advocated for incorporating this content into existing mandatory courses. One faculty member said that they “love the idea of Indigenous legal perspectives, as well as Aboriginal rights jurisprudence, being incorporated into contracts and torts and constitutional law and administrative law” (Participant #1). Similarly, another faculty member commented that they prefer to “infuse Indigenous perspective, law, tradition across the courses” (Participant #2). One faculty member spoke about how their colleagues are incorporating this content into the existing curriculum:

There's a lot of attention to incorporating that stuff, not in a standalone course, but as part of ordinary mandatory curriculum through torts, contracts, constitutional law, criminal law, etc. So, what I see my colleagues do is incorporate a variety of calls into the regular curriculum. So, in constitutional law, for example, they have a big component...they look at how you draft a Royal Proclamation of Reconciliation (call to action 45), what it might look like, the work around it, how to put it into interaction with other things. So, the responses are not just focused only on the mandatory course aspect of call to action 28, but on taking up the substantive content, and implementing it in all the other courses we teach. So, taking seriously the mandatory nature, but embedding all of those things into the courses where those things can be grappled with in a different way. (Participant #7)

Faculty members were adamant that law students must engage with Indigenous law throughout their legal education, not just during their first year of studies.

In addition to teaching the history of Canada-Indigenous relations and requiring students to engage with Indigenous law, participants said that reconciliation requires law schools to make

changes to how legal educators teach and evaluate students. Participants said that law schools need to incorporate “land-based” and “practice-based” learning (Participant #2). One faculty member said that it is important for law schools to incorporate “a variety of ways of learning different forms of law, so problem-based learning, project-based learning, going out on to the land, working in clinics, [and] working in communities” (Participant #6). Another faculty member said that they “would love to start with some kind of experiential, partly land-based [learning] first semester, where [students are] just thrown in the deep end as observers, as flies on the wall, as learners from a bit of a distance, and then com[e] out of that experience...acting as orienteers and guides” (Participant #2). Students would then be asked to reflect on their experience by answering questions like “what happened there, what did you find was useful, strange, helpful, etc.?” (Participant #2). The purpose of this exercise is to make sure that students “aren’t just left to drift” (Participant #2) after participating in land-based and practice-based learning. Another faculty member said that they think it is important to “have a field school in a local community” (Participant #3). This participant acknowledged that this requires a strong “institutional relationship between our faculty and the local communities whose territory this is” (Participant #3). One faculty member said that they like “to take students to Cowichan to hike Mount Prevost and hear our creation story and learn some of the Hul'q'umi'num' words and just think about the connection between land and law” (Participant #5). Finally, one faculty member spoke about the importance of engaging with “pedagogies of Indigenous learning”, such as carving, beading and weaving, as a way to “move from the British colonial boarding school model of delivering education” to one that encourages “different kinds of student learners” (Participant #7). Law students reiterated the importance of engaging with land-based learning which centers Indigenous knowledge and law. For example, one student said that they think it is

essential for law students to have the “opportunity to go out into the wilderness and learn about Indigenous stories” (Participant #8).

Participants expressed concern about traditional methods of evaluation used in legal education. More specifically, several participants said that very often exams do not adequately assess what students have learned in a particular course:

We’re developing new assessment processes because law school exams aren’t going to necessarily enable one to demonstrate all that they know or what little people know about Gitxsan law. (Participant #1)

I have a very large class right now and I still have the class being assessed almost entirely by an exam at the end. And even though I think a lot of what the content of the exam will be, that is definitely not ideal in a lot of ways. (Participant #3)

[E]valuation should be part of the learning process, not something we tag on at the end of the course in order to assign a grade. The way students learn is through iteration. If they’re not getting feedback on the work that they’re doing they’re not going to grow, right? So, you take a course [and] you get a 100 percent final at the end of it. Some people don’t even go and look [at it afterwards]. They get a B or an A-, if that’s what they thought, and they’re off to the races. I just don’t think that’s the way to develop ethical problem-solvers. (Participant #4)

Participants said that “an ideal law school would have a range of approaches to pedagogy” (Participant #6), and that law schools need to develop new forms of assessment because “there are a whole bunch of skills that we want people to develop and they’re more than just learning substantive areas of law. They are about critical analysis, problem-solving, creativity, imagination, and empathy” (Participant #4). Participants had many ideas for improving assessment in legal education. One faculty member, for example, uses project work that “draws on performativity or art” and “play readings as a course evaluation” (Participant #4). One faculty member, who teaches Gitxsan law, said that they use “a very labour-intensive process of an exam, a legal memo on a Gitxsan housing problem, [and] a presentation” to evaluate students’ ability to practice Gitxsan law (Participant #1). Another faculty member said

that when they do land-based teaching, they use “paper-oriented” exercises and “reflective journal” exercises to assess students’ level of understanding. This faculty member also said that they like to use the “Pass/Fail/Honours” system because it assesses whether students meet a certain threshold “without trying to say, well, what’s the difference between a 74 and a 77?” (Participant #2). Two other participants also noted that they think a Pass/Fail system would be beneficial. One said “I think an ideal law school for law students would be one in which it was graded on a Pass/Fail basis because I think that that would allow students to be more creative” (Participant #6), and the other made the following comment:

I've tried a lot of different things in terms of assessment in my classes and I find that everything has strengths and weaknesses for different people, and it is more kind of settling on what works the best in the circumstances. There's a good amount of discussion on the possibility of instead of grading people, having more pass-fail kind of assessment. And I do actually think that would be of assistance when focusing on helping people develop their knowledge and competence in particular areas. I think that probably would be a constructive thing to do rather than thinking so much about rankings that are brought on by external forces. So, that is one thing that I would consider. (Participant #3)

Engagement with Reconciliation Post-TRC

UVic Law was the first law school in Canada to publicly respond to the TRC’s final report and calls to action (Council of Canadian Law Deans, n.d., p. 20). Shortly after the TRC’s final report and calls to action were published, the law school released a one-page statement wherein it confirms its commitment to “live up to the TRC’s recommendation, ensuring a learning environment where all our students will come to recognize the deep and lasting implication of Crown-Indigenous relations” and “graduate lawyers and other advocates who are aware of the privilege and responsibilities of practicing law in the multi-juridical Canada we share today” (University of Victoria, n.d.-1). UVic Law has taken several steps to respond to the TRC’s calls to action. On June 15, 2015, two faculty members wrote an article in *Canadian*

Lawyer titled “TRC offers a window of opportunity for legal education”. In the article, the authors discuss the role that law schools must play in the long-term process of reconciliation:

And on recommendation 28, we hope law schools across the country will take up the challenge to talk to each other. What education models have been employed at universities to address the legacies of genocide, and what partnerships have been put in place to engage creatively and rigorously on those questions? What strategies, curricular innovations, and programs have already been put in place to take up the questions of indigenous laws in our multi-juridical country? What have our colleagues tried in their classrooms? What innovative pedagogies have they developed to ensure that the critical questions of colonialism are woven into all courses?

Many law schools across the country are engaged in curricular reform at the moment. We argue that the recommendation that targets what we teach at law school is a moment for looking broadly at how we offer law students diverse opportunities for engaging with the hardest questions a society can ask of itself. (Calder & Johnson, 2015)

After having a conversation with a lawyer about the work being done by the hashtag #CharlestonSyllabus to create resources to generate conversations about the history of racial violence in the United States, the authors created the Reconciliation Syllabus, a national blog dedicated to offering space for law professors, lawyers, and law students to share ideas and resources for responding to call to action 28 (Calder & Johnson, 2015). The blog offers resources for each course taught in law school, including business law, constitutional law, contract law, criminal law, environmental law, evidence, family law, Indigenous legal traditions, jurisprudence, oil/gas/energy law, professional responsibility, property law, remedies, research methods, securities, sexual identities and the law, and tort law (Calder & Johnson, 2015). The blog also includes resources for teaching about the TRC, conducting a Blanket Exercise, bringing art into the classroom, and strengthening “intersocietal competency” (Calder & Johnson, 2015).

UVic Law has responded to calls to action 28 and 50 by updating its curriculum, supporting Indigenous law revitalization, and enhancing support for Indigenous students. The

law school revised LAW 106 Legal Process, which is a mandatory orientation course for first-year students. According to the academic calendar for 2021-2022, this course “[pr]ovides first-year students with a transactional overview of their new discipline in its totality. [It] [f]oregrounds the processes and pragmatics of decision making throughout the major institutions of the legal system, understood in their changing historical, social and jurisprudential contexts” (University of Victoria, n.d.-k). The course has two components. The first component happens during the first two weeks of September, and the second component occurs in early January. During the September component, students work in small groups with professors and graduate students to learn about “legal institutions, skills and theories through various arts-based practices” (Ramshaw, 2019, p. 4). These arts-based practices include “the use of theatre to introduce students to Alternative Dispute Resolution (ADR); the use of soundscapes in Downtown Victoria to introduce students to living law; and a guided walk up a local mountain (PKOLS) to introduce students to Indigenous laws” (Ramshaw, 2019, p. 4). The hike up PKOLS (Mount Douglas) is used to teach students about the importance of the territory. One faculty member explained the significance of this exercise as follows:

So, for the September course at the moment, one of the very first things that students do is walk up PKOLS, which is a small hike up a mountain. And it ties into a lot of things they would have heard about, kind of the journey of studying and studying law in this particular place as opposed to some other place and so that is supposed to start our learning in a kind of way. And we have included speakers from local First Nations who come and talk about the significance of PKOLS, which has legal significance in this territory. It is a diplomatic meeting place and has been for a long time and draws kind of a boundary between territories. It is also the place where, at least the story is, the Douglas Treaties were signed. So, the interaction with laws there. When you go up there you can also see evidence of municipal planning by-laws because there is like a green agricultural zone. So, we usually talk about that legislation that is being laid on top of the map in this kind of way. So, that is an important part of legal process. (Participant #3)

In past years, the first component of the course has also included a version of the KAIROS Blanket Exercise, which is a two to three-hour interactive exercise that uses blankets as a

representation of land to explore the historic and contemporary relationship between Indigenous Peoples and non-Indigenous people and the Canadian state.

The second component happens in early January and normally lasts for a few days. During the first day of this component, students learn about the TRC's history, final report, and calls to action from professors, Elders, and guest speakers. During the second day, students engage with the text of the TRC's final report through various exercises. Several faculty members noted that the second component was created in response to call to action 28.

In addition to the mandatory first-year orientation course, UVic Law has also incorporated content about "Indigenous legal traditions, the history and legacy of residential schools, Treaties and Aboriginal rights, and Aboriginal-Crown relations" into mandatory courses like Law 100 The Constitutional Law Process; LAW 102 The Criminal Law Process; LAW 104 Law, Legislation and Policy; LAW 110 Legal Research and Writing; LAW 109 Torts; LAW 301 The Administrative Law Process; LAW 315 Business Associations; and LAW 360 Legal Ethics & Professionalism (Council of Canadian Law Deans, n.d., p. 20). This is consistent with faculty members' belief in the importance of infusing this content across the law school curriculum.

UVic Law also added optional upper-year courses dedicated to studying Indigenous law and legal issues. For example, during the spring 2022 term, the law school is offering courses in LAW 343 A02 Current Topics in Indigenous Law: Criminal Justice and Family Law and LAW 388A Indigenous Law Research, Method and Practice. The summaries for these two courses explain how students will engage with Indigenous laws and legal issues. The course summary for LAW 343 A02 Current Topics in Indigenous Law: Criminal Justice and Family Law says that the course "provide[s] a comprehensive treatment, both substantive and practical, of the social realities and issues faced by Indigenous people in the Canadian criminal justice system" by

studying “the problems faced by Aboriginal peoples in the justice system, the search for positive solutions to those problems (the *Gladue* sentencing framework in particular), and problems/issues that have been identified with those solutions” (University of Victoria, 2021a). Lastly, the course summary for LAW 388A Indigenous Law Research, Method and Practice says that “[s]tudents will identify and critically examine legal theories about the nature and sources of law, and reflect on collaborative legal research and the work of Indigenous law revitalization in inter-societal contexts” (University of Victoria, 2021b).

