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Judicial Findings: Inter-Nation Tribunal on Indian Residential schools in Canada

JUDICIAL FINDINGS FROM THE INTER-NATION TRIBUNAL ON RESIDENTIAL SCHOOLS IN CANADA

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"You Can Recognize a Red Indian by His [or Her] Way of Life, Not by His [or Her] Blood Percentage."
- Chief Lame Deer, Lakota

Part One: Some principles of aboriginal life and law guiding my inquiry and findings
Part Two: Mission of the Tribunal - My understanding
Part Three: On the Issue of Ethnocide versus Genocide

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PART ONE: Some principles of aboriginal life and law guiding my inquiry and findings -

1. TRUTH, JUSTICE, HEALING, RECONCILIATION AND PREVENTION OF FUTURE ABUSES: THE FOCUS OF INQUIRY, JUDGMENT and DISPOSITION:

Probably one of the most serious gaps in the system is the different perception of

wrongdoing and how to treat it. In the non-Indian community, committing a crime seems to mean that the individual is a bad person and therefore must be punished...The Indian communities view a wrongdoing as a misbehavior which requires teaching or an illness which requires healing." (Justice proposal by Sandy Lake First Nation (Oji-Cree) quoted in Ross, 1996, p. 5)

"Peacemaking is generally not as concerned with distributive justice or rough and wild justice (revenge, punishment, control, determining who is right) as it is with sacred justice. Sacred justice is that way of handling disagreements that helps mend relationships and provides solutions. It deals with the underlying causes of the disagreement...Sacred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged. A peacemaking process tends to be viewed as a guiding process, relationship-healing journey to assist people in returning to harmony." (Quoted in Ross, 1996, p. 27)

We recognize that eye-for-an-eye" "justice" may lead to the whole world going blind and we recognize that it is in everyone's interest--including the accused--to focus on healing, rehabilitation, solving problems by understanding and removing the root causes of those problems--as opposed to a total and sole focus on "punishment". The real challenge is to pay due respect and sensitivity to the obvious pain, anguish and suffering of alleged victims making their accusations on the one hand while paying due respect to the imperative for due process for the accused on the other hand. It is a real challenge to shame and deter criminal acts while retaining respect for all people--creations of the Creator--and the potential for accused to turn their lives around. All people must be seen as many--sided and whole people, with mental, physical, emotional and spiritual dimensions and not to be reduced to being simply "offenders" and victims". On the other hand, we also recognize that the healing approaches may be misused to obstruct Truth and Justice. According to Rupert Ross:

"Fourth, I don't mean to suggest that all Aboriginal leaders who now speak the language of healing are doing so out of an honest commitment to the betterment of...their communities. Sadly, there are many dysfunctional communities where the groups in power promote traditional healing programs for one reason only: to prevent their abusive friends from being truly called to account in anyone's justice system, Western or Aboriginal. It is not the teachings themselves that are responsible for such abuse; it is their misuse by desperate people in desperately ill communities." (Ross, 1996, p. 15)

2. WE ARE ALL RELATED:

We are all related. For accusers and accused alike, allegations are serious. Accusers and accused alike are members of a Family, Clan, Tribe and Nation and what affects one affects all. As Susan Guyette put it:

"Cultural preservation is not a romantic ideal, but rather a practical necessity. Traditional Cultures are tightly organized systems of belief and behavior, which nourish and protect social groups as well as the individuals who belong to them. The loss of traditional

cultures places extreme social and psychological stress on tribal and rural peoples, exacerbating economic problems and creating additional social and health problems such as the lack of family cohesion and substance abuse." (Guyette, 1996, p. xiii)

The processes of Aboriginal or Indigenous Justice must balance protection of the rights of the accused with the imperative of preservation of the whole society and of what is worth preserving of the whole society--which also protects the individual, including the accused. Forms of revenge, retribution, abuse, injustice, duplicity and failure to seek truth and justice -against the accused or his/her family--add to cumulative spirals of abuse and dysfunction that progressively damage and destroy the whole society including those practicing the forms of abuse, duplicity, retribution, revenge etc.

3. TRUTH, JUSTICE, HEALING, RECONCILIATION AND PREVENTION OF FUTURE ABUSES ARE SACRED:

We are human beings from different backgrounds, with some different interests and agenda. In Aboriginal Law there is a recognition that adversarial processes often and easily degenerate into an emphasis on winning and not on discovery of truth per se. There can be no stopping of further abuses, rehabilitation and/or restrictions of abusers, healing, just compensation for victims or proper lessons learned until that which needs to be stopped, corrected and healed is fully and fairly understood with all contending perspectives fully and fairly taken into account. Still, Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses--the fundamental mandates and goals of Aboriginal Law--are often very illusive. An old Cree saying goes:

"You cannot pass along what another person really told you; you can only pass along what you heard."

And from Ohiyesa:

"The worship of the Great Mystery is silent, solitary, and free from all self-seeking. It is silent, because all speech is of necessity feeble and imperfect; therefore the souls of our ancestors ascended to God in wordless adoration." (Ohiyesa, 1993, pp. 1-2)

People will invariably react to what was said or done in very different ways and as Rupert Ross, a non-Indian observer of "Aboriginal Justice" put it:

"Discussions become a celebration of the rich diversity of life rather than a contest between opposing views about what we ought to think and feel." (Ross, 1996, p. x)

Still, however illusive, we believe that there are objective truths and standards of justice that transcend the myriad differences and subjective perceptions and opinions as to what was/is true or what was/is justice. We get closer to those objective truths and forms of justice by allowing a full--yet structured--interplay of diverse opinions, evidence etc.

The search for Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses are the sacred and the fundamental imperatives. Any attempts to block or thwart these imperatives, bring dishonor not only upon the person doing this, but also bring dishonor upon the family, clan, Tribe and Nation of that person. An Indian Trial or Tribunal is a sacred and a spiritual event as well as a secular one and calls for the triumph of the spiritual mind over the physical mind. According to Ohiyesa:

"We Indian people have traditionally divided the mind into two parts--the spiritual mind and the physical mind. The first--the spiritual mind--is concerned only with the essence of things, and it is this we seek to strengthen by spiritual prayer, the second, or physical mind, is lower. It is concerned with all personal or selfish matters..." (Ohiyesa, 1993, pp. 7-8)

And:

"Before there were any cities on this continent, before there were bridges to span the Mississippi, before the great network of railroads was even dreamed of, we Indian people had councils which gave their decisions in accordance with the highest ideal of human justice. Though the occurrence of murder was rare, it was a grave offense, to be atoned for as the council might decree. Often it happened that the slayer was called upon to pay the penalty with his own life. In such cases, the murderer made no attempt to escape or evade justice. That the crime was committed in the depths of the forest or at dead of night, witnessed by no human eye, made no difference to his mind. He was thoroughly convinced that all is known to the Great Mystery, and hence did not hesitate to give himself up, to stand trial by the old and wise men of the victim’s clan.

