Windsor Yearbook of Access to Justice
Recueil annuel de Windsor d'accès à la justice

Reflections on the TRC's Mandate to Law Schools: Microscopic and Macroscopic Changes

Jaime M.N. Lavallee et Robin F. Hansen

Volume 40, 2024

URI : https://id.erudit.org/iderudit/1116763ar
DOI : https://doi.org/10.22329/wyaj.v40.9560

Aller au sommaire du numéro

Éditeur(s)

Faculty of Law, University of Windsor

ISSN

2561-5017 (numérique)

Découvrir la revue

Citer cet article

Lavallee, J. & Hansen, R. (2024). Reflections on the TRC's Mandate to Law Schools: Microscopic and Macroscopic Changes. *Windsor Yearbook of Access to Justice / Recueil annuel de Windsor d'accès à la justice*, *40*, 345–366. https://doi.org/10.22329/wyaj.v40.9560

Résumé de l'article

Le mandat confié par la Commission de vérité et réconciliation (CVR) aux facultés de droit comporte plusieurs volets sur le plan du contenu et du processus pédagogiques. Ce mandat consiste à rejeter la notion de « territoire sans maître » (terra nullius) et les hypothèses coloniales qui y sont associées dans le droit canadien, tel qu'il est enseigné, ainsi qu'à procéder à une nouvelle valorisation des ordres juridiques autochtones. Ce changement comporte son lot de défis car il peut faire entrer en jeu le sentiment d'identité personnelle et professionnelle individuelle des membres du milieu des facultés de droit. Le fait de comprendre l'ampleur de ces répercussions possibles peut aider à expliquer la mise en œuvre du mandat de la CVR en tant que projet de longue durée, qui soit source de croissance sur le plan tant individuel qu'institutionnel. Pour s'acquitter du mandat de la CVR, une faculté de droit a changé les exigences à remplir pour obtenir un diplôme en droit, dont l'ajout d'un cours au programme de première année. Cet ajout a fait l'objet d'une révision interne en 2023, et celle-ci a permis de relever sept défis; plus particulièrement, le cours tentait de porter à la fois sur un trop grand nombre de sujets et d'objectifs diversifiés. Il imposait aussi un fardeau considérable aux enseignants (et aux étudiants) à cause de cas de conflit et de racisme interpersonnels, ainsi que de niveaux différents de connaissances de base chez les étudiants. Des propositions ont été faites en vue de gérer l'attitude défensive des apprenants, de réduire les cas de racisme dans les communications et de dissocier des sujets distincts et des objectifs d'apprentissage les uns des autres, de façon à rehausser l'efficacité des activités d'enseignement, de planification et d'apprentissage. En adoptant pour la formation en droit une approche fondée sur la réduction des préjudices causés par la colonisation, ainsi que sur les objectifs de décolonisation et d'autochtonisation, nous expliquons les défis qui ont été relevés au cours de cette révision interne, de même que les solutions proposées. Nous analysons les changements comme un processus à plusieurs niveaux et nous examinons comment les expériences de diverses personnes peuvent mener à des choix plus vastes sur le plan pédagogique et institutionnel.

Reflections on the TRC's Mandate to Law Schools: Microscopic and Macroscopic Changes

Jaime M. N. Lavallee[*]
Robin F. Hansen[**]

The Truth and Reconciliation Commission's [TRC] mandate to law schools is multi-faceted in its pedagogical substance and process. The mandate entails rejecting terra nullius and its associated colonial assumptions within Canadian law as taught and a new valorization of Indigenous legal orders. This change is challenging because it can implicate law school community members' sense of individual personal and professional identities. Understanding the depth of these potential implications can help to explain TRC implementation as a long-term project, involving growth at both individual and institutional levels. To fulfill the TRC mandate, one law school changed the requirements for a law degree, including adding a class into the first year program. This addition was reviewed internally in 2023. The internal review identified several challenges; in particular, the course attempted to cover too many diverse topics and objectives within a single class. The course was also placing significant demands on instructors (and students) due to occurrences of interpersonal conflict and racism, as well as students' disparate levels of background knowledge. Curriculum proposals were made that aimed to manage learner defensiveness, reduce instances of racism in communications, and decouple distinct topics and learner objectives from one another, allowing for more effective instruction, scheduling, and learning. By using a settler harm reduction approach to legal education, as well as the goals of decolonization and Indigenization, we explain the challenges identified in the internal review and responses proposed. We discuss change as a multilevel process and consider how individuals' experiences can inform broader curriculum and institutional choices.

*Le mandat confié par la Commission de vérité et réconciliation (CVR) aux facultés de droit comporte plusieurs volets sur le plan du contenu et du processus pédagogiques. Ce mandat consiste à rejeter la notion de « territoire sans maître » (*terra nullius*) et les hypothèses coloniales qui y sont associées dans le droit canadien, tel qu'il est enseigné, ainsi qu'à procéder à une nouvelle valorisation des ordres juridiques autochtones. Ce changement comporte son lot de défis car il peut faire entrer en jeu le sentiment d'identité personnelle et professionnelle individuelle des membres du milieu des facultés de droit. Le fait de comprendre l'ampleur de ces répercussions possibles peut aider à expliquer la mise en œuvre du mandat de la CVR en tant que projet de longue durée, qui soit source de croissance sur le plan tant individuel qu'institutionnel. Pour s'acquitter du mandat de la*

[*] J.D., LLM, SJD. Muskeg Lake Cree. Assistant Professor, College of Law, University of Saskatchewan.
Acknowledgements: the many that shared their experiences that allowed the review and this article, and recognize that truth and Reconciliation is not an easy road - yet continue to join in on the journey.
[**] B.A.(Hons), LL.B., M.A., LL.M., College of Law, University of Saskatchewan