In 2018, UVic Law started offering the world’s first Indigenous law degree program. The optional joint degree program in Canadian common law (Juris Doctor (JD)) and Indigenous legal orders (Juris Indigenarum Doctor (JID)) offers a class of 25 students the opportunity to combine intensive study of the common law legal system with engagement with Indigenous law (University of Victoria, n.d.-m). The program was initially conceived in 2005 by John Borrows (Borrows, 2005; see also Law Commission of Canada, 2006 and Borrows, 2010). In first year, students enrolled in the program are required to take LAW 100I Transsystemic Constitutional Law (or LAW 100 Constitutional Law); LAW 102I Transsystemic Criminal Law (or LAW 102 Criminal Law); LAW 104I Law, Legislation and Policy; LAW 107I Transsystemic Property Law (or LAW 107 Property Law); and LAW 112I Transsystemic Legal Processes, Research, Writing. Second-year students are required to take LAW 105I Transsystemic Contracts (or LAW 105 Contracts) and LAW 109I Transsystemic Torts (or LAW 109 Torts). Third and fourth-year students are required to take LAW 350I Indigenous Field Student Level 1 and LAW 450I Indigenous Field Study Level II, respectively. In their second, third, or fourth year, students are also required to take LAW 301I Transsystemic Administrative Law (or LAW 301 Administrative Law), LAW 360 Legal Ethics and Professionalism, and LAW 395 Coast Salish Legal Studies

and Language. In their third or fourth year, students are required to take LAW 315I Transsystemic Business Associations. Finally, in order to graduate, students enrolled in the JD/JID program must complete the major paper requirement.³¹ As can be seen from the list of required courses, students in the JD/JID program study law from a transsystemic lens, comparing the common law with various Indigenous laws. For example, whereas students in the regular JD program study administrative law purely from the common law perspective, students in the JD/JID program examine “administrative law in Indigenous contexts and mixed-law situations, such as the electoral laws of First Nations bands and environmental review processes” (University of Victoria, 2021d). JD/JID students are able to take optional courses in Indigenous law and legal issues, including LAW 343E *CELÁNENEŁ: A Field Course in the Re-emergence of WSÁNEĆ*, LAW 368 Indigenous Feminist Legal Studies, and LAW 384 Field Course in Reconciliation, Ecology and Place-based Law.

In March 2019, the federal government announced that it would provide \$9.1 million in funding to UVic Law to help build a National Centre for Indigenous Laws (DeRosa, 2019). In September 2020, the Province of British Columbia and the Law Foundation of British Columbia announced additional contributions of \$13 million and \$5 million, respectively (Sloan, 2020). The \$27.1 million in funding will be used to build a 2,440-square-meter addition to the law school building. The centre “will be designed to reflect and honour the law school’s location and long-standing relationship with the Songhees, Esquimalt and WSÁNEĆ peoples on whose territory the university resides” (Sloan, 2020). The centre, which will contain “public lecture theatres, faculty and staff offices, classrooms, meeting space, an Elders’ room and spaces for

³¹ This list of required courses is based on Appendix 5 of UVic Law’s “Winter Session 2021-2022 Planning and Course Selection Guide for UVic Law JD/JID Students”, which was last updated in June 2021 (University of Victoria, 2021c).

gathering, ceremony and sharing of histories and knowledge”, will house the JD/JID program and the ILRU and act as a hub for connection, where the law school can host “conferences, public workshops, research, and partnerships for faculty, students and visitors” (Sloan, 2020).

The JD/JID program and the National Centre for Indigenous laws are both responses to the TRC’s call to action 50, which, as previously mentioned, calls for the development of Indigenous law institutes. While the idea of the JD/JID program was conceived before the TRC’s final report and calls to action were published, the program did not open its doors until 2018. The program, then, should be seen as a direct response to call to action 50. The Assembly of First Nations said that the JD/JID program and the National Centre for Indigenous Laws are powerful responses to call to action 50:

We consider both of these initiatives (the JD/JID program and the Indigenous Legal Lodge [now the National Centre for Indigenous Laws]) to be fundamental to the fulfilment of Truth and Reconciliation Commission Call to Action #50 and to the creation of the legal infrastructure of the nation-to-nation relationship in Canada. (Assembly of First Nations, 2017, cited in University of Victoria, n.d.-n, p. 2)

Senator Murray Sinclair, former judge and Chief Commissioner of the TRC, made a similar statement about the importance of these two initiatives:

They are precisely what we had hoped would follow from the report of the Truth and Reconciliation Commission, and they promise to inform the very best of legacies: a set of initiatives that reject and reverse the pattern of denigration and neglect identified in our report, and that establish the conditions for effective action long into the future. (University of Victoria, n.d.-n, p. 4)

Challenges Responding to TRC’s Calls to Action

Individual faculty members identified several challenges associated with engaging with reconciliation. A common theme identified by faculty members was the need to ensure that all law students are learning about Indigenous law and legal issues. One faculty member, for

example, spoke about the concern that JD and JD/JID students have vastly different experiences when it comes to engaging with Indigenous law and legal issues:

We have been working on this JD/JID for a long time, and we always wanted to ensure there weren't two solitudes—the JD students coming through one stream and the JD/JID coming through another stream. And we're only in our second cohort of the students. We're going from 300 to 400 students here, because we're adding 25 JD/JID students each year. So, at the end of four years, we'll have increased our law school by one quarter...which is pretty big, but having to attend to that programmatic development and growth, even though we've put so many structures in place to make sure there's not two solitudes, the emphasis has been on this new thing. (Participant #2)

This faculty member went on to say that they “feel like there's times when perhaps some of the JD students aren't as aware or brought in...[because] they are getting a different experience, they're not learning transsystemically like other folks [in the JD/JID program] are” (Participant #2). They acknowledged that UVic Law has “continuing work to do to ensure that we're all on the task of resurgence and reconciliation”. Another faculty member said that it is an ongoing challenge to “figure out how to keep our eyes on the content of call to action 28 in each class, and perhaps particularly in our first-year mandatory Legal Process course” (Participant #7). This faculty member noted that this challenge is not unique to UVic Law and that “a lot of [their] colleagues across the country are struggling with how to pull these ideas into the classroom” (Participant #7).

Another challenge identified by faculty members was access to resources to support this important work. Several faculty members identified the need for more funding as a big challenge. For example, one faculty member said that “it would always be nice to have more money” and that they “would like to see more resources for Indigenous grad students” because they “would have more [Indigenous] graduate students, legal scholars, if [they] were able to provide support for them” (Participant #1). According to this faculty member, having more Indigenous scholars is important because “how many people in Canada can teach in the JD/JID

program...[is] a very limited pool and [they] have to expand that pool and the only way [they're] going to be able to do it is by supporting [their] grad students" (Participant #1). Another faculty member spoke about how the law school has to deal with an ongoing "human resources issue, both from making sure you have the faculty capacity to do that [work on resurgence and reconciliation], and then the recruitment of students that are interested in that kind of venture" (Participant #2). This faculty member went on to talk about the struggles that new faculty members experience trying to balance participating in important administrative work with the demands of obtaining tenure:

I think we do great with the recruitment of students, and we've hired a lot of folks in the last few years that have abilities to work in Indigenous fields, but it's a big thing to do. So, for instance, my last dean was Jeremy Webber. I think he was in office from 2011 to 2018, something like that, whatever the time period is. I think of our 30 faculty, we have 16 new faculty just within the last ten years, probably most of those within the last six years. So, half of our faculty is new, and so that creates a challenge because when you're a new professor, you don't just think about administration. You don't think of administration and programming. You're trying to get ready for your next class and get your papers ready to send out to conference so when tenure comes, you can meet the tenure demands. And so that's an issue too. (Participant #2)

Similarly, another faculty member said that "everyone's so busy and so stressed with the amplification of administrative obligations...[and] the demands of social media...[that] they don't have time to find the [time] and resources to do this [work]" (Participant #7).

One final challenge identified by faculty members was finding ways to engage with the TRC's final report and calls to action in a manner that does not reproduce trauma or alienate students who are learning this material for the first time. One faculty member, for example, said that this work involves "the challenge of trying to figure out how you work within the same room with people...who are living through the trauma of this and people who feel themselves traumatised as they're encountering new information that they don't want to believe" (Participant #7). Similarly, another faculty member commented that they constantly "wrestle with the

question of how you can constructively engage students on issues that people feel very strongly about, and which affect them differently and which have a huge emotional and political charge to them” (Participant #3). Finally, one faculty member noted that “some people worry that this is not just an Indigenous law school...and that in taking up some of these questions in such an existential way that we are perhaps not paying due attention to all of the areas [of law] that students come here [to study]” (Participant #4). This participant said that this concern is “ridiculous” and that UVic Law does not privilege Indigenous law over other areas of law (Participant). This challenge demonstrates the need for law schools to think about how they are going to create trauma-informed classrooms and how they are going to prepare for and respond to resistance from students who do not want to learn this material.

Is the TRC’s Call to Action 28 Enough?

All participants said that call to action 28 is a necessary component of reconciliation, but that law schools must go further to create lasting systemic change. Faculty members said that call to action 28 is important because law students cannot leave law school without having learned about Indigenous law. For example, one faculty member said that the TRC’s final report and calls to action “raised a national consciousness about the residential schools, about the class action [lawsuit], [and] about the residential schools and their ongoing consequences” (Participant #1), and another faculty member called call to action 28 a “fantastic call to action” (Participant #7). One faculty member spoke about how the law school uses call to action 28 to say that students should not graduate from law school without “being asked to think carefully about the role that the legacy of colonialism and residential schools has played in the law that we live today and the way in which colonialism is still imprinted on people’s bodies today” (Participant #4).

Despite the importance of call to action 28, many participants said that on its own it does not go far enough towards creating transformative reconciliation in legal education. For example, when asked whether call to action 28 goes far enough towards contributing to reconciliation, one faculty member said, “No. Lawyers’ ethics aren’t just identifying a series of values and putting them in a checklist. It’s something that you live. And so, the course might in one mode meet that call to action, but actually not do the work of reconciliation if it’s not properly integrated or supported or invested in or staffed” (Participant #2). Similarly, another faculty member said, “I don’t think if you say everyone should just take one course and that course should include these things, that’s not enough....It just doesn’t make any sense. It needs to be integrated. It needs to be embodied. It needs to be reiterative. It needs creative evaluation methods” (Participant #4). Several participants resisted the idea that reconciliation involves a checklist of action items. For example, one faculty member said that they “don’t think anything should be seen as an end-goal” and that “[t]here is no arrival here. Even if law schools set up committees and did a mandatory course and did everything like chop-chop, then what? In five years, it’s going to look different. There will be different events, different problems” (Participant #1). Similarly, another faculty member said that having a mandatory course is not the only option and that it should not be treated as an item on a checklist:

I think having a mandatory course that included components that are listed there, I can imagine that would be a good thing, but I don’t think it is the only thing, for sure. And just having done that, to me leaves all kinds of things unanswered, which is not to say that law schools shouldn’t do that. Because I think that is actually one possible way that you would uncover what the next things are. But I definitely don’t think you’d be like, okay check, we’re done. (Participant #3)

Some participants expressed the opinion that it would be very difficult, if not impossible, to include everything in call to action 28 in one mandatory course. For example, one faculty member said that while they think that “those are all important things for a response to the TRC

and for our lawyers to have those competencies”, they “would be in the camp of saying that a mandatory course doesn’t go far enough” because they “don’t think you can capture all of those things in a mandatory course” (Participant #6). Similarly, another faculty member said, “how can you possibly do this in a mandatory course? You can do a whole degree on alternative dispute resolution mechanisms. That’s a whole Ph.D. in and of itself” (Participant #7). This participant went on to talk about how each law school’s response to the calls to action will depend on their location and institutional environment. For them, having a mandatory course might take away from the other really important work that UVic Law is doing to contribute to reconciliation:

I think it’s a fantastic call to action and I think that how they’ll [law schools] use it will depend on where they see themselves and the local conditions of the place that they’re at. So, for us to do the mandatory course would, I think, be a copout because I think we’ve already been doing some of the preliminary work, and with that work in place, we need to continue to go deeper with the work. The Indigenous Law Research Unit’s work is giving us opportunities to learn how to work in partnership, and this opens up space to have our engagements continue to build on what we are learning. We have a 25-year history with our students doing the fantastic Aboriginal Cultural Awareness Camp, which has nurtured different kinds of conversation. And we are right at the epicentre where we can call on Indigenous communities, like multiple Indigenous communities, around us all the time to help us learn. So, for us to do the mandatory course, we could, but I don’t think it would be the way that our work here can help people in other places. We’ve produced faculty who went out to other places to do their graduate work, and that’s a help, right. But I think at other institutions, they’re in a different place with different kinds of resources and the mandatory nature of the call might be politically wise and useful and helpful at the place they’re at. And I’m not saying we’re ahead of people, I don’t want it to sound like that. It’s more like different kinds of challenges and different kinds of assets.