Even his own family and clan might by no means attempt to excuse or to defend him. But his judges took all the known circumstances into consideration, and if it appeared that he slew in self-defense, or that the provocation was severe, he might be set free after a thirty days period of mourning in solitude. The ceremonial mourning was a sign of reverence for the departed spirit." (Ohiyesa, 1993, pp. 23-34)

And:

"Such is the importance of our honor and our word that in the early days, lying was a capital offense. Because we believed that the deliberate liar is capable of committing any crime behind the screen of cowardly untruth and double dealing, the destroyer of mutual confidence was summarily put to death that the evil might go no further." (Ohiyesa, 1993, p. 26)

4. FORM, PROTOCOL AND RITUAL MUST ASSIST AND BE SUBSERVIENT TO THE SEARCH FOR TRUTH, JUSTICE, HEALING, RECONCILIATION AND PREVENTION OF FUTURE ABUSES:

Even the physical layout of the Aboriginal Court must be considered to facilitate the search for truth and justice. For example:

"...putting those tables in a circle shape, hoping that this will reduce the adversarial nature of the process. Instead of having the accused and his lawyer sit directly opposite the Crown and the police like boxers on opposite sides of the ring, they are spread around the circle together with probation officers, translators, alcohol workers and anyone else who might have a contribution to make. My own impression is that such an arrangement does make people feel more comfortable and also contributes to fuller community participation. Perhaps people feel better joining as equals a group discussion aimed at finding solutions than they do making formal and solitary suggestions to an all-powerful judge." (Ross, 1996, P. 8)

Many of the usual processes and tactics associated with the adversarial systems of non-Indian Courts often thwart rather than assist the causes of truth and justice. Such tactics as forum shopping, judge and jury shopping, contrived order of witnesses, rhetorical tricks designed to cast doubt on or prevent admission of credible evidence, abusing witnesses, ad hominem attacks with irrelevant opinion and evidence, ultra-formalism or ultra-ritualism, artificial distinctions between "non-argumentative" vs. "argumentative" phases of a trial or evidence (all speech is rhetoric in the classical sense--non-coercive forms of persuasion), obstruction of full discovery for any party, conscious introduction of contrived or partial evidence, rhetorical appeals to prejudices, deliberate refusal to pose relevant but uncomfortable questions, contrived highlighting of weak points and minimizing strong points of an opponents case while doing the reverse for ones own case, use of paid career experts, etc are to be avoided as they thwart rather than enhance "due process" and discovery of truth and justice--even for the accused.

All parties having what they feel to be relevant evidence and opinion on a particular matter are urged to participate as a matter of duty--to the causes of Truth, Justice, Healing, Reconciliation and Prevention of Further Abuses. Further, the search for Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses cannot be seen as a 3-to-5" matter and Judicial processes must be conducted when and for as long as necessary to serve these and other causes.

All crimes involve multiple past, present and future spirals of cumulative causality, implications on relatives of the accused and accusers as well as on the whole society, multiple dimensions and therefore requirements of varied areas of expertise. Those participating in judicial processes must be selected on the basis of demonstrated integrity, commitment and expertise in areas bearing on the issues of the judicial processes. In any judicial process, not only the accused is being examined, also being examined, is the integrity and credibility of the processes themselves, the participants in the process, the community sanctioning the process as well as core and guiding principles of Indian life and law. There is no place for using sacred proceedings dealing with sacred issues for self-promotion, grandstanding, rewarding friends and relatives, forging businesses alliances, revenge or for any purpose other than the sacred search for Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses.

Compartmentation, hierarchies, models, rituals and organizations are all creations of human beings for various purposes and represent abstractions and conventions that can at best approximate or grasp small parts of the immense totality of all the interrelated creations of the Creator and creations of the creations of the Creator. The answer to the abuses of power and excesses of hierarchies is not more checks and balances, formalism, Compartmentation, strict rules and counter-rules within hierarchies, but rather elimination of essentially formalistic and dysfunctional hierarchies and hierarchical relations themselves. Leadership and authority arise from service, persuasion and skill and not from some fixed or inherited position.

In the Western tradition, human beings stand just below God and the Angels but above all other forms of life and matter based on the passage on Creation from Genesis: "God said, Let us make man in our image and likeness to rule the fish in the sea, the birds of heaven, the cattle, all wild animals on earth, and all reptiles that crawl upon the earth...

In the Ojibwa tradition for example, and quite typical of Indigenous thinking in general, any hierarchy is based upon function and dependence in the totality of the creation of the Creator. The Order of Creation would go: Mother Earth, the plant realm, the animal realm and the human realm because without Mother Earth and her waters, there would be no plant, animal or human life, and without plant life there would be no animal or human life, and without animal life there would be no human life and yet Mother Earth, plant life, animal life existed and can exist without human life. This alternative world view, the Indigenous world-view, which emphasizes "wholeness" in the human as well as natural world, which emphasizes complexity rather than ultra-reductionism, which emphasizes non-linearity rather than linear uni-directional cause and effect, which emphasizes disharmony as a social as well as individual pathogen, which emphasizes connectedness with other parts of creation rather than disconnectedness, which recognizes inevitable change in cycles, spirals or patterns, helps to keep in mind humility and helps to balance judicial processes in ways that help to better search for Truth, Justice, Healing, Reconciliation and Prevention of Further Abuses.

Processes constructed and run on the basis of adversarial competition, ultra-formalism, ultra-reductionism, ultra-ritualism ultra-hierarchies, Compartmentation, linear thinking and modeling, punishment with no regard to the effects on those connected with the person being punished, punishment with no regard to healing or reconciliation will more often than not lead to more and not less future chains of abuse and dysfunction.

Often we find that what superficially appeared to be a "minor" matter turned out quite significant or what appears to be a "major" matter turns out to be relatively insignificant--in the scheme and totality of things. In Aboriginal Law, the time allotted for investigation, inquiry, judgment and disposition is not based upon a preliminary and summary judgment about the alleged severity of particular acts of a crime. Often as much time or even more will be allotted in a judicial proceeding dealing with what many might consider a "minor" crime relative to what others might consider a "major" crime. Substantial time may be allotted to investigating what some consider to be a "minor"

question with the result that substantial and pervasive probative evidence is discovered.