CVR, une faculté de droit a changé les exigences à remplir pour obtenir un diplôme en droit, dont l'ajout d'un cours au programme de première année. Cet ajout a fait l'objet d'une révision interne en 2023, et celle-ci a permis de relever sept défis; plus particulièrement, le cours tentait de porter à la fois sur un trop grand nombre de sujets et d'objectifs diversifiés. Il imposait aussi un fardeau considérable aux enseignants (et aux étudiants) à cause de cas de conflit et de racisme interpersonnels, ainsi que de niveaux différents de connaissances de base chez les étudiants. Des propositions ont été faites en vue de gérer l'attitude défensive des apprenants, de réduire les cas de racisme dans les communications et de dissocier des sujets distincts et des objectifs d'apprentissage les uns des autres, de façon à rehausser l'efficacité des activités d'enseignement, de planification et d'apprentissage. En adoptant pour la formation en droit une approche fondée sur la réduction des préjudices causés par la colonisation, ainsi que sur les objectifs de décolonisation et d'autochtonisation, nous expliquons les défis qui ont été relevés au cours de cette révision interne, de même que les solutions proposées. Nous analysons les changements comme un processus à plusieurs niveaux et nous examinons comment les expériences de diverses personnes peuvent mener à des choix plus vastes sur le plan pédagogique et institutionnel.

I. FIRST STEPS: INDIVIDUALS' RECONCILIATION ONE STEP AT A TIME

In June 2020, two colleagues, professors at a Canadian law school, went on a walk together. One an extrovert; the other an introvert.[1] One a tenured professor; the other not.[2] One is white; the other is Indigenous. Both are from the Prairies.[3] They can no longer remember the first walk's topic(s) of conversation. However, it was either the walk, the talk, or both, that led to this being the first walk of many during The Time That Has Been Named Too Much.[4]

Why does this walk matter? It matters because in the years since that first walk, the colleagues shared and learned individually with one another, contributing to understandings of what it means to be a law teacher on the Prairies in the early twenty-first century. Through interactions between the colleagues, change occurred on what we understand in this article to be the "microscopic" level, explained in Part IV below. These colleagues continued to walk, talk, and share in the years following – making meaningful changes to, for, and with each other.

---

1 Here we are using the Myers-Briggs understanding of personality types, broadly speaking. See e.g. David J Pittenger, "The Utility of the Myers-Briggs Type Indicator" (1993) 63:4 Rev Educational Res 467.

2 A tenured professor has the security of tenure, namely job security and protections for academic freedom. A professor without tenure does not have a permanent position with these characteristics. See e.g. Timothy M Sibbald & Victoria Handford, *Beyond the Academic Gateway: Looking back on the Tenure-Track Journey* (Ottawa: University of Ottawa Press, 2020).

3 We are understanding the Prairies as including Manitoba, Alberta and Saskatchewan. See e.g. Robert Wardhaugh, ed, *Toward Defining the Prairies: Region, Culture, and History* (Winnipeg: University of Manitoba Press, 2001). Within Canada it is common to divide the country into regions based upon landscape and characteristics.

4 The COVID pandemic entailed nearly two years of remote working and teaching. For a Canadian timeline see e.g Fahad Razak et al, "Canada's response to the initial 2 years of the COVID-19 pandemic: a comparison with peer countries" (27 June 2022) 194:25 Can Med Assn J E870.

Their interactions thus caused changes beyond themselves – in their course work, scholarship, and mutuality in understanding – running the gamut from the mundane (the weather) to commiserating on and celebrating academia, to the immense (racial injustice, the patriarchy). One example of a meaningful change was the new inclusion of a specific lecture and readings on the Indian Residential School System ([RS] in the 1L Torts class. In other words, these two people and colleagues became learners, teachers, and friends.

In the 2022-2023 academic year, the colleagues worked together to internally review their law school's response to the Truth and Reconciliation Commission [TRC] and its Final Report and Calls to Action [CTAs].[5] They undertook it knowing that there was much to be done, yet much that had already moved forward. Their internal course review (Review Report) forms the basis of this present article, of which they are co-authors.

A. The TRC: What it is and why it applies to law schools

The TRC was formed on June 1, 2008 through an Order in Council following the Indian Residential School Settlement Agreement [IRSSA].[6] Canada is not the only country to undertake a TRC, as it has occurred in other countries after large-scale societal harms have occurred.[7] It is common to hear that "Truth" must come before "Reconciliation". This imperative for truth-telling was explicitly outlined in the IRSSA:

> There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future. The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal peoples and the need for continued healing. This is a profound commitment to establishing new relationships embedded in mutual recognition and respect that will forge a brighter future. The truth of our common experiences will help set our spirits free and pave the way to reconciliation.[8]

As difficult as the truth-telling was to share by the IRS survivors,[9] reconciliation has been more difficult. The TRC released its Final Report in 2015, a six-volume work containing ninety-four (94) Calls to Action

---

5 Truth and Reconciliation Commission, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: The Truth and Reconciliation Commission of Canada, 2015) [TRC *Summary Report*]. The summary report and multivolume full report is available from the National Centre for Truth and Reconciliation online <https://nctr.ca/records/reports/>.

6 *Order in Council*, No 2008-0793 (4 April 2008), online: <https://ordersincouncil.canada.ca/attachment.php?attach=18635&lang=en>.

7 See e.g. Ronald Niezen, *Truth and Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools*, 2nd ed, (Toronto: University of Toronto Press, 2017).

8 *Indian Residential Schools Settlement Agreement*, [2008], Schedule N, online: <https://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf> [*IRSSA*]

9 The truth telling placed a burden on survivors as well as on their families who shared the damage that had occurred. Kerstin Reibold, "Who Needs to Tell the Truth? – Epistemic Injustice and Truth and Reconciliation Commissions for Minorities in Non-Transitional Societies" (2024) Episteme 1 at 12.

[CTAs],[10] which are enumerated and initial acts for *being in reconciliation*. Reconciliation is not something to be achieved – it is instead an act of being within and of striving to it.[11] Therefore, as overwhelming as it may seem, reconciliation is an on-going state. The only other state that would be more overwhelming is not undertaking it. Since it is an on-going state of being – it will flex, it will adapt, it will respond, and it will be open to more truths (and more on-going actions).