Participants said that in order for call to action 28 to be effective, it must be read in conjunction with the TRC’s other 93 calls to action. For example, one faculty member said that when responding to the calls to action, law schools “should look at the report as a whole because that informs how they work with call to action 28. People need context, background so that call to action 28 is grounded in people’s legal imagination. There’s more homework than just thinking about the call to action” (Participant #1). Similarly, another faculty member said that

“you have to read the entire report. If you put the report into place in terms of its spirit, its ethos, then you’re in a better place than just focusing on the call to action around the mandatory course. That broader vision has to inform the course” (Participant #2). Finally, one faculty member explained how they have students engage with the entire report:

[Law schools should be responding to the] [r]eport as a whole. So, just for another example for you, our graduate theory course, which I teach, the first two weeks we read the report, the executive summary volume and then the entire legal theory course takes topics like sovereignty, recognition, embodiment, distribution, all the topics of graduate theory. And every week we read three readings and people have to draw the connections between those readings and the TRC and their own research project. So, we use the document itself as a way of not only focusing on the calls to action, but on the historical context as a way of making sure that we think about theory and engagement through this common history. So, that course, it’s a riot to work with, to teach and learn alongside the students, and I think that’s the kind of thing that I’m talking about, is where we start using it not like here’s what it makes you do, but how does taking it seriously help you rethink connections between schools of theory, schools of thought, and what politics means on the ground...So, of course...the calls to action [are] a nice handy summary that helps trigger thinking, but what we’ve got is a massive question of what it means to live in the world we live in now or to say “all my relations”, right? What does that really mean? (Participant #7)

How Well Does UVic Law’s Response to the TRC’s Calls to Action Contribute to Reconciliation?

When asked to evaluate how well the law school’s response to the TRC’s calls to action contributes to reconciliation, most participants said that their response is imperfect. While one participant was certain of the power of UVic Law’s response, calling it “great, innovative, ground-breaking, country-leading, [and] super-important” (Participant #4), most participants were more cautious. For example, one faculty member said that they “would be really hesitant to over-state the significance of some of the things” and they “want to be quite careful about saying that it is contributing to reconciliation” (Participant #3). Similarly, another faculty member said that while their response “has been strong on doing the nuts and bolts of having CLE [continuing legal education] conferences and getting more scholarship money”, they have “not been as strong

as [other law schools at] saying ‘here’s our ten-point plan and a strategic document, here’s a committee, here’s what our study has revealed’” (Participant #2). One faculty member spoke about how it is too early to tell how powerful the law school’s response will be: “I think that they have the potential to be transformative. But I don’t think that we’ll see that for a while, right. I think we’re seeing glimmers of it, but I also think that our students have to get through the program” (Participant #6). This participant was hopeful that “down the road, everyone [will] be doing a transsystemic degree” and that “as the cohorts go through [the JD/JID program], we will see more transsystemic work being done in the JD courses” (Participant #6). Finally, one faculty member spoke about how it is important to understand UVic Law’s response as part of the “common project” of all Canadian law schools:

[W]hat we’re doing here; I see us as totally related to my colleagues at the other law schools. So, this experiment with the JD/JID program would not happen but for the very hard work and concerted energy and support of people at every single other law school around the country. So, I see us as part of the common project and it’s just being test-piloted here, but I see this as everybody’s work and we draw on everybody’s work. So, yes, I don’t see this as distinct and that was part of the hope with the Reconciliation Syllabus too, to start having us more quickly see the ways that we are drawing on the experiments and the insights and the knowledge of people at all these other different places. So, I kind of feel very much not like UVic versus U of A versus Dalhousie... This is team law kind of work and we could not do this but for the work that people are doing at the other places. (Participant #7)

What More can UVic Law do to Better Contribute to Reconciliation?

Participants had several recommendations for how UVic Law can better engage with reconciliation. Faculty members identified three primary avenues for change. The first was the need to develop a strategic plan for implementing the TRC’s calls to action. As one faculty member said, “I do think it’s important that we have a strategic plan and a mechanism for reporting on or being accountable to that strategic plan. We do have a strategic plan and we do have reporting mechanisms, and it does mention a whole bunch of things about Indigenous

issues, but the TRC itself has not figured as strongly in that” (Participant #2). The second was the need for greater discussion around pedagogy. One faculty member, for example, spoke about the importance of talking about pedagogy and how they would like to “have more time to talk about what we’re doing in our classrooms...[and] more opportunities for co-teaching” (Participant #6). This was echoed by another faculty member who said that they value the “very hard work and concerted energy and support of people at every single other law school around the country” and would like to see more opportunities for collaboration between law schools (Participant #7). The third recommendation was the need for greater focus on trauma-informed lawyering. According to one faculty member, law schools need to teach students how to be trauma-informed lawyers because “it is integral that to be a good lawyer you have to be thinking about the role that trauma plays in your clients but also in yourself” (Participant #4). They said that “it is something that [the law school has] to be grappling with and figuring out how to do that [in a way] that’s respectful” (Participant #4).

The two law students that I interviewed identified two main opportunities for change. The first one is that Indigenous Elders and knowledge keepers should play a bigger role in legal education. As one law student put it, “I think what I would like to see is more guest speakers coming in, more Elders, more knowledge keepers coming in and speaking to the entire law school” (Participant #8). This student spoke about how they “really thrive” off having Elders and knowledge keepers at the law school and that they “really appreciate when they take the time to tell their stories” (Participant #8). This student went on to talk about the impact of learning about the legend of Camossung and the history of the Esquimalt and Songhees people:

We learned about the Camosun story from one of the Elders that came in. Because I live right on the Gorge here, and I had no idea of the Camosun story, so that was really...those are the things I’m going to remember more than the lectures; those are the

things that I'm going to take with me when I'm done law school. I'm not going to remember learning about Latin words, I'm not going to use Latin words. (Participant #8)

This student later provided me with a document written by Keddie (1991) that explained the legend of Camosun as follows:

In Songhees tradition, Camossung was a Spirit Being connected to the area of the reversible falls. At the falls, a little girl named Camossung, who was squatting in the water, and her grandfather *Snukaymelt* ("diving"), were turned to stone. The stones could once have been seen under the water facing up the Gorge. Two stone figures were said to rise and fall with the level of water, but never came to the surface.

This is a sacred place where people sought spirit powers. On this spirit quest, persons would jump into water below the falls, holding a rock to take them to the bottom, until Camossung took pity and granted the powers they sought. It was believed that only persons who practised regular spirit-cleaning rituals would gain the powers necessary to acquire success in life.

In the early nineteenth century, the Songhees people were under the constant threat of war raids. They retreated up the Gorge to Portage Inlet in the territory of one of their tribal groups called the *Sahsum*, whose village was located where the old Craigflower school and the Tillicum school are today. Here, it was believed, Camossung would protect her people from their enemies.

Throughout my research with UVic Law, faculty members spoke about the importance of engaging with local Indigenous communities. One faculty member, for example, said that it is important that "we have Elders that come into the building and meet and work with our students", and that the law school is focused on building capacity for this work (Participant #4).

The second opportunity for change identified by the two law students was that the onus for thinking about and engaging with reconciliation needs to be placed on students, not just faculty members. One of the students said that the law school "definitely should put some onus on the students to define what reconciliation looks like to them" (Participant #9). This is consistent with the idea that reconciliation is a process that, in the context of legal education, must involve engagement from everyone—faculty members, law students, and staff.

Chapter Summary

Based on my interviews with individual faculty members and Indigenous law students, participants defined reconciliation, both as a general concept and in the context of legal education, in ways that align with the transformative approach to reconciliation. For them, this relationship acknowledges the settler colonial history of Canada and its historical and continuing impacts on Indigenous Peoples. This new relationship seeks to find possibilities of living together in peace, goodwill, and friendship. Participants said that the goal of reconciliation is realizing a nation-to-nation relationship grounded in trust, humility, relationality, and Indigenous resurgence.

In the context of legal education, participants said that reconciliation means that law schools teach students about the settler colonial history of Canada and role that law played, and continues to play, in perpetuating colonial domination and inequality. In addition, participants also said that reconciliation requires law schools to become multi-juridical spaces where students engage with Indigenous law alongside common law and civil law. They said that Indigenous law cannot be an add-on; it must be fully integrated into the curriculum. Most participants said that engagement with Indigenous law does not need to come in the form of a standalone mandatory first-year course. Rather, the focus should be on ensuring that students do not graduate without having been exposed to Indigenous law and the key ideas in call to action 28. Many participants saw the benefits of infusing Indigenous law and perspectives across all law school courses. In addition to teaching Indigenous law and the key ideas in call to action 28, participants said that reconciliation requires law schools to make changes to how legal educators teach and evaluate students. Participants indicated that law schools must include a range of approaches to pedagogy and assessment. They said that legal educators should incorporate more experiential and land-

based learning and use more creative forms of assessment such as paper assignments, art-based assignments, reflective journal assignments.

Based on my interviews and my review of UVic Law's website and University of Victoria's academic calendars, UVic Law has made important changes to its program that contribute to transformative reconciliation. Since the TRC's final report and calls to action were published, it revised its first-year mandatory orientation course to focus on Indigenous law and the TRC, incorporated Indigenous law and legal issues in mandatory first-year courses and optional upper-year courses, created the JD/JID program, and obtained funding for a new National Centre for Indigenous Laws. These changes represent important responses to the TRC's calls to action 28 and 50.

There are some things that UVic Law can do to better contribute to transformative reconciliation in legal education: (1) develop a formal strategy for implementing the TRC's calls to action; (2) incorporate more transsystemic learning into the JD program to ensure that JD and JD/JID students do not have vastly different experiences when it comes to engagement with Indigenous law and legal issues; (3) create opportunities for greater engagement with community and land-based learning; and (4) support Indigenous Elders and knowledge keepers in playing a bigger role in legal education. Implementing these changes will require a large amount of funding. As with UOttawa Law and Dal Law, UVic Law should create a sub-committee comprised of administrators, faculty members, staff, and students whose sole responsibility is developing creative proposals to obtain grants and donations to fund these changes.

CHAPTER 6: DISCUSSION

Chapter Overview

The previous three chapters examined how UOttawa Law, Dal Law, and UVic Law have engaged with reconciliation both before and after the TRC's final report and calls to action were published. This chapter puts the pieces of the puzzle together. In the first section of the chapter, I discuss some of the similarities and differences between the three law schools in how they define reconciliation, both as a general concept and in the context of legal education. In the second section, I engage with the data to argue that transformative reconciliation requires law schools to do much more than develop a standalone mandatory course that covers the content contained in call to action 28. In the third section of the chapter, I discuss the extent to which the three law schools' responses to the TRC's final report and calls to action engage with transformative reconciliation. In the final section of this chapter, I put forward a set of recommendations that law schools can consider when formulating responses to the TRC's final report and calls to action.