Judgmental language and simplistic labels may often lead to preemptory conclusions, summary judgments, simplistic and reductionist thinking, obfuscation, hiding or failure to introduce significant evidence, failure to pose necessary questions and failure to generally pursue Truth, Justice, Healing, Reconciliation and Prevention of Future Abuse. As Rupert Ross puts it:

"For one thing, English has an extraordinary number of adjectives that are not so much descriptions of things, as they are conclusions about things...adjectives like horrible, uplifting, disgusting, inspiring, delightful, and tedious and so on. When you really look at them, you discover that they don't tell us much about things-in-themselves, but only about the judgments speakers have made about them--and want the rest of us to accept." (Ross, 1996, p. 102)

"Put simply, I worry that our simplistic, punitive responses to simplistic, judgmental labels put us into blind canyons where we actually contribute to the development of those one-dimensional and dangerous people we are sworn to prosecute." (Ross, 1996, p. 106)

Further, these summary-and-final-judgment nouns and adjectives affect not only the integrity and effectiveness of judicial proceedings and the name and reputation of the accused; they reflect upon and damage the family, clan, tribe and nation of the accused as well. In short, they lead to ongoing consequences and further victimization. Speech must be careful and focus on the act and its consequences rather than on judgments about the actor nature and character.

5. FOCUS ON WHAT A PERSON SHOULD DO RATHER THAN ON WHAT A PERSON SHOULDN'T DO

Indigenous judicial processes are concerned primarily with establishing what people should do--as members of a family, clan, tribe and nation--rather than focus on what people shouldn't do. This may appear to be a distinction without a difference, but in fact it is a profound distinction.

Instead of long lists of potential offenses (listed as "should not do") and an attempt to cover every possible negative act, with the implication that if a given act is not on the should not do list, it is at least not illegal if not permissible, Indigenous Law focuses on core principles and values to guide general conduct such that if one followed those principles, each situation or act can be properly evaluated as to its propriety and proper legality or illegality without having memorized the "should not do" list or in dealing with a potential act not covered on the list. There are many acts that are not illegal or even regarded as improper or immoral from an absolute sense but nonetheless might have negative consequences on an individual committing the act or on others in a particular context.

Instead of something like the "Ten Commandments" with "Thou Shalt Not...", in Indian life and law there is more focus on "Thou Should...--as a family member, a clan member, a tribal member, a member of a nation, to live a happy life, to treat others as you want to be treated...

Resources and Sources

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3. Nerburn, Kent (Ed) "The Soul of an Indian and Other Writings of Ohiyesa", New World Library, 1993.

4. Ross, Rupert "Dancing With A Ghost", Octopus Publishing Group, Markham, ON, 1992

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PART TWO: Mission of the Tribunal - My understanding

I can only report my understanding of the central mission of the Tribunal because the mission as I understood it--or any other mission understood by others--was not formally and fully articulated, generally understood or pursued through consistent, coherent and structured processes and lines of inquiry and document gathering.

My understanding was that the overall mission of the Tribunal involved assisting local interests in Canada in obtaining data, testimony, supporting documentation and expert opinion on the alleged histories, causes, effects, intentions, interests, contending perspectives and opinions, legal judgments, ongoing chains and spirals of abuse and dysfunction in First Nations Communities, cover-ups and intimidation of/retribution against past and present victims and witnesses, compensations and actual distributions of compensations for alleged victims associated with Indian Residential Schools in Canada.

I understood that we were to assist in the gathering, correlating, triangulating , interpreting and questioning of evidence related to allegations of criminal and/or ethnocidal and/or genocidal intentions, practices, effects and implications associated with the setting-up and alleged routine practices of the Indian Residential Schools and to do so in such ways and through such procedures as to assist in the discovering and establishing of Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses for people, groups and institutions alleged and categorized to be "victims" and/or

"victimizers"--alike.

My understanding was that we were to conduct full, fair, open and honest--for all parties or potential parties concerned--inquiry and gathering, examination, interpretation and reporting of evidence and opinion. We were not there to question the socioeconomic-political system of Canada or the Sovereignty of the Government of Canada or of any of its Agencies. We were not there to intentionally and rhetorically exacerbate past or present wounds, feuds, differences or hostilities. We were not there to question the overall theologies or integrity of "institutions" such as the Anglican Church, United Church, Mormon Church, Catholic Church or other Churches associated with the Indian Residential Schools in Canada. We were not there to assist or support personal or wider agenda and activities, interests or the embarrassment/demonization of particular individuals, groups or political parties locally. We were not there to use our positions or status to forge deals or alliances not related to the issues with which the Tribunal was dealing or to engage in personal self-promotion, grandstanding, revenge or retribution, private business dealing or any other form of conduct that might bring discredit upon the Tribunal and its integrity and credibility, the issues and evidence with which the Tribunal was dealing or any organization associated with the Tribunal. We were not there to make statements or pre-judgments or pre-findings that might undermine the credibility and integrity of the Tribunal or its findings.

My understanding based on reading background materials and with discussions with organizers of the Tribunal was that we would be dealing with and examining allegations, opinion and evidence related to damages against and destruction of First Nations Peoples --individually and collectively--and that the allegations would involve some or more than the following allegations of practices in individual cases and patterns of practices as well as possible implicit or explicit policies against First Nations Children in Residential Schools:

1) sexual and physical torture;
2) murder;
3) coerced and/or deceptive medical experimentation;
4) forced de-Indianization and assimilation;
5) coerced and/or deceptive adoptions;
6) coerced and/or deceptive placements into Residential Schools;
7) coerced and/or deceptive takings of Indian Lands;
8) coerced and/or deceptive alienation of First Nations children from Traditional First Nations values, practices, dress, communities and support-systems, families and overall identity;
9) coerced non-Indian diets and food generally unfit for human consumption thus producing long-term deleterious effects in First Nations communities;
10) teaching and promotion of psychologically-destructive and vilifying racist myths, caricatures, false histories, "spiritual values" etc. to First Nations and non-First Nations children, adults and communities;
11) coerced and/or deceptive sterilization of First Nations children;
12) subjection of First Nations children to educational programs that were underfunded,