In this article, we reflect on how the "reconciliation"[12] outlined by the TRC can be pursued in legal education not only by understanding the law school as a microcosm of society, but also by understanding how reconciliation is effectuated through small scale, individual-level "microscopic" interactions and realizations within members of the law school community. These individualized developments towards reconciliation are difficult to measure and quantify in the short-term, but add-up and can become amplified over time, and as such are to be fostered. Our approach, which is sensitive to scale, is consistent with social sciences theorization concerning discrimination, which offers distinct methods of analysis for understanding it depending on whether the inquiry concerns the individual, institutional or societal level.[13] It is notable that each level is influenced by and composed of one other.

Our law school took action towards *being in reconciliation* by addressing the Call to Action #28 (CTA28), which required law schools to teach a course covering several enumerated subjects, skills and competencies.[14] The University of Saskatchewan College of Law (USask Law) undertook two significant changes to its curriculum and graduation requirements. First, all graduates of USask Law, starting with the 2018 class (2021 graduates) would be required to take an upper year course from those identified as being relevant to Indigenous law.[15] The second change was to include a course within the first year curriculum that (attempted) to teach the course as described by CTA28.

In this article, we consider our law school's internal review of the first year class instituted five years earlier, during the opening of the school's curriculum changes made to fulfill the TRC's CTA. This internal review identified several key challenges. In particular, the course as it was structured to fulfill the CTA, was covering too many diverse topics and objectives within a single class, and was as such, ironically, not meeting the objective of the CTA28; nor, as it is shown in this article, was it meeting the overall objective of the TRC – truth and reconciliation. In addition, the course was placing significant demands on instructors (and students) due to experiences of interpersonal conflict and racism by Faculty, as well as students,' vastly disparate levels of background knowledge. Although not the first internal

---

10 *IRSSA*, *supra* note 8, Schedule N.

11 See e.g. David MacDonald, "Canada's Truth and Reconciliation Commission: Assessing context, process, and critiques" (2020) 29:1 Griffith L Rev 150.

12 The TRC defines reconciliation as "establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal people in this country. In order for that to happen, there has to be awareness of the past, acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour", TRC *Summary Report*, *supra* note 5 at 6-7.

13 Rosita Fibbi, Arnfinn H Midtbøen & Patrick Simon "Theories of Discrimination" in Rosita Fibbi, Arnfinn H Midtbøen & Patrick Simon, eds, *Migration and Discrimination* (Springer, 2021) 21.

14 *Ibid* at 323. Other CTAs also have similar wording see Truth and Reconciliation Committee of Canada: Calls to Action (Winnipeg: Truth and Reconciliation Committee of Canada, 2015) Calls to Action 24, 27, 57, 59, 60, 62, 69, 86, 87 and 93 [TRC *Calls to Action*].

15 University of Saskatchewan, College of Law, "Current Students: Course information and program requirements" (last modified 26 September 24), online: <https://law.usask.ca/students/jd-students/current-students.php#Courseinformationandprogramrequirements>. [U of Sask, "Course Information"]

review that has occurred about the curriculum change, the Review Report is the first formalized one undertaken. (And it will not be the last, since, as mentioned above reconciliation is not 'one and done', it is an active on-going state.)

We go beyond the Review Report findings to also outline how a settler harm reduction approach[16] to legal education was used to make proposals for responding to the challenges identified by the curriculum change, notably focusing upon the first-year course inclusion. In particular, the Review Report recommended several curriculum proposals aimed at managing learner defensiveness, reducing instances of racism in communications, and decoupling distinct topics and learner objectives in CTA28 from one another, allowing for more effective instruction, scheduling, and learning. This is not to say that there is not room for more development and improvement. Indeed, it is expected that the course will continue to change and adapt as individuals, institutions and society changes.[17] These changes may mean that other approaches are added or ultimately replace the use of settler harm reduction as the critique for this approach is that by its eponymous name, it centers on reducing the harm to the settler(s) rather than focusing upon decolonizing and is not necessarily inclusive of harm reduction of, for, with, or by Indigenous peoples. Instead, it can be seen as further entrenching the colonial myopia by perpetuating settler centrism.[18]

The article is organized into five parts. Following this present introduction, including our introduction of selves, below, we next turn to Part II for a brief description of the TRC, and the CTAs relevant to law schools. In Part III, we present the content of the Review Report, as well as the proposals made. In Part IV, we argue that changes in legal education should be considered for their effects at the individual and the institutional levels, in order to adequately respond to the TRC CTAs and to reconciliation, in general. We argue further than the settler harm reduction approach is helpful in anticipating and responding to challenges experienced, notwithstanding the fact that Indigenization and decolonization[19] are ultimately required in order to reject the colonial *status quo* in legal education. Part V contains a brief conclusion and even enthusiasm and hope for the future of (Indigenous) legal education and programming.

B. Limitations, Challenges & Opportunities: Introduction of Selves

We acknowledge that there are limitations to the Review Report both in size and methodology. The authors of the review also have their own limitations – neither is trained in educational pedagogical review.

---

16 Scott Franks, *Towards Implementing the Truth and Reconciliation Commission's Calls to Action in Law Schools: A Settler Harm Reduction Approach to Racial Stereotyping and Prejudice Against Indigenous Peoples and Indigenous Legal Orders in Canadian Legal Education* (LLM Thesis, York University, 2020) [unpublished] online: <https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/37924/Franks_Scott_J_2020_LLM.pdf> [Franks, *Settler Harm Reduction*]. Please note that this article's research has undergone university ethics review and approval.

17 The first-year course has not remained static. Each year there have been *ad hoc* changes made to address the challenges encountered and to bolster the areas where successes have occurred.

18 See Eve Tuck & K Wayne Yang, "Decolonization is not a Metaphor" (2012) 1:1 Decolonization: Indigeneity, Education & Society 1; and Patricia Barkaskas & Sarah Buhler, "Beyond Reconciliation: Decolonizing Clinical Legal Education" (2017) 26 JL& Soc Pol'y 1.