Defining Reconciliation: Transformation, Not Recolonization

Participants at all three law schools defined reconciliation, both as a general concept and in the context of legal education, in ways that are consistent with the transformative approach to reconciliation. In general terms, participants defined reconciliation as the process of creating a new relationship between Indigenous Peoples and communities and non-Indigenous people and the Canadian state. Participants indicated that this new relationship must be grounded in honesty, respect, reciprocity and relationality, and that it must be constantly evaluated over time. Moreover, they said that reconciliation means that non-Indigenous people need to learn about the relationship between Indigenous Peoples and the Canadian state and the historical and contemporary injustices associated with this relationship. Participants at all three law schools

agreed that simply learning the truth about this relationship is insufficient. Non-Indigenous people and governments need to work with Indigenous Peoples to transform this relationship from one based on prejudice and violence to one grounded in respect and support for the resurgence of their cultures, languages, legal traditions, and governance structures. Participants were adamant that this process of change must not involve recolonization by requiring Indigenous Peoples to reconcile themselves to the Crown's assertion of sovereignty. Rather, the burden of change rests with colonial governments and institutions to relinquish power over Indigenous Peoples, recognize and support their inherent right to self-determination, and work with them to create a healthier relationship for the future.

Participants had many fascinating things to say about what reconciliation means in the context of legal education. Participants at all three law schools argued that in order for law schools to engage with reconciliation, they must first acknowledge the role that law and legal education has played in perpetuating colonial domination. While it is true that law has been used as a tool for freedom and social change, it has just as often been used as a tool for oppression and inequality. It is essential for students to know this history and learn how to practice law in ways that do not perpetuate harm. In addition to acknowledging that law has been used to support Canada's settler colonial project, participants said that law schools must become multi-juridical spaces that engage with Indigenous law alongside common law and civil law. Several participants acknowledged that law schools have, for a very long time, treated Indigenous law as an add-on to common law and civil law, which is not reconciliation. Rather, reconciliation requires law schools to ensure that law students learn about Indigenous law and the content included in call to action 28.

Participants at the three law schools expressed different approaches to how students should engage with this content. UOttawa Law participants said that students should be required to take a mandatory first-year course in Indigenous law so that it is treated equally with other mandatory content. They also said that it will be necessary to use other mandatory and optional courses in order to teach students all the content included in call to action 28. Participants at Dal Law said that learning Indigenous law must be a mandatory component of the law school curriculum, and that it occurs throughout a law student's education. They also said that Indigenous law and legal issues must be incorporated into other mandatory and optional courses. Finally, participants at UVic Law did not believe that students should be required to take a mandatory first-year course in Indigenous law. Instead, many of them advocated for infusing this content into existing mandatory and optional courses. They also said that law students must engage with Indigenous law throughout their legal education, not just during their first year of studies. Despite taking different approaches to how students should learn about Indigenous law and the other content included in call to action 28, participants at all three law schools agreed that students cannot graduate from law school without knowing this material. This diversity of approaches reflects the reality that a law school's location, institutional environment, and financial resources will affect its response to the TRC's calls to action. It also reflects the reality that incorporating all the content included in call to action 28 into a single course will be very difficult, if not impossible. As a result, when formulating their response to call to action 28, law schools should not feel restricted to developing a standalone mandatory course.

Transformative Reconciliation Requires More Than Implementing Call to Action 28

Participants at all three law schools said that while call to action 28 is a necessary component of reconciliation, on its own it will not result in transformative change. To make call

to action 28 more effective, participants said that it must be read in the context of the entire report and in conjunction with the other 93 calls to action. However, regardless of how law schools interpret and apply call to action 28, participants indicated that learning a number of content areas will not treat Indigenous law equally with the common law or civil law, nor will it address the systemic racism that exists in many Canadian law schools. Law schools will need to make other changes to achieve these goals.

Participants at all three law schools said that law schools need to engage more with call to action 50 by creating institutes for the study, research, and application of Indigenous law. UVic Law is already engaging with call to action 50 through its JD/JID program, Indigenous Legal Research Unit, and new National Centre for Indigenous Laws. UOttawa Law and Dal Law also have plans to engage with call to action 50 by creating an Indigenous Nationhood, Governance and Laws Institute and an Indigenous Law and Governance Lodge. Engaging more with call to action 50 will make Indigenous law more prevalent in Canadian legal education.

All participants agreed that reconciliation requires law schools to do more than implement calls to action 28 and 50. They must also make changes to the law school environment and to how they teach and evaluate students. Participants said that reconciliation requires law schools to make their admissions process more accessible for Indigenous students, hire more Indigenous faculty members and staff, recruit more Indigenous students, create more spaces for Indigenous students to study and socialize, and empower faculty members to use creative methods of evaluation and engage with experiential learning, land-based learning, and Indigenous pedagogies. The need to make more than just curricular changes makes sense given that many Canadian law schools, including the three that I studied, have been offering courses in Aboriginal and Indigenous law for decades. Yet, despite this engagement, law schools have been

sites of exclusion and discrimination for many Indigenous students. Addressing this exclusion and discrimination will require changes like the ones described above.

Law Schools Are on the Right Track, But More Work Needs to Be Done

As discussed above, transformative reconciliation requires law schools to implement calls to action 28 and 50, make non-curricular changes to their programs, and advocate for the creation of Indigenous law schools. The three law schools that I examined are moving towards implementing transformative reconciliation, but more work needs to be done. UOttawa Law has not currently implemented their response to calls to action 28 and 50. It has, however, made important non-curricular changes to improve the law school environment, such as hiring more Indigenous faculty members and staff, obtaining significant funding to support Indigenous students, and hosting more events to provide faculty members, students, and staff with opportunities to learn more about Indigenous law. According to its 2019-2024 Strategic Plan, UOttawa Law plans on implementing calls to action 28 and 50 in the near future.

Dal Law has responded to call to action 28 by creating a mandatory course that runs for a few weeks each year in September and January. It, too, has not yet implemented call to action 50. Dal Law has also made important non-curricular changes, including creating an Elder-in-Residence position and the Chancellor's Chair in Aboriginal Law and Policy. According to my research, Dal Law has plans to implement call to action 50 and enhance its response to call to action 28.

UVic Law has responded to call to action 28 by revising its first-year mandatory orientation course to focus on Indigenous law and the TRC and by incorporating Indigenous law and legal issues in mandatory first-year courses. UVic Law has implemented call to action 50 by creating its JD/JID program and National Centre for Indigenous Law. The JD/JID program is a

strong response to call to action 28 for students enrolled in the program. UVic Law can enhance its response to call to action 28 by designing mandatory courses in Indigenous law or making its existing curriculum truly transsystemic, where *all* students learn about Indigenous law alongside common law and civil law, not just students enrolled in the JD/JID program.

As discussed in chapter 1, transformative reconciliation requires settler law schools to advocate for the creation of Indigenous law schools. It is not clear if UOttawa Law, Dal Law, and UVic Law are currently doing this work, but several participants called for decolonization in legal education, and one participant from UOttawa Law specifically argued for the establishment of Indigenous law schools. Going forward, these three law schools should provide support to local Indigenous communities interested in developing their own law schools.

UOttawa Law, Dal Law, and UVic Law are on the path towards implementing transformative reconciliation in legal education. They are using different approaches and are at different stages of the journey. While much work remains to be done, it is clear that each law school understands the importance of engaging with reconciliation: not just any reconciliation, but the kind that disrupts settler colonial relations of power. Because reconciliation is a difficult and long-term process rather than an event, it is not surprising that law schools still have work to do.

Recommendations for the Future

In the final section of this chapter, I outline thirteen recommendations that will assist law schools in implementing transformative reconciliation. I have tried to frame these recommendations in a way that will allow them to be taken up by every Canadian law school regardless of location and institutional environment.

1. Law schools should establish a TRC Committee

My research suggests that law schools would benefit from having a TRC Committee dedicated to responding to the TRC's calls to action. Dal Law's effective response to the TRC's final report and calls to action was the result of establishing a TRC Committee soon after the TRC published its final report and calls to action. In addition, faculty members at UVic Law indicated that the law school would benefit from having a TRC Committee. The TRC Committee should be comprised of faculty, staff, students, and local Indigenous community members. It should also have a focused mandate that defines reconciliation and outlines its approach to responding to the TRC's calls to action.

2. The TRC Committee should include settlers

Participants at all three law schools were adamant that reconciliation is a long-term process that requires active participation from settlers. This is consistent with anti-colonialism. It is therefore important for the TRC Committee to include settlers in this work and not leave it all to Indigenous Peoples.

3. Law schools should create a TRC Sub-Committee dedicated to developing creative proposals to obtain grants and donations to fund its response

Participants at all three law schools indicated that they will need significant resources to implement the TRC's calls to action. Establishing Indigenous law institutes, creating new courses, hiring more Indigenous faculty members and staff, and improving the law school environment will very likely cost millions of dollars. This Sub-Committee should target funding opportunities with government and industry, and Sub-Committee members should have experience writing successful grant proposals and/or lobbying various levels of government for appropriate funding.

4. The TRC Committee should clearly explain how it understands reconciliation

How the TRC Committee understands reconciliation will likely have an impact on how it decides to respond to the TRC's calls to action. Consequently, one of the first things the TRC Committee should do is articulate its understanding of reconciliation, both as a general concept and in the context of legal education. If the TRC Committee prefers to use another term or concept, it should explain why.

5. The TRC Committee should consult faculty, students, staff, legal professionals, and local Indigenous community members when formulating its response to the TRC's calls to action

It is important that, when implementing their response to the TRC's final report and calls to action, law schools engage in extensive consultation. It is particularly important for law schools to seek input from students and Indigenous community members. Several students that I interviewed indicated that they were not consulted by the law school. Given that any response to the TRC's final report and calls to action will have a direct impact on students' legal education, it is essential to seek their input at each stage of the process. Canadian law schools are very often located on unceded Indigenous land and near Indigenous communities. In addition, Indigenous law is rooted in Indigenous societies themselves. For these reasons, local Indigenous communities should play a central role in formulating the law school's response to the TRC's calls to action.

6. The TRC Committee should develop responses to calls to action 28 and 50

My research has indicated a clear need to engage with both calls to action. Responding to call to action 28 alone will not lead to transformative reconciliation. They must also engage with call to action 50.

7. The TRC Committee should outline clearly how the law school will respond to call to action 28

In developing its response, the TRC Committee should consider what approach will work best for the law school given its location, institutional environment, and financial resources. My research suggests that rather than only creating a standalone mandatory first-year course, law schools should develop mandatory first-year and upper-year components and infuse Indigenous law and legal issues into existing mandatory and optional courses. My research also suggests that law schools should respond to call to action 28 in a way that allows for student flexibility.

8. The TRC Committee should explain clearly how the law school will respond to call to action 50

The TRC Committee should engage with local Indigenous communities to assess their needs and discuss the institute's purpose and design. The TRC Sub-Committee should outline how the law school will target funding opportunities with government and industry to pay for the institute.

9. The TRC Committee should also address other non-curricular changes

In addition to responding to calls to action 28 and 50, law schools should also implement non-curricular changes, including making the admissions process more accessible for Indigenous students, hiring more Indigenous faculty members and staff, recruiting more Indigenous students, creating more spaces for Indigenous students to study and socialize, and empowering faculty members to use creative methods of evaluation and engage with experiential learning, land-based learning, and Indigenous pedagogies. While these changes are not explicitly included in calls to action 28 and 50, they are necessary components of transformative reconciliation. This work will very likely require the TRC Committee to work with other Faculty Committees and university management.