staffed with incompetent and abusive individuals, geographically isolated and structured with programs to de-Indianize First Nations children and prepare them for life on the poorest and most isolated margins of Canadian society;
13) past and ongoing cover-ups and intimidation of witnesses and victims of crimes and abusive practices and policies;
14) general abuse and vilification of First Nations children for speaking Native languages and articulating or practicing Aboriginal spirituality;
15) arranging and coercing abortions of products of rape and sexual abuse of First Nations children by men in authority;
16) starvation, unprotected and extended exposure (to the natural elements) and forced labor under unsafe working conditions of First Nations children;
17) placing non-infected First Nations children with other children infected with TB and other communicable diseases;
18) covert practices and graveyards designed to conceal murder, neglect and effects of abortions;
19) organized, calculated, structured and pervasive programs and practices designed for mind programming and control;
20) inadequate, incompetent and brutal medical services and practices and withholding of medical services to children after brutal beatings, sometimes leading to death of First Nations children;
21) use of First Nations children as informants and bullies to enforce Residential School rules, regimens, value systems, prejudices, retribution and cover-ups;
22) physically and psychologically brutal shaming, vilification and beating of First Nations children in front of other children;
23) isolation and of First Nations children from their families and communities, through location of Residential Schools in geographically isolated areas (often on islands making escape difficult) and through withholding of personal property, letters, presents and other forms of communication between children and their families and communities;
24) forcing children to fight or engage in sexual activities for the voyeuristic pleasure of Residential School staff and authorities;
25) failure to bring incidences and evidence of abuse/criminal conduct to higher church, local, provincial and federal authorities;
26) failure to protect children from physical and sexual abuse and murder by school staff and other school residents;
27) failure to remove known and provably chronic physical and sexual abusers from positions of authority and control over children;
28) incompetence and neglect by Residential School officials relative to educational mandates;
29) failure of federal, provincial and local governmental authorities to maintain supervision over and to intervene in behalf of, First Nations children and wards of the State;
30) failure to adequately fund Residential Schools relative to mandates governing Church and Governmental authorities;
31) failure to maintain and/or respect processes for filing and investigating grievances by First Nations children;
32) firing and sanctions against people of conscience who sought to expose and correct

alleged abuses of First Nations children;
33) failure to fully and fairly investigate Residential Schools and their aftermath effects on First Nations children, adults, communities and survivability--continues to today--and suggest and implement programs for mitigating and ameliorating damages;
34) failure to respect and live up to Treaties promising educational and other services to First Nations children and communities;
35) failure to seek, structure, ensure compliance and ensure delivery to actual victims, just and adequate compensation for abuses against First Nations Peoples that already have been stipulated and proved to have occurred;
36) all of the above-mentioned--and other not-mentioned--practices and policies carried out as part of overall, ongoing, forced, and intended marginalization, vilification, de-Indianization and assimilation of First Nations People--adding up cumulatively to extermination and extinction of First Nations Peoples as First Nations Peoples individually and collectively, and therefore "genocide", against First Nations Peoples under the articles of the UN Convention on Genocide, previous Tribunals on War Crimes and Genocide and other Authorities in International Law and Common Law of Nations;

It was my understanding that: the allegations and supporting evidence and opinion would be quire serious for the accused as well as for the accusers; that allegations would not be taken as established facts even where similar allegations had been established and stipulated to as facts in other forums; that some in the community would regard the Tribunal as "trouble-making" outsiders with no real authority or standing to conduct the proceeding; that those against whom allegations had been made would be present and fully and freely able to respond to any allegations with which they might disagree and/or comment on or provide further evidence and opinion on those allegations with which they might agree; that the credibility and integrity of the Tribunal, its members and organizations with which it had some affiliation would be under scrutiny and subject to attack; that the causes of Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses would be paramount in the mandate and focus of the Tribunal; that serious gathering investigation, weighing, evaluation and reporting of any relevant evidence and opinion would be undertaken. Further, given that evidence and opinion gathered previously on the Residential Schools in Canada were not properly included in the Royal Commission Report on Aboriginal Peoples (RCAP), it was my understanding that this Tribunal would be seriously and properly set-up, structured, executed, concluded and reported upon to any authorities who might be able to assist in dealing with the relevant issues and mandates.

In my opinion, the seriousness of the issues, the very real pain and anguish and suffering of the victims, the seriousness of the issues and allegations for the accusers and accused and probable impacts of any findings were not duly and properly considered. In my opinion the following errors were instrumental in severely limiting and compromising the work, content, scope of inquiry, quality of evidence, respect for accused and accusers, overall competence, integrity and overall credibility and acceptance of the Tribunal and any findings:

1) From its inception, the Tribunal was severely underfunded which compromised duration, scope, content, credibility and integrity of evidence, opinion and any findings; (the search for Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses is not a 9-to-5 proposition and there should be sufficient funding and competent logistics to ensure that all who want to bring relevant evidence and opinion may be able to do so;)

2) In my opinion, some of the Tribunal Judges were clearly not selected and invited by the organizers of the Tribunal on the basis of demonstrated experience, interest, commitment, capabilities and expertise related to the probable issues with which the Tribunal would likely be dealing but rather on some other basis;

3) The role, standing, authority and degree of participation of IHRAAM was misrepresented and used and promoted in ways that caused some threats to the credibility of IHRAAM as well as to the Tribunal;

4) The Tribunal Judges were told to watch the nature and content of any conversations with the News Media and to avoid any appearance of pre-judgment, bias, hidden agenda or whatever; this advice was generally followed by the Tribunal Judges and yet not followed by some of the very same persons who had given such suggestions--the organizers of the Tribunal and their relatives--who gave the impression to some of using the News Media for personal self-aggrandizement and self-promotion;

5) It is a fundamental principle of Indigenous Law that what may appear to be trivial may be quite significant and what may appear to be important may be relatively less-important in the scheme of things and therefore sufficient time and resources must be allotted to ensure full, fair and thorough inquiry. Due to lack of proper funding, inadequate specification, understanding and execution of the essential roles of the Tribunal officials and judges, and due to the summary, precipitous, disrespectful and not-explained removal of key Tribunal participants like Dr. Robert Ward, the designated prosecutor who had the best academic preparation and experience along with having conducted preliminary interviews for his role, insufficient time, scope and competent inquiry were given to key testimonies individually and to the testimonies collectively;

6) Contending local groups and interests were not fully, fairly and evenly accepted by the Tribunal and some favoritism and granting of insider status compromised the overall fairness, objectivity, credibility and integrity of the Tribunal;

7) Insufficient attention was paid to and mechanisms were not set up to handle, credible allegations of explicit and implicit forms of threats, intimidation and retribution against witnesses and their families--prior to, during and subsequent to the Tribunal inquiry;

8) Insufficient attention was paid to and mechanism were not set up to ensure or at least persuasively argue for, attendance at the Tribunal by individuals and groups representing various sides and contending allegations related to the issues being dealt with by the Tribunal. Thirty-seven invited parties failed to show up at the Tribunal of whom only two gave notice that they would not be attending; this compromised the

ability of the Tribunal to look at issues from contending perspectives;

9) Witnesses are apparently sometimes chosen not on the basis of direct experience or plausible indirect experience--beyond hearsay--with the issues involved but rather on the basis of associations--in other domains--with the organizers or participants of the Tribunal; this left many people with possibly very revealing and probative evidence unable to testify and/or severely restricted in the scope and content of their testimony;