19 Jeffery G Hewitt, "Decolonizing and Indigenizing: Some Considerations for Law Schools" (2016) 33:1 Windsor YB Access Just 65; Adam Gaudry & Danielle Lorenz, "Indigenization as inclusion, reconciliation, and decolonization: navigating the different visions for indigenizing the Canadian Academy" (2018) 14:3 AlterNative 218.

However, we hope to add to the larger conversation currently underway concerning TRC implementation in legal education.[20] This is both a formal academic writing and an informal truth-telling, as we share with others that are undertaking their own journey of being in reconciliation in order to show that even though we are trying to set things right, we are far from getting it right and that perhaps part of the *being in reconciliation* means acknowledging that as a law school and as law professors, we may stumble but will (must) continue along this journey. As individuals and as institutions, we also experience our own challenges and opportunities based on who we are, what stage in academia we are in, and where we are located. These intersectionalities at an individual author level all influence our own roles as women, colleagues, professors, and legal academics. To provide the reader with a better understanding of these limits, challenges, and opportunities of ourselves, while also acknowledging that some of the similarities that exist between us are just that: similarities, we provide a brief overview of how we see ourselves within this milieu. What has shown to be most important, which is evidenced by the walking and talking between these authors is that each of us can listen with an open heart, open mind, and willingness to understand and become competent, and maybe even compassionate, with each other's limitations, challenges and opportunities – which, we believe, are necessary components of *being in reconciliation*.

As co-authors of this article, we go beyond *co*nsulting with each other. Instead, as co-authors, we *co*llaborate, we *co*operate, and we hold *co*mpassion for each other and ourselves. In this article, we will introduce ourselves so that you may better understand from where our perspectives, identities, and values may arise. It is not a complete telling since we have limited space. However, it is a good starting point. Maybe you will see yourself in all, some or neither of us. But, maybe, it will help you think about how to better articulate yourself so that others can better understand your own values, perspectives, and how reconciliation affects you, which the authors hope will also be one step towards your own *being in reconciliation*.

Author 1

My own family history lays in stark contrast to my co-author and is more of a family forest of bushes than a tree. However, for ease of reference and brevity, I will share what I believe pertains to this article. I am a Muskeg Lake Cree Nation citizen, which is located in Treaty Six.[21] I grew up in Saskatchewan, primarily in Saskatoon. I left Saskatchewan to pursue legal education. I hold a Juris Doctor (J.D.) from the University of Toronto Faculty of Law, and a Master of Law (L.L.M.) and Doctor of Juridical Science (S.J.D.) from the University of Arizona, James E. Rogers College of Law in Indigenous Peoples Law and Policy.[22] I started my position at USask Law in 2018. I have written about my experience teaching the first year course, which is far less enthusiastic and hopeful than what is in this article. It could be because I am currently not the instructor for it. Although I remained involved in the first year course – informally by listening to the instructors and students with their experiences in it, and formally through my faculty

---

[20] See e.g. Federation of Law Societies "Report of the Truth and Reconciliation Calls to Action Advisory Committee" (2020) online: <https://flsc.ca/wp-content/uploads/2020/08/Advisory-Committee-Report-2020.pdf>.

[21] Muskeg Lake Cree Nation is a located near Marcelin, Saskatchewan and entered into Treaty 6 in 1881. Being a citizen of Muskeg Lake Cree Nation means that I am registered as an Indian under s. 2(1) of the *Indian Act*, RSC 1985, c I-5. See "Community history" (last visited 5 December 24), online: *Muskeg Lake Cree Nation* <https://muskeglake.com/about-muskeg-lake/history/>.

[22] "Indigenous Peoples Law and Policy Program" (2024), online: <https://law.arizona.edu/academics/programs/indigenous-peoples-law-policy>.

work, as evidenced by the Review Report. I am still reeling from the stumbles that have occurred in implementing the CTA28, but I am still pursuing the journey.

Author 2
I am a white, cis-woman, mother and mid-career law professor. I grew up in Calgary and lived in Ottawa and Montreal before returning to the prairies. My parents grew up on farms outside of Calgary. My ancestors emigrated from England and Europe four-plus generations back. I have benefited in a material sense from colonialism as a settler Canadian. This benefit is due to the land my ancestors' received indirectly from the Dominion government. (Such receipt begs the uncomfortable question: how did the Dominion government "get" that land?) This benefit is also due to my positioning as a white person, offering me socially constructed status according to colonial ideologies circulating within Canadian society, sets of assumptions that equate whiteness with civilization, modernity, superiority and entitlement to possess.[23] My area of graduate studies in law, and main area of research is international law; I write primarily about personhood across legal systems.[24]

II. THE TRC CALL(S) TO ACTION RELEVANT TO LAW SCHOOLS

The TRC was a truth-telling of the systematic psychological, physical, spiritual, and sexual abuse Indigenous children experienced at the hands of the federal and provincial governments, and various religious institutions. The opening paragraph of the TRC's summary final report sums up the reason that it was needed:

> 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."[25]

When the TRC released its final report in 2015, this multi-volume work was based on the testimony of more than 6,000 survivors of Canada's Indian Residential Schools System (IRS).[26] That these 'students' were and are more aptly named as 'survivors' of the IRS is integral to understanding why the TRC was and is needed. The IRS was established as a central element of Canada's cultural genocide[27] against

---

23 Amanda Gebhard, Sheelah McLean, Verna St. Denis, eds. *White Benevolence: Racism and Colonial Violence in the Helping Professions* (Halifax: Fernwood, 2022).

24 Legal personhood (also called legal personality) is understood as the capacity for rights and obligations within a legal system. See e.g. Bryant Smith, "Legal Personality" (1928) 37:3 Yale LJ 282.

25 TRC *Summary Report, supra* note 5 at 1.

26 *Ibid* at v.

27 The TRC describes cultural genocide as "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.

Aboriginal peoples. The IRS was founded in Eurocentric views and separated Indigenous children from their parents and placed them in residential schools, usually run by religious institutions, supported by the federal and provincial governments, often far from their communities.[28] Some children were in IRS close to their communities but were denied any means of interacting with their families. This was done to "get rid of the Indian problem",[29] and fracture Indigenous communities in ways that effectively terminated the intergenerational transmission of language, culture, and livelihood.