10. When the TRC Committee is responding to calls to action 28 and 50, they should situate their response in the context of the entire TRC report and in relation to the other 93 calls to action

The TRC's calls to action do not exist in a vacuum. They were developed in response to findings outlined in its final report. The TRC committee should situate its response to calls to action 28 and 50 within the context of the entire TRC report and in relation to the other 93 calls to action. The final report and other calls to action will very likely provide the TRC Committee with insight and inspiration.

11. The TRC Committee should work with other law school committees

Implementing transformative reconciliation in legal education will require law schools to make many changes, including changes to admissions policies, curriculum components, equity and diversity policies, student services, and financial aid policies. The TRC Committee should therefore consult with other law school committees such as the Admissions Committee, Curriculum Committee, Equity and Diversity Committee, Student Affairs Committee, and Financial Aid Committee, if they exist.

12. The TRC Committee should produce an annual public report of its work

Law schools should be honest and transparent about how they are engaging with the TRC's final report and calls to action. Law students pay tens of thousands of dollars in tuition. They have the right to know what their law school is doing to address this important issue. Similarly, Indigenous communities have the right to know how law schools are engaging with their laws. More generally, as publicly funded institutions that provide an invaluable public good, law schools should allow the public to learn about how they are responding to the TRC's final report and calls to action.

13. Law schools should provide support to Indigenous communities who want to establish Indigenous law schools

Since law schools operate on stolen land and within universities built by colonizers, the only way they can truly engage with decolonization is if they actively support the creation of Indigenous law schools. They can do this by assisting local Indigenous communities to apply for funding and by providing them with helpful resources and training.

Chapter Summary

This chapter elucidated the overall arguments of my dissertation. The first argument is that participants at all three law schools explained reconciliation, both as a general concept and in the context of legal education, in ways that are consistent with the transformative approach to reconciliation. The second argument is that participants at all three law schools agreed that transformative reconciliation requires law schools to do much more than implement call to action 28. In addition to creating a mandatory component that addresses the content included in call to action 28, participants said that law schools must create Indigenous law institutes and make non-curricular changes to improve the law school environment for Indigenous students.

The final, and most important, argument of my dissertation is that while all three law schools are on the path to implementing transformative reconciliation, they are at different stages of this process and still have much work to do. In the final section of this chapter, I outlined thirteen recommendations that will help all Canadian law schools, including the three that I studied, implement transformative reconciliation.

CONCLUSION

The Canadian Oxford Dictionary (2005) defines ‘unsettle’ as a process of “disturb[ing] the settled state or arrangement of [something]”. Canadian legal education has undergone significant change in the past two centuries. What once consisted of an apprenticeship in a law office now requires an undergraduate degree and three years of full-time study. What has not changed, however, is the structure of that education. Since the very beginning, it has been taken as settled that Canadian legal education should be directed towards the study of Canada’s two legal traditions, common law and civil law. Despite the existence and resilience of Indigenous law and the important role it played in the formation of Canada’s constitution, law schools have not seriously engaged with it. In fact, they have actively ignored and devalued it.

I have used anti-colonial theory to show that the devaluation of Indigenous law in Canadian legal education is not accidental or benign. It represents a continuation of one of Canada’s most powerful strategies of elimination, namely, the use of education to systematically devalue and erase Indigenous Peoples’ cultures and experiences. In addition to being excluded from the law school curriculum, Indigenous students also experience racism and discrimination, isolation and culture shock, and stigma and feelings of powerlessness, among other barriers.

Canadian law schools have made commitments to transform legal education through a process of reconciliation. I have explored the liberal and transformative approaches to reconciliation and demonstrated that only the transformative approach has the potential to disturb the settled structure of Canadian legal education. The purpose of my doctoral research was to explore whether UOttawa Law, Dal Law, and UVic Law are engaging with the liberal or transformative approach to reconciliation.

I have shown that these three law schools conceptualize reconciliation, both as a general concept and in the context of legal education, in ways that are consistent with the transformative approach to reconciliation rather than the liberal approach to reconciliation. As a general concept, participants defined reconciliation as a process that involves governments and non-Indigenous people learning about Indigenous Peoples, their relationship with the Canadian state, and the violence and oppression associated with this relationship. They also said that reconciliation requires governments and non-Indigenous people to use this new knowledge to create a relationship grounded in respect, reciprocity, and Indigenous resurgence.

In the context of legal education, participants said that reconciliation requires law schools to acknowledge the role law has played in Canadian settler colonialism and become multi-judicial spaces where Indigenous law is engaged with alongside common law and civil law. UOttawa Law, Dal Law, and UVic Law articulated different approaches to how law students should learn about Indigenous law and the other content included in call to action 28. Participants at UOttawa Law said that law schools should require students to take a mandatory first-year course in Indigenous law, and that other mandatory and optional courses should be utilized to teach all the content in call to action 28. Similarly, participants at Dal Law said that learning Indigenous law must be a mandatory component of the law school curriculum that occurs throughout a law student's education. They also said that Indigenous law must be incorporated into other mandatory and optional courses. Participants at UVic Law agreed that law students should be required to learn about Indigenous law throughout their education, but they advocated for infusing this content into existing mandatory and optional courses rather than creating a standalone course.

One of the key findings of my research was that participants at all three law schools indicated that while call to action 28 is a necessary component of reconciliation, on its own it will not result in transformative change. Participants said that call to action 28 must be read in the context of the entire TRC report and in conjunction with the other 93 calls to action. They also said that in addition to implementing call to action 28, reconciliation requires the development of Indigenous law institutes and non-curricular changes to improve the law school environment for Indigenous students.

My research found that while UOttawa Law, Dal Law, and UVic Law are on the path to implementing transformative reconciliation, significant work remains to be done to unsettle the settler colonial structure of Canadian legal education. Each law school is in the process of implementing calls to action 28 and 50 and non-curricular changes to improve the law school environment for Indigenous students. This demonstrates that transformative reconciliation is a long-term process that is challenging to implement. In the final chapter of my dissertation, I outlined recommendations that will help Canadian law schools engage with transformative reconciliation.

Legal education is “ground zero” for reconciliation in Canada (Pearl, 2021). Implementing transformative reconciliation in legal education will have broader implications for Canadian society. Canadian settler colonialism is built on and supported by Canada’s European-derived legal system—a legal system that oppresses Indigenous Peoples and marginalizes their legal traditions. Canadian law schools can contribute to reconciliation in Canadian society by advocating for genuine change in Canada’s state-based legal system and teaching and engaging with Indigenous law respectfully.

Implementing transformative reconciliation in Canadian legal education will be more meaningful if our legal system and legal profession support the revitalization of Indigenous law. As you may recall, the TRC's call to action 27 calls on the Federation of Law Societies of Canada to ensure all lawyers receive cultural competency training in "the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations" (Truth and Reconciliation Commission of Canada, 2015, p. 168). Researchers should explore how law societies are responding to call to action 27 and whether they are engaging with the liberal or transformative approach to reconciliation.

In addition, the TRC's call to action 45(ii) calls on the government to implement the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP), which, as I mentioned in chapter 1, says that Indigenous Peoples have the right to maintain their own legal institutions. On June 21, 2021, Canada's United Nations Declaration on the Rights of Indigenous Peoples Act (2021) (UNDRIPA) received Royal Assent and came into force. Section 5 of the Act says that "[t]he Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration". This requires the government to ensure that its laws recognize and support Indigenous Peoples' right to maintain their own legal institutions. Researchers should examine whether and how the government is implementing call to action 45(ii) and section 5 of UNDRIPA, and whether their responses are consistent with the liberal or transformative approach to reconciliation. I am particularly excited by these two potential directions for future research, and I look forward to contributing to them in the future.

In addition to contributing to future research on implementing transformative reconciliation in the Canadian legal profession, I am looking forward to working with Indigenous Peoples in my capacity as a lawyer. My hope is that I can contribute to transformative reconciliation by representing First Nation, Métis, and Inuit clients in Aboriginal and Indigenous law matters. This work will be challenging and it will require me, as a settler lawyer, to be aware of the ways in which I benefit from Canada's state-based legal system, and constantly engage in reflexivity to ensure that I am not practicing law in a way that reproduces colonial relations. Having supportive anti-racist colleagues and access to continuing legal education resources will assist me during this journey.

BIBLIOGRAPHY

- Absolon, K., & Willett, C. (2005). Putting ourselves forward: Location in Aboriginal research. In L. Brown & S. Strega (Eds.), *Research as resistance: Critical, Indigenous, and anti-oppressive approaches* (pp. 97–126). Canadian Scholars Press.
- Adjin-Tettey, E., & Deckha, M. (2010). Promises and challenges of achieving racial equality in legal education in Canada. *Canadian Legal Education Annual Review*, 171-209.
- Applebaum, B. (2010). *Being white, being good: White complicity, white moral responsibility, and social justice pedagogy*. Lexington Books.
- Asch, M., Borrows, J., & Tully, J. (Eds.). *Resurgence and reconciliation: Indigenous-settler relations and earth teachings*. University of Toronto Press.
- Askew, H. (2016). Learning from bear-walker: Indigenous legal order and intercultural education in Canadian law schools. *Windsor Yearbook of Access to Justice*, 33(1), 29-46.
- Aveling, N. (2013). ‘Don’t talk about what you don’t know’: On (not) conducting research with/in Indigenous contexts. *Critical Studies in Education*, 54(2), 203-214.
- Backhouse, C. (2016). Gender and race in the construction of “legal professionalism”. In A. Dodek & A. Woolley. (Eds.), *In search of the ethical lawyer: Stories from the Canadian legal profession* (pp. 126-149). UBC Press.
- Bailey, C.A. (2007). *A guide to qualitative field research* (2nd ed.). Pine Forge Press.
- Bailey, K. A. (2016). Racism within the Canadian university: Indigenous students’ experiences. *Ethnic and Racial Studies*, 39(7), 1261-1279.
- Band-Winterstein, T., Doroa, I., & Naim, S. (2014). “I take them with me” – Reflexivity in sensitive research. *Reflective Practice*, 15(4), 530–539.

- Barkaskas, P., & Buhler, S. (2017). Beyond reconciliation: Decolonizing clinical legal education. *Journal of Law and Social Policy*, 26(1), 1-20.
- Bell, J. (2010, June 4). *GN rejections leaves Nunavut law school in the lurch*. *Nunatsiaq News*.
https://nunatsiaq.com/stories/article/98789_gn_rejection_leaves_nunavut_law_school_in_the_lurch/.
- Berger, R. (2015). Now I see it, now I don't: Researcher's position and reflexivity in qualitative research. *Qualitative Research*, 15(2), 219–234.
- Bhabha, F. (2014). Towards a pedagogy of diversity in legal education. *Osgoode Hall Law Journal*, 52(1), 1-41.
- Bishop, R. (1998). Freeing ourselves from neo-colonial domination in research: A Maori approach to creating knowledge. *International Journal of Qualitative Studies in Education*. 11(2), 199-219.
- Bishop, R., & Glynn, T. (1992). He Kanohi Kitea: Conducting and evaluating educational research. *New Zealand Journal of Educational Studies*, 27(2), 125-135.
- Borrows, J. (2005). Creating an Indigenous legal community. *McGill Law Journal*, 50, 153-182.
- Borrows, J. (2010). *Canada's Indigenous constitution*. University of Toronto Press.
- Borrows, J. (2016). Heroes, tricksters, monsters, and caretakers: Indigenous law and legal education. *McGill Law Journal*, 61(4), 795-846.
- Borrows, J., & Tully, J. (2018). Introduction. In M. Asch, J. Borrows & J. Tully (Eds.), *Resurgence and reconciliation: Indigenous-settler relations and earth teachings* (pp. 3-25). University of Toronto Press.
- Bourdieu, P. (2001). *Masculine domination* (R. Nice, Trans.). Polity Press.
- Cabral, A. (2016). *Resistance and decolonization*. Rowman & Littlefield International, Ltd.