10) Rifts and animosities between contending groups and personalities locally and among participants of the Tribunal--often nominally on the same side of the issues with which the Tribunal were dealing--were allowed to invade and to shape or limit some of the content, scope and actions of Tribunal inquiry;

11) Insufficient time and resources were allotted for preliminary investigations and gathering of background information necessary to properly and fairly, examine, document and thoroughly test allegations, opinions, evidence being given by contending parties;

12) Some Tribunal participants were precipitously and summarily demonized, marginalized or even removed without explanation or inquiry about their concerns with the result that the Tribunal lost potential contributions and expertise from those participants;

13) Some of the Tribunal participants engaged in ultra-formalism, ultra-ritualism, ultra-hierarchicalism, verbosity, pontification, lecturing of witnesses, favoritism toward some witnesses that interfered with the full, free, fair and credible inquiry about relevant issues and the obtaining of real, substantive, verifiable and probative evidence or opinion leading to probative evidence;

14) The physical arrangements of the furniture in the Tribunal were more in keeping with the hierarchical, adversarial, ultra-formalistic and ultra-ritualistic Tribunals of the non-Indian world and may have prevented or inhibited the full, free, fair and cooperative search for Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses;

15) Some of the witnesses preferred to testify 3in-camera2 for various reasons. Inadequate staffing and logistics made this difficult to accommodate or encourage those who really wished to do so--to get more complete and accurate evidence and opinion. In one case about which I know, "in-camera" testimony was probably or almost certainly revealed to one of the persons against whom the allegations of sexual and physical abuse had been made and this compromised the effectiveness and credibility of the Tribunal and possibly a witness who trusted us to keep her testimony confidential--especially from the alleged abuser;

16) Poor funding and poor logistics, along with conflicting versions of events and allegations to contending parties resulted in alleged promises allegedly not being kept, Tribunal participants suffering unforeseen financial and personal hardships and rifts and

feuds between contending groups and individuals exacerbated rather than healed. This compromised the overall effectiveness and credibility as well as the productivity and contributions of individual Tribunal participants.

For these above-mentioned and some other reasons, I cannot in all honesty provide any of my own definitive "findings" or endorse any "findings" of this Tribunal; in my opinion is was seriously flawed in its origination, design, staffing, execution, structure, content and scope of inquiry. I found some serious very compelling testimony and documentation with some credible evidence, supporting opinion and consciousness-of-guilt-like machinations that supported all of the previously-mentioned 35 allegations to varying but not to any conclusive degrees. Those against whom many allegations had been made were not in attendance--for whatever reason. Without a competently designed, staffed, structured, executed and monitored process, accepted by contending parties as credible or intending to be credible, further evidence on the full scope, intentions, causes, effects and agents of the previously mentioned very serious alleged crimes when established to have occurred, will remain to be discovered and fully documented. And until that occurs, with real substantive revelations and real substantive accountability, there can be no real truth, justice, healing, reconciliation, prevention of future abuses and crimes or mitigating the damages of ongoing dynamic circles or spirals of abuse, neglect and dysfunction from past and present crimes.

In the next section, I propose to discuss some suggestions for future lines of inquiry and probable constraints and obstacles.

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PART THREE: On the Issue of Ethnocide versus Genocide

During the Tribunal, some of us were aware and all of us were made aware of the distinction between "ethnocide" and "genocide" in Law and convention. Consistent with the importance of "mens rea" (state of mind and intent) in Tort and Criminal Law as well as Common Law where degree of intent and calculation is critical in classifying the level of criminality or liability (e.g. First-degree versus Second-degree murder versus Manslaughter), so ethnocide (unintended and non-coerced assimilation of a minority group into a broader group leading to the progressive destruction of the national minority group as a separate and identifiable minority group) is distinguished from genocide (intended and coerced assimilation and/or outright extermination of a national minority as a separate and identifiable group).

It is recognized in conventional economic theory that especially under national capitalism and capitalist-driven globalization, that processes of homogenization and equalization through mobility of capital and labor (equalization of wage rates and salaries, rents, interest rates and profits) take place daily. Labor migrates from areas of relatively low wage rates and high unemployment to areas of relatively low unemployment and expected higher relative wage rates, thus driving down some and raising other wage rates. Capital migrates from areas of high risk and/or relatively low rates of expected profitability to areas of lower risk and/or relatively higher rates of expected profitability thus driving down some and raising other rates of profitability.

Financial capital migrates from areas of relatively high risk and/or low real interest rates to areas of relatively low estimated risk and/or higher real interest rates thus driving down some and raising other real interest rates.

Further, not only people, capital and financial capital migrate, so do value systems, paradigms, power relations and structures, religious creeds and core principles of whole systems.

Creating and expanding global markets or markets in other regions of a nation, and expanded reproduction of whole systems (power structures and relations, defining institutions, capital-labor relations, value systems, laws, rights, responsibilities, practices etc.) require conditioning and assimilating--through increasingly sophisticated technologies of mind control, persuasion and social systems engineering--minority nations and cultures to new values, tastes and preferences, lifestyles, religions and paradigms of the dominant and dominating classes and the systems they dominate. In other words, the core, inner and defining imperatives, institutions, power relations and structures, values and practices of capitalism, which make up the inner "logic" and shape the dynamics and trajectories of capitalism on the "micro" and "macro" levels, lead inexorably to more and more homogenization, assimilation and destruction of national groups as separate and identifiable national groups--one form of "Ethnocide."

Personally, I feel that the reality of the inner and defining logic and dynamics of capitalism leading inexorably to increasing homogenization, assimilation and destruction of national groups and cultures as separate and identifiable groups and cultures is perhaps a major reason for the distinction between "ethnocide" and "genocide." When people "choose" or are "induced"--as opposed to having been clearly forced-- to opt into a new and dominating culture, even on the margins of that new dominating culture for career or other reasons, free of having been forced to assimilate, or when combatants are killed without the "intent" to kill them because they are members of a national group targeted for extermination but rather because they are combatants on the "other side" of a conflict, this is considered "ethnocide". Who wants to say that the inner "logic" and derivative/inexorable dynamics and trajectories of capitalism lead to genocide?

I found it amazing that no one from the Canadian Government or any of the Churches bothered to challenge or repudiate the assertion that the practices and policies of the Residential Schools in Canada collectively and cumulatively constituted one of the instruments of Genocide against First Nations Peoples in Canada. I doubt, however, that this represents on their part, a fundamental stipulation to overwhelming and irrefutable evidence. In fact, in other forums and other periods of history, there have been clear attempts to spin various versions of the history of Residential Schools in Canada even to the point of asserting that assimilation, even if shown to be forced, would fall short constituting Genocide under the UN Convention on Genocide, International Law or other principles of Common Law of Nations.