The TRC isolated 94 Calls to Action to redress the legacy of residential schools and to advance the process of Canadian reconciliation.[30] In the aforementioned CTA28, the TRC called on law schools to address the legacy of the IRS by implementing mandatory subject instruction and skills development.[31] In addition to CTA28, there are other CTAs that elaborate on the reasoning for why the TRC named law schools specifically in CTA28. In its Call to Action #47 (CTA47) the TRC called for the repudiation of the Doctrine of Discovery and *terra nullius* within Canadian law and practice, legal concepts which are profoundly dehumanizing towards Indigenous persons since they posit that the land was "empty" of people (denying Indigenous humanity since Indigenous people were clearly here) and open for "discovering".[32] Furthermore, in Call to Action #50 (CTA50) the TRC called for the revitalization of Indigenous laws and institutions as described above since the IRS and other Canadian laws and policies aimed to destroy and forcibly replace existing Indigenous laws and institutions.[33]

There is a (handy) booklet that lists only the 94 CTAs without the background of the six volume Final Report.[34] Each of the CTAs are in corresponding chapters of the full six volume report that provide details as to why each of the 94 CTAs exist. The CTA28 is found within the chapter entitled "A Denial of Justice".[35] The chapter details the enacting of violence against Indigenous persons by Canada's criminal and civil law and legal process. It describes the forcing of children into IRS, the excusal of those who committed violence against the children, and the extreme slowness of recognizing and redressing the injustices experienced.[36] It details how specific legal rules were employed to undermine survivors' access

---

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." (emphasis added) *Ibid* at 1.

28 *Ibid* at 2-6.

29 Canada, *NIHYANAN OMA NEHIYAWAK OCHI MIHKOSKIWAKAK: Red Earth Cree Nation Legal Traditions*: *Introduction* (last modified 8 August 2015), online: <https://canada.justice.gc.ca/eng/rp-pr/jr/recnlt-tjncre/p3.html> citing National Archives of Canada, Record Group 10, vol 6810, file 470-2-3, vol 7, 55 (L-3) and 63 (N-3). Not being allowed to be in contact with their families usually meant they were not also allowed to be with their own siblings that attended the school with them.

30 TRC *Calls to Action*, *supra* note 14.

31 *Ibid* at 323.

32 *Ibid* at 327. *Terra nullius*, "relies on the myth of Indigenous inhumanity (and invisibility) in order that title can be found to belong to colonizers." Robert J Miller et al, *Discovering Indigenous Lands* (Oxford: Oxford University Press, 2010) at 131.

33 TRC *Calls to Action*, *supra* note 14.

34 *Ibid*.

35 Truth and Reconciliation Commission, *The Legacy: Canada's Residential Schools,* vol 5 (Winnipeg: The Truth and Reconciliation Commission of Canada, 2015) at 185-276 [TRC *Final Report Vol 5*].

36 *Ibid* at 186-198.

to justice.[37] Unethical lawyer practices, largely unpunished, further worsened survivors' outcomes.[38] The claims processes themselves were often re-traumatizing in their execution, which was part of the impetus for the IRSSA and, ultimately, the TRC.[39] The Denial of Justice chapter does not only outline the historic issues, but continues by analyzing the Canadian legal system's contemporary treatment of Indigenous persons and communities in terms of its seriously disproportionate rate of incarceration and of child apprehension.[40] Lastly, it discusses the overrepresentation of Indigenous persons as victims of crime in Canada, particularly as concerns violence against Indigenous women and girls.[41]

The Summary Report of the TRC furthermore provides direct comment on CTA28 concerning the need for change in legal education:

> Educating Lawyers
> 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.[42]

---

37 *Ibid* at 199-207.

38 *Ibid* at 207-210.

39 *Ibid* at 210-218.

40 *Ibid* at 218-256. Disproportionate incarceration and child apprehension continues in the Canadian legal system, post TRC. Statistics Canada reporting on provincial incarceration shows that in 2020–21, Indigenous persons were imprisoned at 8.9 times the rate of non-Indigenous persons in Canada. Statistics Canada, "Over-representation of Indigenous persons in adult provincial custody, 2019/2020 and 2020/2021" by Paul Robinson et al (12 July 2023), online (pdf): *Juristat* <https://www150.statcan.gc.ca/n1/pub/85-002-x/2023001/article/00004-eng.pdf>. "Indigenous adults accounted for about one-third of all adult admissions to provincial and territorial (31%) and federal (33%) custody, while representing approximately 5% of the Canadian adult population in 2020." Statistics Canada, "Adult and youth correctional statistics, 2020/2021" (Ottawa: Statistics Canada, 20 April 2022), online: *The Daily* <https://www150.statcan.gc.ca/n1/daily-quotidien/220420/dq220420c-eng.htm>; "In 2016/2017, Aboriginal adults accounted for 28% of admissions to provincial/territorial correctional services and 27% for federal correctional services, while representing 4.1% of the Canadian adult population." Statistics Canada, "Adult and youth correctional statistics in Canada, 2016/2017" by Jamiel Malakieh, (Ottawa: Statistics Canada, 19 June 2018), online: *Juristat* <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm>; Regarding child apprehensions, according to Census 2021 data, 53.8 percent of children in foster care under fourteen are Indigenous, yet Indigenous children make up only 7.7 percent of the child population under fourteen in Canada, Indigenous Services Canada, "Reducing the Number of Indigenous Children in Care" (2021), online: <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>.