- Calder, G., & Johnson, R. (2015, June 15). TRC offers a window of opportunity for legal education. *Canadian Lawyer*. <https://www.canadianlawyermag.com/news/general/trc-offers-a-window-of-opportunity-for-legal-education/269823>.
- Canadian Bar Association. (1999). *Virtual justice: Systemic racism and the Canadian legal profession*.
- Canadian Forum on Civil Justice. (n.d.). *Akitsiraq Law School*. <https://cfcj-fcjc.org/inventory-of-reforms/akitsiraq-law-school/>.
- Canadian Oxford Dictionary. (2005). Unsettle. (eISBN: 9780191735219).
- Carlson, E. (2016). Anti-colonial methodologies and practices for settler colonial studies. *Settler Colonial Studies*, 7(4), 496-517.
- Césaire, A. (1972). *Discourse on colonialism*. Monthly Review Press.
- Chanock, M. (1985). *Law, custom and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.
- Chartrand, L. (2015). Indigenizing the legal academy from a decolonizing perspective. *Ottawa Faculty of Law Working Paper Np. 2015-22*, 1-24.
- Clark, D. A., Kleiman, S., Spanierman, L.B., Isaac, P., & Poolokasingham, G. (2014). “Do you live in a teepee?” Aboriginal students’ experiences with racial microaggressions in Canada. *Journal of Diversity in Higher Education*, 7(2), 112–125.
- Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 (1982).
- Continuing Legal Education Society of British Columbia. (n.d.). But I was wearing a suit (part I and II). <https://www.cle.bc.ca/butiwaswearingasuit/>.
- Corntassel, J., Chaw-win-is & T’lakwadzi. (2009). Indigenous storytelling, truth-telling, and community approaches to reconciliation. *English Studies in Canada*, 35(1), 137-159.

- Corntassel, J., & Holder, C. (2008). Who's sorry now? Government apologies, truth commissions, and Indigenous self-determination in Australia, Canada, Guatemala, and Peru. *Human Rights Review* 9, 465-489.
- Cote-Meek, S. (2014). *Colonized classrooms: Racism, trauma and resistance in post-secondary education*. Fernwood Publishing.
- Coulthard, G.S. (2010). Place against empire: Understanding Indigenous anti-colonialism. *Affinities: A Journal of Radical Theory, Culture, and Action*, 4(2), 79-83.
- Coulthard, G.S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.
- Council of Canadian Law Dean. (n.d.). [Summaries of responses to the TRC's calls to action]. <https://cclcd-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf>.
- Craft, A., & Regan, P. (2020). Introduction. In A. Craft & P. Regan (Eds.), *Pathways of reconciliation: Indigenous and settler approaches to implementing the TRC's calls to action* (pp. xi-xxi). University of Manitoba Press.
- Creswell, J.W. (2014). *Research design: qualitative, quantitative, and mixed methods approaches* (4th ed.). SAGE Publications, Inc.
- Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24 (2000).
- Dalhousie University. (2016). *Chancellor's Chair in Aboriginal Law and Policy Schulich School of Law, Dalhousie University Strategic Plan 2016 – 2018*. https://cdn.dal.ca/content/dam/dalhousie/pdf/law/Faculty%20and%20Staff/law_Chancellor%27s%20Chair%20in%20Aboriginal%20Law%20and%20Policy_Strategic%20Plan.pdf.

Dalhousie University. (n.d.-a). *About the IB&M initiative*.

<https://www.dal.ca/faculty/law/indigenous-blacks-mi-kmaq-initiative/about.html>.

Dalhousie University. (n.d.-b). *Faculty of Law academic calendar 2000-2001*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2000-2001-Professional.pdf>.

Dalhousie University. (n.d.-c). *Faculty of Law academic calendar 2003-2004*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2003-2004-Professional.pdf>.

Dalhousie University. (n.d.-d). *Faculty of Law academic calendar 2004-2005*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2004-2005-Professionsl.pdf>.

Dalhousie University. (n.d.-e). *Faculty of Law academic calendar 2014-2015*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/14%2015%20Dentistry%20Law%20Medicine%20Calendar%20WEB.pdf>.

Dalhousie University. (n.d.-f). *Faculty of Law academic calendar 2008-2009*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/PR20082009Calendar.pdf>.

Dalhousie University. (n.d.-g). *Faculty of Law academic calendar 2001-2002*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2001-2002-Professional.pdf>.

Dalhousie University. (n.d.-h). *Faculty of Law academic calendar 2002-2003*.

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2002-2003-Professional.pdf>.

Dalhousie University. (n.d.-i). *Faculty of Law academic calendar 2009-2010.*

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/PR20092010Calendar.pdf>.

Dalhousie University. (n.d.-j). *Faculty of Law academic calendar 2013-2014.*

https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/Professional%20Calendar%202013_2014.pdf.

Dalhousie University. (n.d.-k). *Faculty of Law academic calendar 2021-2022.*

https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2021_2022%20DENT_MED_LAW_Calendar.pdf.

Dalhousie University. (n.d.-l). *Faculty of Law academic calendar 2017-2018.*

https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/DLM_17_18_Calendar.pdf.

Dalhousie University. (n.d.-m). *Faculty of Law academic calendar 2018-2019.*

https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/Dentistry_Law_Medicine_2018-2019.pdf.

Dalhousie University. (n.d.-n). *Faculty of Law academic calendar 2019-2020.*

https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/Dentistry_Law_Medicine_2019_2020.pdf.

Dalhousie University. (n.d.-o). *Faculty of Law academic calendar 2020-2021.*

<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/DENT-2020-2021%20July%207.pdf>.

Dalhousie University. (n.d.-p). *Aboriginal and Indigenous law.*

<https://www.dal.ca/faculty/law/aboriginal-indigenous-law.html>.

- Daniels v Canada (Indian Affairs and Northern Development), 2016 SCC 12 (2016). <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15858/index.do>.
- Davidson, L. (2012). *Cultural genocide*. Rutgers University Press.
- Daza, S. L., & Tuck, E. (2014). De/colonizing, (post)(anti)colonial, and Indigenous education, studies, and theories. *Educational Studies*, 50, 307-312.
- Dei, G.J.S. (2000). Rethinking the role of Indigenous knowledges in the academy. *International Journal of Inclusive Education*, 4(2), 111-132.
- Dei, G.J.S. (2005). Critical issues in anti-racist research methodologies: An introduction. In G.J.S. Dei & G.S. Johal (Eds.), *Critical issues in anti-racist research methodologies* (pp. 1-28). Peter Lang Publishing, Inc.
- Dei, G.J.S. (2006). Introduction: Mapping the terrain—Towards a new politics of resistance. In G.J.S. Dei & A. Kempf (Eds.). *Anti-colonialism and education: The politics of resistance* (pp. 1-23). Sense Publishers.
- Dei, G.J.S. (2010). Rereading Fanon for his pedagogy and implications for schooling and education. In G.J.S. Dei and M. Simmons (Eds.), *Fanon & education: Thinking through pedagogical possibilities* (pp. 1-28). Peter Lang Publishing, Inc.
- Dei, G.J.S., & Asgharzadeh, A. (2001). The power of social theory: The anti-colonial discursive framework. *Journal of Educational Thought*, 35(3), 297-323.
- Dei, G.J.S., & Lordan, M. (2016). *Anti-colonial theory and decolonial praxis*. Peter Lang Publishing, Inc.
- Dei, G.J.S. & Simmons, M. (2010). The pedagogy of Fanon: An introduction. In G.J.S. Dei and M. Simmons (Eds.), *Fanon & education: Thinking through pedagogical possibilities* (pp. xiii-xxv). Peter Lang Publishing, Inc.

- Deliofsky, K. (2017). Whiteness in the qualitative research setting: Critical skepticism, radical reflexivity and anti-racist feminism. *Journal of Critical Race Inquiry*, 4(1), 1-24.
- Department of Justice Canada. (1992). *Survey of students at ten law schools in Canada*.
- DeRosa, K. (2019, March 19). Federal budget: UVic gets \$9.1M to build national centre for Indigenous law. *Times Colonist*. <https://www.timescolonist.com/local-news/federal-budget-uvic-gets-91m-to-build-national-centre-for-indigenous-law-4670971>.
- Devlin, R. (1989). Towards an/other legal education: Some critical and tentative proposals to confront the racism of modern legal education. *University of New Brunswick Law Journal*, 38, 89-129.
- Devonshire, P. (2014). Indigenous students at law school: Comparative perspectives. *Adelaide Law Review*, 35, 309-330.
- Fanon, F. (1963). *The wretched of the earth*. Grove Press.
- Fanon, F. (1967). *Black skin, white masks*. Grove Press.
- Federation of Law Societies of Canada. (2009). *Final report of the task force on the Canadian common law degree*.
- Federation of Law Societies of Canada. (n.d.). *Canadian law school programs*. <https://flsc.ca/law-schools/>.
- Ferreira, M.P., & Gendron, F. (2011). Community-based participatory research with traditional and indigenous communities of the Americas: Historical context and future directions. *International Journal of Critical Pedagogy*, 3(3), 153-168.
- Garcia, F. (2017, December 18). Statement of principles critics: Stop fighting against us. *Canadian Lawyer*.

- <https://www.canadianlawyermag.com/inhouse/news/opinion/statement-of-principles-critics-stop-fighting-against-us/274762>.
- Gaudry, A., & Lorenz, D. (2018). Indigenization as inclusion, reconciliation, and decolonization: Navigating the different visions for indigenizing the Canadian Academy. *AlterNative: An International Journal of Indigenous Peoples*, 14(3), 218-227.
- Gillies, C., Burleigh, D., Snowshoe, A., & Werner, D. (2014). Walking in circles: Self-location in Indigenous youth violence prevention research. *First Nations Perspectives*, 6(1), 5-25.
- Girard, P., Phillips, J., & Brown, R.B. (2018). *A history of law in Canada: Vol. 1. Beginnings to 1866*. University of Toronto Press.
- Glenn, H.P. (2014). *Legal traditions of the world: Sustainable diversity in law* (5th ed.). Oxford University Press.
- Gordon, C.E., & White, J.P. (2014). Indigenous educational attainment in Canada. *International Indigenous Policy Journal*, 5(3), 1-28.
- Government of Canada. (n.d.). Justice Partnership and Innovation Program.
<https://www.justice.gc.ca/eng/fund-fina/jsp-sjp/pfo-pfc.html>.
- Government of Canada. (2021, May 17). Revitalization of Indigenous laws at centre of Government of Canada funding. *Department of Justice Canada News Release*.
<https://www.canada.ca/en/department-justice/news/2021/05/revitalization-of-indigenous-laws-at-centre-of-government-of-canada-funding.html>.
- Guillemin, M., & Gillam, L. (2004). Ethics, reflexivity, and “ethically important moments in research. *Qualitative Inquiry*, 10(2), 261-280.
- Habermacher, A. (2019). *Institutional cultures and legal education at select Canadian law faculties* [Doctoral dissertation, McGill University]. eScholarship@McGill.