Both Canada and the United States (also in need of many Tribunals on Boarding Schools and other instruments of genocide) have consistently in the past and to this day

resisted a full definition, examination and adjudication of the myriad dimensions, forms, crimes and effects of genocide. According to Chrisjohn et al.:

"The draft Genocide Convention proposals included an explicit statement proscribing cultural genocide (destruction of the specific characteristics of a group) as well as biological genocide (restricting births, sterilization) and physical genocide (killing, whether quickly as by mass murder, or slowly as by economic strangulation). This proposal was immediately resisted by the United States (whose politicians were concerned that U.S. treatment of minorities would be in violation of such injunctions), and their efforts to derail those provisions were supported by Canada. As a result, the present version of the Convention is often taken as not dealing with cultural genocide." (Chrisjohn et. al, 1997, p 43)

Chrisjohn et al. quoting from "Minorities and Human Rights Law" by Patrick Thornberry (London: The Minority Rights Group, 1991, pp. 13-14) note:

"The classification of genocide here included physical and biological genocide; ...cultural genocide is not included except partially in the case of forced transfer of children. Existence is a somewhat circumscribed notion in this context. It is not genocide if a culture is destroyed but the carriers of culture are spared. A forcible assimilation is therefore not proscribed by this Convention: there is no such offense in international law. (Quoted in Chrisjohn, et al. Ibid. pp. 43 44)

This interpretation of the UN Convention (which Thornberry does not endorse but merely reports), that there is no such thing as cultural genocide is absurd on the face of it. How can it be possible to forcibly remove children from their families and place and indoctrinate them into strange, isolated and foreign places without "inflicting serious mental harm on the members of a group?" (violation of Article II of the UN Convention on Genocide) even if not accompanied by sexual and physical torture, starvation, medical experimentation, vilification of the culture and families of those being abducted etc.? And what kind of simplistic reductionism separates the importance of physical and cultural dimensions of persons--"carriers of a culture"--such that total or even essential personhood or total or essential existence of an identifiable group is seen in terms of physical existence only? The originator of the term "genocide", Raphael Lemkin railed against this kind of reductionism in his original definition:

"Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killing of all the members of a nation. It is intended rather to signify a coordinated plan of different actions aimed at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be 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 personal security, liberty, health, dignity, and the lives of individuals belonging to such groups. Genocide is the destruction of the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity but as members of the national

group." (Raphael Lemkin, "Axis Rule in Occupied Europe", Concord, NH: Carnegie Endowment for International Peace/Rumford Press, 1944, p. 79; quoted in Churchill, 1994, pp.12-13)

Lemkin observed two fundamental phases of genocide:

"Genocide has two phases: one, destruction of the national pattern of the oppressed group: the other, the imposition of the national pattern of the oppressor." (Lemkin, Ibid. p 79 quoted in Churchill, 1994, p. 14)

How could phase two commence if genocide means only the destruction of the physical existence of members of the oppressed group as a means of destroying the physical existence of the whole group? Yet even part c of Article II of the UN Convention on Genocide--"Deliberately inflicting on the group conditions of life calculated [the "mens rea" issue] to bring about its physical destruction in whole or in part"--is but one of the means--and criteria--for determining if genocide is going on.
Commenting on the lessons and implications of the Nazi Holocaust, Zygmunt Bauman wrote in "Modernity and the Holocaust" (p. 27):

"Ordinarily genocide is rarely if at all, aimed at the total annihilation of the group; the purpose of the violence (if the violence is purposeful and planned) is to destroy the marked category (a nation, a tribe, a religious sect) as a viable community capable of self-perpetuation and defense of its own self-identity. If this is the case, the objective of the genocide is met once 1) the volume of violence has been large enough to undermine the will and resilience of the sufferers, and to terrorize them into surrender to the superior power and into acceptance of the order it imposed; and 2) the marked group has been deprived of resources necessary for the continuation of the struggle. With these two conditions fulfilled, the victims are at the mercy of their tormentors. They may be forced into protracted slavery, or offered a place in the new order on terms set by the victors--but which sequel is chosen depends fully on the conquerors whim. Whichever option has been selected, the perpetrators of genocide benefit. They extend and solidify their power and eradicate the roots of the opposition." (Quoted in Chrisjohn et. al, pp. 45-46)

In 1947, the Lebanese delegate to the U.N. committee that produced the Draft Convention on Punishment and Prevention of the Crime of Genocide noted:
"..what is at issue is the destruction of a [recognizably distinct] human group, even though the individual members survive." (UN Doc. E/A.C. 25/S.R. 1-28; Quoted in Churchill, 1994, p. 13)

This led to a formulation in the initial U.N. Draft Convention on Genocide which focused not only upon mass murder or calculated extermination campaigns, but upon actions and policies which brought about: disintegration of the political, social or economic structures of a group or nation and the systematic moral debasement of a group, people or nation. (Report of the United Nations Economic and Social Council, 1947, Part VI quoted by Churchill, 1994, pp. 13-14 from Robert Davis and Mark Zannis, "The

Genocide Machine in Canada: The Pacification of the North, Montreal, Black Rose Books, 1973, p. 19)

All of this led to the 1948 IV Convention on the Prevention and Punishment of the Crime of Genocide which specified:

a) Article I: Genocide is a crime under International Law whether committed during times of peace or war;

b) Article II: Killing or causing serious bodily or mental harm or inflicting conditions calculated to bring about physical destruction or imposing measures to prevent births or forcibly transferring children--of an identifiable group targeted for elimination-- is genocide;

c) Article III: That shall be punishable under the Convention would not only be genocide per se, but also conspiracy to commit, direct and public incitement of , attempt to commit, or complicity in, genocide;

d) Article IV: anyone committing genocide (acts under Article II) or any of the acts under Article III, whether constitutionally responsible rulers, public officials or private individuals shall be punished;

e) Article V: Contracting parties undertake to enact, in accordance with their respective Constitutions, necessary legislation to give effect to the provisions of the Convention and provide effective penalties against persons guilty of genocide or Article III acts.