41 TRC *Final Report Vol 5, ibid* at 257-273.

42 TRC *Summary Report*, *supra* note 5 at 168 (emphasis added).

Given the Canadian legal system's past and ongoing injustices[43] towards Indigenous peoples it is logical that law schools were designated in CTA28 as having a clear role in reconciliation and in the redress of the legacy of residential schools. TRC Commissioner, and former Senator, Murray Sinclair stated in 2015 that: "Education is the key to reconciliation."[44] Therefore, legal education is likely key to changing understandings within the legal system in a way that redresses the legacy of and harms from residential schools.[45] It is also key to addressing associated policies that continue to reverberate today, and will continue to do so until the shift occurs away from the colonial *status quo*. This shift away requires both Indigenization and decolonization. Dr. Marie Battiste, L'nu Mi'kmaq Educator, eloquently describes the process of decolonization in education, as a complex, deeply embedded, culturally justified mandate:

> Colonialism as a theory of relationships is embedded in power, voice and legitimacy. In Canada, it has racialized Aboriginal peoples' identity, marginalized and de-legitimated their knowledge and languages, and exploited their powerlessness in taking their lands. This imperialistic system of knowing that is considered the "mainstream" functions like a "keeper" current in a rapidly flowing river or ocean. The keeper current drags a person to the bottom and then to the top, but if one fights against the current one usually drowns. Decolonization then is a process of unpacking the keeper current in education: its powerful Eurocentric assumptions of education, its narratives of race and difference in curriculum and pedagogy, its establishing culturalism or cultural racism as a justification for the status quo, and the advocacy for Indigenous knowledge as a legitimate education topic.[46]

Law schools arguably have a disproportionately important role in effecting decolonial change within the legal system, relatively to their size as institutions. They are the places of learning that create the foundational knowledge enacted by key actors within the legal system, namely lawyers and judges, along with many politicians and legislators – basically those that create and maintain the laws and policies of society. The Call to Action #27 (CTA27) mandates law societies to provide continuing education on the same topics as outlined in CTA28. While continuing education is important, this level of study is different qualitatively from law school's three years of full-time examination of the nature and substance of the law itself. Therefore, it lays outside the scope of this article and the Review Report.

In addition to the aforementioned CTA28, TRC CTA47 is also directly relevant to law schools and legal education:

> 47. We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as

---

43 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Volume 1a (Gatineau: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019) [National Inquiry *Final Report*].

44 Haydn Watters, "Truth and Reconciliation chair urges Canada to adopt UN declaration on Indigenous Peoples", *CBC News* (1 June 2015) online: <https://www.cbc.ca/news/politics/truth-and-reconciliation-chair-urges-canada-to-adopt-un-declaration-on-indigenous-peoples-1.3096225>.

45 TRC *Final Report Vol 5*, *supra* note 35.

46 Marie Battiste, *Decolonizing Education: Nourishing the Learning Spirit* (Vancouver: Purich Publishing, 2013) at 107 (emphasis added).

> the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts. [47]

This CTA is relevant because it is a comment on the substance of Canadian law, namely that the Doctrine of Discovery and *terra nullius* are legal concepts that are harmful to reconciliation, with implications for how such concepts should be framed in legal education. The CTA50 is another CTA that is relevant to law schools:

> 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.[48]

Indirectly, almost all CTAs present legal concepts and agendas requiring change and broad integration into society. Considering the text of these Calls to Action, it is clear that genuine implementation of the TRC Calls to Action at a law school cannot be achieved by one or two (whether mandatory or not) courses alone. Rather a paradigm shift in thinking is needed in a manner that rejects entrenched assumptions, particularly those that erase Indigenous personhood and jurisdiction, and moves towards an openness to learn about and envision law, legal education, and legal research in a way that is different from those that at root rely on *terra nullius* for their logical foundation. Canadian law by colonial habit tends to reject Indigenous law as being valid on its own terms. This "habit" must be broken; it requires truth-telling and the development of cultural humility in order to do so.[49] Otherwise, the only acceptable lens for assessment of law, teaching and research is one that makes no true space for Indigenous approaches or values, and instead continues the colonial *status quo*. In other words, the TRC Calls to Action prompts decolonization and reconciliation in law teaching and learning. This decolonization of legal education is a foundational change. It will take time, resources, will and perseverance to change the foundation of legally embedded discrimination and racism within the institutions, students, and instructors since many of us grew up and were educated within the very system that we are now being called upon to change.

Unsurprisingly, then, given the multi-layered task at hand, the text of CTA28 itself is multifaceted and comprehensive:

> 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

---

47 TRC *Summary Report*, *supra* note 5 at 327.

48 *Ibid*.

49 See e.g. the new recognition of ethnographic evidence recognized by dissent in *R v Van der Peet* [1996] 2 SCR 507 at paras 213-214.

> skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.[50]

CTA28 thus lists required skills training in four topics (intercultural competency, conflict resolution, human rights, and antiracism). In addition, it requires instruction in at least three substantive legal areas:

> 1. Canadian Aboriginal Law:[51] The history and legacy of residential schools; Treaties and Aboriginal rights, Aboriginal–Crown relations;
> 2. International Law: *United Nations Declaration on the Rights of Indigenous Peoples*; Treaties and Aboriginal rights; and Aboriginal–Crown relations; and
> 3. Indigenous law.

Review of CTA28, CTA47, and CTA50 suggests that the education for reconciliation required in law schools is expansive and has at least four essential dimensions: (1) addressing ignorance regarding colonialism; (2) dismantling racism; (3) teaching law that establishes just relations;[52] and (4) ensuring the vitality of Indigenous law and teaching such law.

First, the ignorance of many concerning the past and present treatment by the Canadian legal system of Indigenous peoples must be ameliorated. This includes basic questions of history. For decades, Canadian education minimized the very existence of Indigenous peoples and this has only changed in recent years.[53] Second, as the TRC and numerous other reports have extensively described anti-Indigenous bias is endemic in Canada's law and legal processes and it will require concerted efforts to acknowledge and reject colonial hierarchization and prejudices; moreover, anti-Indigenous racism exists in many societal areas beyond law.[54] Third, the legal instruments and principles that we may rely upon for establishing "just relations" must be taught and more widely understood, building from Canadian law, International law, and Indigenous law. Fourth, changing the Canadian legal system towards reconciliation and redressing the legacy of the IRS requires space for, knowledge of, and respect for Indigenous legal orders. Many law students will become part of the legal system in various roles, all of these affect Indigenous peoples, and thus require appropriate training in Indigenous law.