- Hales, J. (2006). An anti-colonial critique of research methodology. In G.J.S. Dei and A. Kempf (Eds.), *Anti-colonialism and education: The politics of resistance* (pp. 243-256). Sense Publishers.
- Henderson, J.Y. (1994). Empowering treaty federalism. *Saskatchewan Law Review*, 58(2), 241-329.
- Henderson, J.Y. (2019). UN Declaration on the Rights of Indigenous Peoples and treaty federalism in Canada. *Constitutional Studies*, 24(1), 17-41.
- Hermes, K.A. (2008). The law of Native Americans to 1815. In M. Grossberg & C. Tomlins (Eds.), *The Cambridge history of law in America: Vol. 1. Early America (1580-1815)* (pp. 32-62). Cambridge University Press.
- Hewitt, J.G. (2016). Decolonizing and Indigenizing: some considerations for law schools. *Windsor Yearbook of Access to Justice*, 33(1), 65-84.
- Hickman, T.A., Poitras, L.A., & Evans, G.T. (1989). *Digest of findings and recommendations*. Royal Commission on the Donald Marshall Jr. Prosecution.
https://novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf.
- Indian Act, S.C. 1876, c. 18 (39 Vict.) (1876).
- Indian Act, R.S.C. 1985, c. I-5 (1985).
- Indigenous Law Research Unit. (n.d.-a). *About us*. <https://ilru.ca/about-us/>.
- Indigenous Law Research Unit. (n.d.-b). *Our team*. <https://ilru.ca/our-team/>.
- Indigenous Law Research Unit. (n.d.-c). *Research*. <https://ilru.ca/research/>.
- Indigenous Law Research Unit. (n.d.-d). *Workshops*. <https://ilru.ca/workshops/>.
- Indigenous Law Research Unit. (n.d.-e). <https://ilru.ca/education/>.

- Keddie, G. (Autumn 1991). The legend of Camosun. *Discovery*.
<http://staff.royalbcmuseum.bc.ca/wp-content/uploads/2013/10/The-Legend-on-Camosun.-Keddie-1991.pdf>.
- Kelley, R.D.G. (2000). A poetics of anticolonialism. In A. Césaire, *Discourse on colonialism* (pp. 7-28). Monthly Review Press.
- Kempf, A. (2006). Anti-colonial historiography: Interrogating colonial education. In G.J.S. Dei and A. Kempf (Eds.), *Anti-colonialism and education: The politics of resistance* (pp. 1-23). Sense Publishers.
- Kempf, A. (2009). Contemporary anticolonialism: A transhistorical perspective. In A. Kempf (Ed.), *Breaching the colonial contract* (pp. 13-34). Springer.
- Kempf, A. (2010). *The production of racial logic in Cuban education: An anti-colonial approach* [Doctoral dissertation, University of Toronto]. ProQuest Dissertations Publishing.
- Kirkness, V.J., & Barnhardt, R. (1991). First Nations and higher education: The four r's — respect, relevance, reciprocity, responsibility. *Journal of American Indian Education*, 30(3), 1-15.
- Kovach, M. (2009). *Indigenous methodologies: Characteristics, conversations, and contexts*. University of Toronto Press.
- Kovach, M. (2015). Emerging from the margins: Indigenous methodologies. In S. Strega and L. Brown (Eds.), *Research as resistance: Revisiting critical, Indigenous, and anti-oppressive approaches* (2nd ed., pp. 43-64). Canadian Scholars' Press.

- Kovach, M. (2018). Doing Indigenous methodologies: A letter to a research class. In N.K. Denzin & Y.S. Lincoln (Eds.), *The SAGE handbook of qualitative research* (5th ed., pp. 214-234). SAGE Publications, Inc.
- Kwame, A. (2017). Reflexivity and the insider/outsider discourse in indigenous research: My personal experiences. *AlterNative: An International Journal of Indigenous Peoples*, 13(4), 218-225.
- Ladner, K. (2018). Proceed with caution: Reflections on resurgence and reconciliation. In M. Asch, J. Borrows & J. Tully (Eds.), *Resurgence and reconciliation: Indigenous-settler relations and earth teachings* (pp. 245-264). University of Toronto Press.
- Lawrence, S., & Shanks, S.A.D. (2015). Indigenous lawyers in Canada: Identity, professionalization, law. *Dalhousie Law Journal*, 38(2), 503-524.
- Law Commission of Canada. (2006). *Justice within: Indigenous legal traditions*.
- Law School Admission Council. (n.d.-a). *University of Victoria Faculty of Law*.
<https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools/university-victoria>.
- Law School Admission Council. (n.d.-b). *Dalhousie University Schulich School of Law*.
<https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools/dalhousie-university>.
- Law School Admission Council. (n.d.-c). *University of Ottawa Faculty of Law*.
<https://www.lsac.org/choosing-law-school/find-law-school/canadian-law-schools/university-ottawa-faculty>.
- Law Society of British Columbia. (1996). *Report on the survey of Aboriginal law graduate in British Columbia*.

- Law Society of British Columbia. (1998). *Summary of the discussion of the Aboriginal law graduates focus groups.*
- Law Society of British Columbia. (2000). *Addressing discriminatory barriers facing aboriginal law students and lawyers.*
- Law Society of British Columbia. (2012). *Towards a more representative legal profession: Better practice, better workplaces, better results.*
- Law Society of Ontario (2017). Fact sheet: Statistical snapshot of lawyers in Ontario.
<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyers-2017-english.pdf>.
- Law Society of Upper Canada. (1957). *Report of the special committee on law school.*
- Law Society of Upper Canada. (1972). *Report of the special committee on legal education.*
- Law Society of Upper Canada. (2009). *Report to convocation: Equity and aboriginal issues committee.*
- Law Society of Upper Canada. (2016). *Working together for change: Strategies to address issues of systemic racism in the legal professions.*
<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>.
- Law Students' Society of Ontario. (2019). *Just or bust: Results of the 2018 survey of Ontario law students' tuition, debt, & financial aid experiences.* https://6142d97f-a3bd-422b-8df0-053543d6365f.filesusr.com/ugd/32a46b_e94f25bc987340e982f4ec1a897f871b.pdf.

- Lean, M. (2021, October 20). Using law as a tool for reconciliation. *Schulich School of Law News*. https://www.dal.ca/faculty/law/news-events/news/2021/10/14/using_law_as_a_tool_for_reconciliation.html.
- Lemkin, R. (1944). *Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*. Carnegie Endowment for International Peace, Division of International Law.
- Lincoln, Y.S., & González y González, E.M. (2008). The search for emerging decolonizing methodologies in qualitative research: Further strategies for liberatory and democratic inquiry. *Qualitative Inquiry*, 14(5), 784-805.
- Lightfoot, S. (2020). Conclusion. In A. Craft & P. Regan (Eds.), *Pathways of reconciliation: Indigenous and settler approaches to implementing the TRC's calls to action* (pp. 280-291). University of Manitoba Press.
- Lincoln, Y.S., Lynham, S.A., & Guba, E.G. (2018). Paradigmatic controversies, contradictions, and emerging confluences, revisited. In N.K. Denzin & Y.S. Lincoln (Eds.), *The SAGE handbook of qualitative research* (5th ed., pp. 108-150). SAGE Publications, Inc.
- Lindberg, T. (1997). What do you call an Indian woman with a law degree? Nine Aboriginal women at the University of Saskatchewan College of Law speak out. *Canadian Journal of Women and the Law*, 9(2), 301-335.
- MacAulay, H. (1991). Improving access to legal education for native people in Canada: Dalhousie law school's I.B.M. program in context. *Dalhousie Law Journal*, 14(1), 133-157.
- MacDonald, D.B. (2020). Paved with comfortable intentions: Moving beyond liberal multiculturalism and civil rights frames on the road to transformative reconciliation. In A.

- Craft & P. Regan (Eds.), *Pathways of reconciliation: Indigenous and settler approaches to implementing the TRC's calls to action* (pp. 3-34). University of Manitoba Press.
- Macdonald, R.A., & McMorrow, T.B. (2014). Decolonizing law school. *Alberta Law Review*, 51(4), 717-738.
- Max, K. (2005). Anti-colonial research: Working as an ally with Aboriginal peoples. In G.J.S. Dei and G.S. Johal (Eds.), *Critical issues in anti-racist research methodologies* (pp. 79-94). Peter Lang Publishing, Inc.
- Mbembe, A. (2001). *On the postcolony*. University of California Press.
- McLaren, J. (1987). The history of legal education in common law Canada. In R.J. Matas & D.J. McCawley (Eds.), *Legal education in Canada: Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985* (pp. 111-145). Federation of Law Societies of Canada.
- Memmi, A. (1965). *The colonizer and the colonized*. Beacon Press.
- Mero-Jaffe, I. (2011). 'Is that what I said?' Interview transcript approval by participants: An aspect of ethics in qualitative research. *International Journal of Qualitative Methods*, 10(3), 231-247.
- Merry, S.E. (1991). Law and colonialism. *Law & Society Review*, 25(4), 889-922.
- Meyer, K., & Willis, R. (2019). Looking back to move forward: The value of reflexive journaling for novice researchers, 62(5), 578-585.
- Miles, J. (2018). Teaching history for truth and reconciliation: The challenges and opportunities of narrativity, temporality, and identity. *McGill Journal of Education*, 53(2), 294-311.
- Mills, A. (2016). The lifeworlds of law: On revitalizing Indigenous legal orders today. *McGill Law Journal*, 61(4), 847-884.

- Monture, P.A. (1990). Now that the door is open: First Nations and the law school experience. *Queen's Law Journal*, 15, 179-215.
- Mussell, W. (2008). Decolonizing education: A building block for reconciliation. In M. Brant Castellano, L. Archibald & M. DeGagné (Eds.), *From truth to reconciliation: Transforming the legacy of residential schools* (pp. 321-338). Aboriginal Healing Foundation.
- Napoleon, V., & Friedland, H. (2016). An inside job: Engaging with Indigenous legal traditions through stories. *McGill Law Journal*, 61(4), 725-754.
- National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). *Final report: Vol. 1a*. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf.
- National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). *Supplementary report*. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_2_Quebec_Report-1.pdf.
- Nicholis, R. (2009). Research and Indigenous participation: Critical reflexive methods. *International Journal of Social Research Methodology*, 12(2), 117-126.
- Nunatsiaq News. (2016). *Nunavut government, college to launch Iqaluit-based law program in 2017*. https://nunatsiaq.com/stories/article/65674nunavut_government_college_to_launch_iqaluit-based_law_program_in_2017/.
- Ornstein, M. (2010). *Racialization and gender of lawyers in Ontario: A report for the Law Society of Upper Canada*.

- https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/r/racialization_gender_report.pdf.
- Parmar, P. (2019). Reconciliation and ethical lawyering: some thoughts on cultural competence. *Canadian Bar Review*, 97(3), 526-557.
- Patel, L.L. (2014). Countering coloniality in educational research: From ownership to answerability. *Educational Studies*, 50(4), 357-377.
- Pearl, T. (2021, June 8). *Working together; helping one another: Engaging māmawī wīcihitowin in heeding the TRC's call to action #28 in Alberta legal education*. CBA National. <https://www.nationalmagazine.ca/en-ca/articles/the-practice/legal-education/2021/working-together-helping-one-another>.
- Pidgeon, M. (2009). Pushing against the margins: Indigenous theorizing of “success” and retention in higher education. *Journal of College Student Retention*, 10(3), 339-360.
- Pue, W.W. (2016). *Lawyers' empire: Legal professions and cultural authority, 1780-1950*. UBC Press.
- Purich, D.J. (1986). Affirmative action in Canadian law schools: The Native student in law school. *Saskatchewan Law Review*, 51, 79-104.
- Ramshaw, S. (2019). Law and humanities: A field without a cannon. *Law, Culture and the Humanities*, 00(0), 1-12.
- Reference as to whether the term "Indians" in s. 91(24) of the B.N.A. Act includes Eskimo inhabitants of the Province of Quebec, [1939] SCR 104 (1939). <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8531/index.do>.
- Regan, P. (2010). *Unsettling the settler within: Indian residential schools, truth telling, and reconciliation in Canada*. UBC Press.