[Note: does this mean that if the Constitution of a given country sanctions genocide or acts considered genocidal, that the Country would be unable to comply or reserve the right not to comply with Article V or other articles of the Convention, as it would not be consistent with that country's Constitution? Does this mean that genocidal acts or policies--a crime under International Law--might be seen as a matter of sovereign "internal affairs" of a given country and that domestic law would trump international law? This is the so-called "sovereignty" exception position taken by the United States Government when finally signing the UN Convention in 1988--40 years after it was drafted--and at present (and was and is the position of the Nazis and a whole host of other genocidal forces];

f) Article VI: Persons charged with genocide or Article III acts shall be tried by a "competent tribunal" of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

[Questions: What happens when one of those Contracting Parties whose "competent State tribunals or acceptance of jurisdiction of an international penal tribunal is one of the entities against which allegations of genocide or Article III acts is being made?; Which State, even a signatory to the Convention, allegedly guilty of genocide or acts

under Article III, will likely provide its own Courts or accept the jurisdiction of other Courts to hear allegations of genocide against itself?]

g) Article VII: Genocide and Article III crimes shall not be considered as "political crimes" for purposes of extradition and Contracting Parties pledge themselves to grant extradition in accordance with their laws and treaties in force.

[Questions: What if the forces committing genocide are themselves "Contracting Parties" and effectively constitute a large section of whole State apparatus?; And in which case, how and to where or what venue will they be extradited?; What if domestic laws and treaties in force prevent extradition of parties who refuse to accept or define genocide as an international crime or if those domestic laws and treaties fail to include specific language allowing definition of genocide and Article III extraditable acts?; What if the demand is made to extradite from one Contracting Party engaging in genocide to the jurisdiction of another Contracting Party engaging in similar and even coordinated practices--e.g. U.S. and Canada?]

h) Article VIII: "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III."

[Questions: Again, what if the forces directing and carrying out genocide or any Article III acts represent a large section of the State of a Contracting Party Country?; Can the victims of genocide call upon the UN to intervene against the domestic State which may even be one of the "Contracting Parties"?; And if the victims can call for action against one of the Contracting Parties alleged to be conducting genocide or Article III acts, what mechanisms and venues exist for such allegations to be tried?];

I) Article IX: Disputes between Contracting Parties relating to the interpretation, application or fulfillment of the Convention, including responsibility of a State for genocide or for any of the other Article III acts to be submitted to the International Court of Justice.

[Questions: What if the State and Contracting party, alleged to be guilty of genocide or article III acts, summarily refuses, as does the United States on any matters other than commercial matters, to accept the authority and jurisdiction of the ICE?];

j) Article XV: "If as a result of denunciations, the number of Parties to the present Convention should become less than sixteen; the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective."

[Questions: What if one of the Contracting Parties is not only a genocidal State, but also a superpower powerful enough to apply political, economic, military and other sanctions to obtain enough denunciations to cause the Convention to cease to be in force? If genocide or Article III acts are crimes under International Law and Common Law of

Nations, why should it take a minimum number of Contracting Parties to recognize that fact and to keep the Convention in force?]

The point is that even in the UN Convention all sorts of dodges, tricks with language, procedural games, summary non-compliance--even by a "Contracting Party"--and other escapes from scrutiny and accountability are possible. This is especially true when one considers the extent of personal and systemic interests, mystifications, future interests and possibilities associated with genocide, past and present.

The United States and Canada--said to be "Children of a Common Mother"--have striking parallels in their own histories in many ways including in the operations, crimes, policies, intentions and effects of their Boarding Schools and Residential Schools respectively. It is interesting to note that the United States, the leading force in the establishment and execution of the Nuremberg Tribunals and other War Crimes and Genocide Tribunals that were instrumental in the development of the UN Convention, declined to sign on to the Convention for 40 years after it had been established; Canada finally signed on in 1952. According to Ward Churchill's examination:

"The reason for this extensive delay resides primarily, as is revealed in the records of Senate debates on the Genocide Convention since it was referred to that body by President Truman in 1950, in congressional concern that a broad range of federal policies vis-à-vis minority populations in the U.S. might be viewed as genocidally criminal under international law." (Lawrence J. LeBlanc, "The United States and the Genocide Convention", Durham, NC: Duke, University Press, 1991 cited in Churchill, 1994, p. 16)

Finally in 1988, in the closing days of the 100th Congress, based on the growing disconnect or contradiction between presuming to lecture other countries all around the world about basic human rights on the one hand and not having ratified participation in the UN Convention on the other hand, the U.S. Government enacted the "Genocide Convention Implementation Act of 1988" (Title 18, Part I, USC) which contained language designed from its inception to provide language that would narrow the applicability of the Convention to the United States. Deposited with the U.N. Secretary General in 1988 along with the instrument of treaty ratification was a summarily asserted amendment called a "Resolution of Ratification" or the "Lugar-Helms-Hatch Sovereignty Package" which contained the following reservation Article I (2):

[N]nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States." (Quoted in Churchill, 1994, p. 17)

Of course that is exactly the argument that the Nazis made at Nuremberg. "Nothing genocidal we did and no orders we followed were prohibited by our legal authorities as we interpreted them and we ruthlessly guarded the sovereignty of and compliance with our own legal authorities." In the U.S. Supreme Court decision in "Reid v Covert" (354, U.S. 1, 1957) ruled that any treaty provision that is inconsistent with the United States

Constitution would simply be invalid under national law (Quoted in Churchill, 1994, p. 19) which was one of the authorities used in the so-called "Sovereignty Resolution".

There is however, the matter of Article VI Section " of the U.S. Constitution that states that treaties are "the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Further, there is the matter of Article 27 of the 1969 Vienna Convention on the Law of Treaties (to which the United States is not a signatory but has recognized as the definitive promulgation of the Laws of Nations with regard to treaty relations--see Churchill, 1994, p.19 and 49) which notes that no country may invoke provisions of its domestic law as a reason for not abiding by its treaty obligations.

I raise U.S. issues and laws not only because of the common sources of U.S. and Canadian law, or because of the parallels between the U.S. Boarding Schools and the Canadian Residential Schools, but also because some of the same summary exceptions and assertions of "right of non-interference in internal affairs"--including Genocide and Article III offenses have been raised by Canadian authorities as well by U.S. authorities. Through summary language, the intent, content and scope of the Convention can be circumvented. Effectively countries like the U.S. and Canada, under the banners of "sovereignty" and "right of non-interference in internal affairs," can seek:

"To retain prerogatives to engage in or sanction policies and activities commonly understood as being genocidal, even while professing to condemn genocide." (Churchill, Ibid. p. 18)

During the setting up of the Nuremberg Tribunal, when the U.S. and other allies were accused of applying "ex post facto" law (nullem crimen sine lege or nulla poena sine lege previa) and uncodified international legal principles to the Nazis, noted that although much of what needed to be examined at trial had never been formally codified in international law or officially accepted by Germany, nonetheless:

"International law shall be taken to include the principles of the law of nations as they result from the usages established among civilized people, from the laws of humanity, and the dictates of public conscience." (Quoted in Churchill, 1994, p.22)