---

50 TRC *Final Report Vol 5, supra* note 35 at 210.

51 Canadian Aboriginal law "is a body of law, made by the courts and legislatures that largely deals with the unique constitutional rights of Aboriginal peoples and the relationship between Aboriginal peoples and the Crown. Aboriginal law is largely found in colonial instruments (such as the *Royal Proclamation* of 1763, the *Constitution Acts of* 1867 and 1982 and the *Indian* Act) and court decisions, but also includes sources of Indigenous law" JKF Law, "Making Space for Indigenous Law", (13 January 2016), online: *JFK Law* <https://jfklaw.ca/making-space-for-indigenous-law/>.

52 Just relations are "relationships of reciprocal respect to people's self-determination and substantive equality". Hanoch Dagan & Avihay Dorfman, "Just Relationships" (2016) 116:6 Colum L Rev 1395.

53 Sheila Carr-Stewart, *Knowing the Past, Facing the Future: Indigenous Education in Canada* (Vancouver: UBC Press, 2020).

54 Illoradanon H Efimoff &d Katherine B Starzyk, *The impact of education about historical and current injustices, individual racism and systemic racism on anti-Indigenous racism"* (2023) 53:7 Eur J Soc Psychology 1542.

III. INTERNAL COURSE REVIEW AT A CANADIAN LAW SCHOOL

A. Curriculum Change

In 2018, after curriculum review a three (3) credit unit first year (1L) class was created at our institution, with a calendar description that was essentially identical to the text of CTA28. All 1L courses are mandatory and these courses are currently: Contracts, Criminal Law, Property I, Tort Law, Constitutional Law, Kwayeskastasowin, Legal Research and Writing, and Dispute Resolution.[55] With the addition of Kwayeskastasowin, it is common to hear Kwayeskastasowin referred to as a mandatory course, yet it is more accurate to refer to all of the first year classes as being mandatory. As mentioned previously, at the same time as the change in the 1L curriculum, students were also required to take a course in the upper years (either in second year [2L] or third year [3L]).

Over the next five years nine instructors taught the class. Of these nine instructors, there were six female Indigenous instructors, one male Indigenous instructor and two white, male, non-Indigenous instructors. Except for one year where all first years and transfer students[56] were in one class and were taught by one instructor,[57] the course was divided into two sections, which is the standard way of division for 1Ls at this law school.[58]

In 2023, the authors, as members of the law school's Indigenous Engagement Committee, which is a Faculty subcommittee, reviewed the "new" 1L course that had been instituted five years earlier in response to CTA28.[59] In a Review Report presented to Faculty in May of 2023, we proposed program improvements based on information gathered from several past instructors, as well as others closely associated with the class. Information was gathered largely via interview. Several persons consulted also reviewed drafts of the report to propose changes and add clarification. This report led to several instruction changes in response that will themselves be reviewed in time, although discussion of responses to the Review Report are beyond the scope of this article.

The Review Report findings were organized along five themes: (1) achievement of transformational learning by individual students; (2) unique and complex pedagogical considerations; (3) range in student background knowledge; (4) interpersonal conflict and racism; and (5) need for broader law school developments and supports. Each thematic finding is discussed below, along with the corresponding response proposed in our Review Report.

---

55 U of Sask, "Course Information" *supra* note 15

56 Transfer student is defined by the College of Law as "[f]irst-year law students wishing to transfer to the College of Law from common law JD programs at other Canadian universities", University of Saskatchewan, College of Law ,"Juris Doctor (JD)" (2021), online: *Program Admissions* <https://law.usask.ca/documents/students/jd/21-22-jd-recruitmentbooklet-final.pdf>.

57 See Jaime MN Lavallee, "How to be Biased in the Classroom: Kwayeskastasowin – Setting Things Right?" (2022) 48:3 Mitchell Hamline L Rev 773.

58 University of Saskatchewan, College of Law, "New to Law" (2024), online: <https://law.usask.ca/students/jd-students/new-to-law.php#Studentresponsibilities>.

59 Faculty Member at the University of Saskatchewan "means a person appointed by the Board to the rank of Professor, Associate Professor, Assistant Professor, Librarian, Associate Librarian, Assistant Librarian, Lecturer, Instructor, or Special Lecturer" University of Saskatchewan, "Definitions" (last visited 12 November 2024), online: <https://careers.usask.ca/agreements/usfa/usfa-definitions.php#:~:text=Faculty%20Member%20means%20a%20person,Lecturer%2C%20Instructor%20or%20Special%20Lecturer>.

Theme 1: Transformational Learning that Furthers Reconciliation is Possible

A key response from multiple persons consulted was that transformational learning that furthers reconciliation had occurred and was occurring in this class, as evident in individual students' course work and oral interventions in the class.[60] Several instructors reported a marked evolution in some students' understanding of the course materials and skills development. This was observed in reflection assignments, oral participation in-class, and other class activities.[61] Instructors, Elders, Teaching Assistants [TA] and others had organized and delivered rich educational experiences for the students.[62] Considering this as a measure of success, it was recommended that the course continue its provision of various modalities and educational experiences to continue transformative learning – meaning that Kwayeskastasowin goes beyond the lecture room.

It was recommended that at least one of the course's instructors be an on-site Faculty member, in order to ensure students had a ready point of contact. The close involvement of the law school's Cultural Advisor was widely seen as deeply valuable – even essential – to the course and was strongly supported for the future.[63]

Theme 2: The Course's Content and Form Presented Unique and Complex Pedagogical Considerations: Expansive and Disparate Content in CTA28.

Many persons consulted noted that the 1L course was seeking to achieve too much in too short of a time, during an already busy first year program.[64] This view was consistent with concerns that had been raised in 2016 when the law school began considering how to implement CTA28.[65] A foundational issue was that the course description, matching CTA28 almost verbatim, contained many disparate elements, each of which might require distinct teaching modalities and instructor expertise.[66]

The recommendation related to this finding was to break up the components of the course into distinct classes or modules of instruction, particularly by separating the antiracism instruction from the rest of the materials and offering this instruction at the outset by separate instructors specially trained in this area, and in class sizes conductive to this learning e.g. smaller groups than the standard two sections of 65 students.