- Regan, P. (2018). Reconciliation and resurgence: Reflections on the TRC final report. In M. Asch, J. Borrows & J. Tully (Eds.), *Resurgence and reconciliation: Indigenous-settler relations and earth teachings* (pp. 209-228). University of Toronto Press.
- Rice, B., & Snyder, A. (2008). Reconciliation in the context of settler society: Healing the legacy of colonialism in Canada. In M. Brant Castellano, L. Archibald & M. DeGagné (Eds.), *From truth to reconciliation: Transforming the legacy of residential schools* (pp. 45-62). Aboriginal Healing Foundation.
- Robinson, A. (2016, May 23). More aboriginal students needed in Ontario law schools: Academics. *Law Times*. <https://www.lawtimesnews.com/news/general/more-aboriginal-students-needed-in-ontario-law-schools-academics/262142>.
- Rohner, T. (2016, March 15). *Nunavut to revive law school, Quassa says*. *Nunatsiaq News*. https://nunatsiaq.com/stories/article/65674nunavut_lawyer_training_program_to_be_revived/.
- Schnarch, B. (2004). Ownership, control, access, and possession (OCAP), or self-determination applied to research: A critical analysis of contemporary First Nations research and some options for First Nations communities. *Journal of Aboriginal Health*, 1(1), 80-95.
- Schulich School of Law TRC Committee. (2019). *Schulich School of Law: Efforts to implement the TRC report and calls to action* [PowerPoint slides].
- Schwartz, D. (2015, June 2). Truth and Reconciliation Commission: By the numbers. *CBC News*. <https://www.cbc.ca/news/indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185>.
- Sealy-Harrington, J. (2020). Twelve angry (white) men: The constitutionality of the statement of principles. *Ottawa Law Review*, 51(1), 195-256.

- Simmons, M., & Dei, G.J.S. (2012). Reframing anti-colonial theory for the diasporic context. *Postcolonial Directions in Education*, 1(1), 67-99.
- Simpson, L.R. (2004). Anticolonial strategies for the recovery and maintenance of Indigenous knowledge. *The American Indian Quarterly*, 28(3), 378-384.
- Sloan, J. (2020, September 3). UVic Law to build a national centre for Indigenous laws. *UVic News*. <https://www.uvic.ca/news/topics/2020+indigenous-law-funding-ring+news>.
- Smith, C. C. (2008). Who is afraid of the big bad social constructionists? Or shedding light on the unpardonable whiteness of the Canadian legal profession. *Alberta Law Review*, 45(5), 55-73.
- Smith, L.T. (2012). *Decolonizing methodologies: Research and Indigenous peoples*. Zed Books Ltd.
- Statistics Canada. (2016-a). *Census profile, 2016 census (Ottawa)*. <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=3506008&SearchText=ottawa>.
- Statistics Canada. (2016-b). *Census profile, 2016 census (Halifax)*. <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=1209034&SearchText=halifax>.
- Statistics Canada. (2016-c). *Census profile, 2016 census (Victoria)*. <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=1209034&SearchText=halifax>.

pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=5917034&SearchText=victoria.

Steinhauer, P. (2001) Situating myself in research. *Canadian Journal of Native Education*, 25(2), 183-187.

StopSOP (n.d.). *Bencher profiles*. <http://stopsop.ca/bencher-profiles/>.

Swanborn, P.G. (2010). *Case study research: What, why and how?*. SAGE Publications, Inc.

Thapar-Björkert, S., Samelius, L., & Sanghera, G.S. (2016). Exploring symbolic violence in the everyday: Misrecognition, condescension, consent and complicity. *Feminist Review*, 112(1), 144-162.

Tracy, S.J. (2013). *Qualitative research methods: Collecting evidence, crafting analysis, communicating impact*. Wiley-Blackwell.

Truth and Reconciliation Commissions of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf.

Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization, Education & Society*, 1(1), 1-40.

Tully, J. (2018). Reconciliation here on earth. In M. Asch, J. Borrows & J. Tully (Eds.), *Resurgence and reconciliation: Indigenous-settler relations and earth teachings* (pp. 83-132). University of Toronto Press.

United Nations Convention on the Prevention and Punishment of the Crime of Genocide, January 12, 1951, <https://www.un.org/en/genocideprevention/documents/atrocity->

crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14 (2021).

United Nations. (n.d.). *United Nations Declaration on the Rights of Indigenous Peoples*.

<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

United Nations Declaration on the Rights of Indigenous Peoples, September 13, 2007,

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

University of Ottawa. (1978). *University of Ottawa Calendar (volume 2) 1978-1979, Faculty of Law Common Law Section, (Fonds 77, Box No. 10765.3)*.

University of Ottawa. (1986). *University of Ottawa Calendar (volume 2) 1986-1987, Faculty of Law Common Law Section, (Fonds 77, Box No. 10384.5)*.

University of Ottawa. (1995). *University of Ottawa Calendar (volume 2) 1995-1997, Faculty of Law Common Law Section, (Fonds 77, Box No. 4996.14-15)*.

University of Ottawa. (2019-a). *Indigenous pathways statement*.

<https://commonlaw.uottawa.ca/en/news/indigenous-pathways-statement>.

University of Ottawa. (2019-b). *uOttawa Faculty of Law receives \$1 Million to support*

Indigenous learners. <https://media.uottawa.ca/news/uottawa-faculty-law-receives-1-million-support-indigenous-learners-0>.

University of Ottawa. (2019-c). *Indigenous symbolism at convocation*.

<https://commonlaw.uottawa.ca/en/news/indigenous-symbolism-convocation-0>.

- University of Ottawa. (n.d.-a). *University of Ottawa Calendar 2001-2003*.
<https://www.uottawa.ca/academic/info/regist/crs/0103/coursesEN/CML.html#CML2301>.
- University of Ottawa. (n.d.-b). *University of Ottawa Calendar 2010-2011*.
<https://www.uottawa.ca/academic/info/regist/1011/calendars/courses/CML.html>.
- University of Ottawa. (n.d.-c). *University of Ottawa Calendar 2006-2007*.
<https://www.uottawa.ca/academic/info/regist/0607/calendars/courses/CML.html>.
- University of Ottawa. (n.d.-d). *University of Ottawa Calendar 2008-2009*.
<https://www.uottawa.ca/academic/info/regist/0809/calendars/courses/CML.html>.
- University of Ottawa. (n.d.-e). *University of Ottawa Calendar 2011-2012*.
<https://www.uottawa.ca/academic/info/regist/1011/calendars/courses/CML.html>.
- University of Ottawa. (n.d.-f). *University of Ottawa Calendar 2012-2013*.
<https://www.uottawa.ca/academic/info/regist/1213/calendars/courses/CML.html>.
- University of Ottawa. (n.d.-g). *2021-2021 course search engine, CML 1105P*.
https://commonlaw.uottawa.ca/en/students/student-centre/course_search_engine.
- University of Ottawa. (n.d.-h). *2021-2021 course search engine, CML 3162B*.
https://commonlaw.uottawa.ca/en/students/student-centre/course_search_engine.
- University of Ottawa. (n.d.-i). *2021-2021 course search engine, CML 3162A*.
https://commonlaw.uottawa.ca/en/students/student-centre/course_search_engine.
- University of Ottawa. (n.d.-j). *Option in Aboriginal law and Indigenous legal traditions*.
<https://commonlaw.uottawa.ca/en/students/student-centre/course/option-aboriginal-law-and-indigenous-legal-traditions>.

University of Ottawa. (n.d.-k). *Faculty of Law strategic plan 2019-2024*.

https://commonlaw.uottawa.ca/sites/commonlaw.uottawa.ca/files/sp_eng_h_november_27.pdf.

University of Saskatchewan. (n.d.). *Nunavut law program*.

<https://law.usask.ca/programs/nunavut-law-program.php>.

University of Victoria. (2021a). *Preliminary course information summary, LAW 343 A02*

Current Topics in Indigenous Law: Criminal Justice and Family Law.

<https://www.uvic.ca/law/assets/docs/pcisspring2022/202201-343-2-indig-crim-family-milwards.pdf>.

University of Victoria. (2021b). *Preliminary course information summary, LAW 388A*

Indigenous Law Research, Method and Practice.

<https://www.uvic.ca/law/assets/docs/pcissummer2021/202105-388a-indigenous-research-johnson-napoleon.pdf>.

University of Victoria. (2021c). *Winter session 2021-2022 planning and course selection guide*

for UVic Law JD/JID students. <https://www.uvic.ca/law/assets/docs/2021-2022/2021-2022-course-planning-guide-jd-jid---revised-june-7.pdf>.

University of Victoria. (2021d). *Preliminary course information summary, LAW 301I*

Transsystemic Administrative Law.

<https://www.uvic.ca/law/assets/docs/pcisfall2021/202109-301i-t-adm-law-promislow1.pdf>.

University of Victoria. (n.d.-a). *University of Victoria calendar 1987-1987*.

<https://archive.org/details/universityofvict1986univ>.

University of Victoria. (n.d.-b). *University of Victoria calendar 1993-1994*.

<https://archive.org/details/199394>.

University of Victoria. (n.d.-c). *University of Victoria calendar 2013-2014*.

<https://www.uvic.ca/calendar/assets/docs/pdfs/undergraduate-2013-2014-calendar.pdf>.

University of Victoria. (n.d.-d). *University of Victoria calendar 1998-1999*.

<https://archive.org/details/199899>.

University of Victoria. (n.d.-e). *University of Victoria calendar 2004-2005*.

<https://archive.org/details/200405>.

University of Victoria. (n.d.-f). *University of Victoria calendar 1997-1998*.

<https://archive.org/details/universityofvict1997univ>.

University of Victoria. (n.d.-g). *University of Victoria calendar 1999-2000*.

https://archive.org/details/universityofvict1999univ_a1p0.

University of Victoria. (n.d.-h). *University of Victoria calendar 2003-2004*.

<https://archive.org/details/200304>.

University of Victoria. (n.d.-i). *University of Victoria calendar 2005-2006*.

<https://wayback.archive->

[it.org/4390/20140225100658/http://web.uvic.ca/calendar2005/CDs/LAW/354.html](http://web.uvic.ca/calendar2005/CDs/LAW/354.html).

University of Victoria. (n.d.-j). *AbCamp: 20 years of understanding*.

<https://www.uvic.ca/law/home/news/archive/AbCamp20thAnniversary.php>.

University of Victoria. (n.d.-k). *Indigenous summer intensive*.

<https://www.uvic.ca/law/about/indigenous/indigenoussummerintensive.php>.

- University of Victoria. (n.d.-l). *UVic Law responds to recommendations 27 and 28 of the Truth and Reconciliation Commission*.
<https://www.uvic.ca/law/home/news/archive/TRC%20recommendations.php>.
- University of Victoria. (n.d.-m). *Undergraduate programs, law*.
<https://www.uvic.ca/undergraduate/programs/undergraduate-programs/pages/law.php>.
- University of Victoria. (n.d.-n). *The JD/JID—A unique and transformative program*.
<https://www.uvic.ca/law/assets/docs/jid/jidbrochureravennov2018web.pdf>.
- Veracini, L. (2013). ‘Settler colonialism’: Career of a concept. *The Journal and Imperial and Commonwealth History*, 41(2), 313-333.
- Wane, N.N. (2006). Is decolonization possible? In G.J.S. Dei and A. Kempf (Eds.).
Anticolonialism and education: The politics of resistance (pp. 87-106). Sense Publishers.
- Waziyatawin (2009). You can’t un-ring a bell: Demonstrating contrition through action. In G. Younging, J. Dewar & M. DeGagné (Eds.), *Response, responsibility, and renewal: Canada’s truth and reconciliation journey* (pp. 173-180). Aboriginal Healing Foundation.
- White, J.P., & Peters, J. (2009). A short history of Aboriginal education in Canada. In J.P. White, J. Peters, D. Beavon, & N. Spence (Eds.), *Aboriginal education: Current crisis and future alternatives* (pp. 13-31). Thompson Educational Publishing, Inc.
- Wilson, S. (2008). *Research is ceremony: Indigenous research methods*. Fernwood Publishing.
- Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocidal Research*, 8(4), 387-409.