Finally, there is the U.N. Charter to which the U.S. and Canada are signatories which asserts and is generally recognized that the U.N. may declare principles of international law binding on even non-member nations. Further:

"The concept of offenses against the [customary] law of nations (delicti juris gentium) was recognized by the classical text writers on international law and has been employed in national constitutions and statutes. It was regarded as sufficiently tangible in the eighteenth century so that United States Federal Courts sustained indictments charging acts as an offense against the law of nations, even if there were no statutes defining the offense. Early in the nineteenth century it was held that criminal jurisdiction of federal courts rested only on statutes though the definition of crimes denounced by statutes

might be left largely to international law. Thus piracy as defined by the law of nations is an indictable offense in federal courts and all offenses against the law of nations are indictable at common law in state courts." (Quincy Wright, "The Law of the Nuremburg Trial" in Jay w. Baird, ed. "From Nuremberg to My Lai, Lexington, MA. DC Heath and Co., 1972, p. "7, quoted in Churchill, 1994, p. 21)

And yet as I write this, with one day left for the deadline for agreement of nations to form a standing World Court to deal with war crimes and genocide, the United States and some allies resist formation of such a court on the basis of summary assertions of "sovereignty" leaving the impression that war crimes and genocide might be a matter of "internal affairs" about which they have the "right" to demand non-interference from other nations, the U.N. and presumably from the victims themselves.

On the question of "mens rea" or the requisite intent to forcibly assimilate and/or extinguish a whole people all sorts of deceptive arguments are made. One argument may be called the "Zeitgeist" argument which goes something like this: as all forms of life are in process and development, so it is with people and nations; we cannot judge the commonly-accepted standards, moral codes and practices of past periods of history, through the prism of today's standards, moral codes and acceptable practices. To this we have to ask by whom were these past standards, moral codes and practices accepted? Whose perspective are we adopting with this line of argument? In Nazi Germany, there were indeed large groups of people who did not "commonly accept" the prevailing moral codes, standards and practices: Jews, Gypsies, Homosexuals, Communists, Trade-Unionists, Peoples of Conquered Territories, Prisoners of War, etc. And does this then mean that all standards, morality and practices are essentially subjective--you like genocide and I don't, just like you like to have a blue car and I prefer red?

Then there is the "perhaps-we-were-misguided-but-we-had-honest--as-opposed-to criminal-intent" argument. This is referred to as the "Standard Account" by Chrisjohn et al.:

"Residential Schools were created out of the largesse of the federal government and the missionary imperatives of the major churches as a means of bringing the advantages of Christian civilization to Aboriginal populations. With the benefit of late-20th century hindsight, some of the means with which this task was undertaken may be seen to have been unfortunate, but it is important to understand that this work was undertaken with the best of humanitarian intentions. Now, in any large organization, isolated incidence of abuse may occur, and such abuses may have occurred in some Indian Residential Schools...In any event, individuals who attended Residential Schools now appear to be suffering low self-esteem, alcoholism, somatic disorders, violent tendencies, and other symptoms of psychological distress (called Residential School Syndrome.) While these symptoms seem endemic to Aboriginal Peoples in general (and not limited to those who attended Residential School), this is likely to have come about because successive generations of attendees passed along, as it were, their personal psychological problems to their home communities and, through factors such as inadequacy of

parenting skills, perpetuated the symptomology, if not the syndrome. In order to heal the rift the Residential School experience may have created between Aboriginal Peoples and Canadian society at large, and in order to heal those individuals who still suffer the consequences of their school experiences, it is necessary and appropriate to establish formally the nature of Residential School Syndrome, causally link the condition to Residential School abuses (physical, sexual or emotional) determine the extent of its influence in Aboriginal populations, and suggest appropriate individual and community interventions that will bring about psychological and social health." (Chrisjohn et al, 1997, pp. 1-2)

This “Standard Account" was found in many of the testimonies about Residential Schools in Canada (not part of the Royal Commission on Aboriginal Peoples) and in the "apologies" presented by some of the Churches and the Government of Canada. For some, I included, this appears to be another crime rather than any substantive act of contrition. Without full and competent inquiry, full discovery and accountability, willingness to disclose all, commitment to change and removal of systemic imperatives and interests that produced the Residential School experience and other horrors for Indigenous People, no real Truth, Justice, Healing, Reconciliation or Prevention of Future Abuses is possible.

Chrisjohn, et al. (whose competent report was not included in the RCAP) give a "Non-Standard Account" which goes like this:

"Residential Schools were one of many attempts at the genocide of the Aboriginal Peoples inhabiting the area now commonly called Canada. Initially, the goal of obliterating these peoples was connected with stealing what they owned (the land, the sky, the waters, and their lives, and all that these encompassed); and although this connection persists, present-day acts and policies of genocide are also connected with the hypocritical, legal and self-delusion need on the part of the perpetrators to conceal what they did and what they continue to do. A variety of rationalizations (social, legal, religious, political, and economic) arose to engage (in one way or another) all segments of Euro Canadian society in the task of genocide. For example, some were told (and told themselves) that their actions arose out of a Missionary Imperative to bring the benefits of the One True Belief to savage pagans; others considered themselves justified in land theft by declaring that the Aboriginal Peoples were not putting the land to "proper" use; and so on. The creation of the Indian Residential Schools followed a time-tested method of obliterating indigenous cultures, and the psychosocial consequences these schools would have on Aboriginal Peoples were well understood at the time of their formation. Present-day symptomology found in Aboriginal Peoples and societies does not constitute a distinct psychological condition, but is the well-known and long-studied response of human beings living under conditions of severe and prolonged oppression. Although there is no doubt that individuals who attended Residential Schools suffered, and continue to suffer, from the effects of their experiences, the tactic of pathologizing these individuals, studying their condition, and offering therapy to them and their communities must be seen as another rhetorical maneuver designed to obscure (to the world at large, to Aboriginal Peoples, and to

Canadians themselves) the moral and financial accountability of Euro Canadian society in a continuing record of Crimes Against Humanity." (Chrisjohn, et. al, 1997, pp. 2-4)

These are some future lines of inquiry I would propose for future Tribunals in other places. Out of the deepest and most profound respect for the victims I heard and all of those I did not get to hear, and out of respect for their anguish, pain and suffering, I beg that future Tribunals be thoroughly and competently designed, constructed, set-up, executed and followed-up upon. There is simply too much at stake. Out of respect for the victims and what is at stake, I cannot and will not endorse "fruits of an essentially poisoned tree"--which only serve those who wish to compound the past and present crimes with the further crimes of cover-up and false contrition.

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