---

60 Although closer scrutiny of the student evaluations for this course could be made to see if there is authentic transformation and understanding of the issues in this class, as anonymized feedback may be significantly different than named materials used for grading purposes. See Lavallee, *supra* note 57.

61 Indigenous Engagement Committee, College of Law, University of Saskatchewan, *Implementation of the Truth and Reconciliation Commission: Call to Action #28 Five Year Review* (8 May 2023at 4.[Internal document on file with author].

62 *Ibid*.

63 *Ibid*.

64 *Ibid* at 5.

65 *Ibid*.

66 The course description for Kwayeskastasowin is as follows: "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" University of Saskatchewan, College of Law, "Kwayeskastasowin: Setting Things Right (LAW 232)", online: *University of Saskatchewan Course Catalogue* <https://catalogue.usask.ca/LAW-232#top>.

Teaching cultural competency presented its own distinct requirements as well. Intercultural and cultural competency is related to the concepts of cultural intelligence and cultural humility, and requires addressing the void in understanding of many non-Indigenous persons of Indigenous cultures, worldviews, ways of knowing, and other cultures.[67] This involves learning by experiences and developing an understanding of and respect for Indigenous cultures and knowledge.[68] This is not to be a performative learning process, but rather one of development of cross-cultural understanding.[69] This requires time, patience, and student engagement in a healthy and safe environment for both students (Indigenous and non-Indigenous) and instructors, all considerations relevant to course curriculum and design.[70] Teaching cultural intelligence and humility thus relates to building a knowledge foundation that allows healthy ways for Indigenous and non-Indigenous communities to work together in the present and future which advances the goal of reconciliation.[71] Kindness and compassion through the learning were identified as being of assistance in the process, one that is at the root of wahkotowin – relationship building.[72]

Considering the importance given in the TRC as evidenced by multiple CTAs regarding revitalization of Indigenous laws and developing cultural competency in law students as future lawyers,[73] it was not clear that allocating a mere portion of a 3 credit unit class to Indigenous laws was the appropriate mode of allowing for the development of this level of understanding, leading to a recommendation of an upper-level course in this area. It must be remembered that Indigenous Law is the legal principles and systems of Indigenous Nations themselves, created by and for the people. As noted earlier in this paper, Canadian Aboriginal law is the creation of laws by the colonial state about and for Indigenous peoples.

Ensuring the availability of an upper year course in Indigenous law was recommended to offer students the opportunity to develop a strong familiarity with Indigenous legal orders, and to develop their intercultural competency. At present, given the scarce number of mandatory instruction hours allotted and the number of instructors that have this training the Indigenous law and intercultural competency dimensions of the law school's implementation were noted to be likely insufficient to significantly contribute to redressing the legacy of the IRS or to advance reconciliation. There is a growing wealth of scholarship concerning teaching Indigenous law in law schools that was identified as a potential guide for growth in this area going forward.[74]

One further point identified as worthy of mention was respect for academic freedom.[75] It is generally expected that instructors have a large amount of latitude and individual judgment in the organization and

---

67 Indigenous Engagement Committee, *supra* note 61 at 5.

68 *Ibid*.

69 *Ibid*.

70 *Ibid*.

71 *Ibid*.

72 *Ibid*.

73 TRC *Summary Report*, *supra* note 5 at 168; Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence," (2019) 97:3 Can Bar Rev 526.

74 See e.g. Karen Drake, "Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom" (2017) 95 Can Bar Rev 9, online: <http://works.bepress.com/karen-drake/100/>. Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847; John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795.

75 Academic freedom as it pertains to employees at the University of Saskatchewan is "the exercise of their rights as citizens and to freedom in carrying out research and in publishing its results, freedom of discussion, freedom to teach the

delivery of their classes. It was recommended that classes identified as key to ensuring that the law school is implementing CTA28, and other CTAs that affect legal education and the legal system, remain true to this expectation. It would have to be broadly organized which subjects would primarily fit in which classes, but beyond that there should be full respect granted to instructors to exercise their judgment in the same manner as other JD courses.

Theme 3: Variation in Student Levels of Background Knowledge

It was reported that some non-Indigenous law students entered the JD program with the barest of understandings of colonialism in Canada and of Indigenous peoples.[76] One respondent noted that in a discussion session it became evident that a good number of students in the group did not understand the existence of Métis peoples or their languages.[77] Some Indigenous law students take the class during the summer, however there are still some Indigenous law students who take the mandatory 1L class during the academic year.[78]

Since some students have a very basic level of understanding at the outset of the class, it was reportedly very challenging as an instructor to teach effectively or to move the class as a whole toward understanding of the knowledge areas listed in CTA28.[79] Furthermore, some students appeared hesitant to participate for fear of exposing their ignorance relative to other classmates, as often they believe it could be seen as racist rather than merely ignorant of the issue(s).[80] The recommendation related to this finding was to seek ways to mitigate the variation in students' background knowledge, such as by admission pre-requisite or through JD orientation instruction.[81] However, this recourse presents its own issues with implementation.

Theme 4: Instructor Burden: Conflict Management and Racism in Student Communications

Non-indigenous and Indigenous instructors noted that the class was significantly more burdensome concerning teaching time, compared to other classes.[82] They also specifically noted this in regard to the area of interpersonal conflict management, reporting even having to change tutorial groupings at times in order to improve students' comfort in the learning environment.[83] In addition to this challenge for all instructors, however, Indigenous instructors teaching the 1L course had to confront and navigate racism in conducting the class and with teaching the material.[84] This was at times highly toxic and unhealthy. In multiple years, there were cases of students, individually and in groups, grandstanding against the class

---

subject assigned in classes, freedom to criticize the University and the Association without suffering censorship or discipline" University of Saskatchewan, "Article 6 – Academic Freedom" (last visited 13 November 2024) online: *Employment Agreements* <https://careers.usask.ca/agreements/usfa/usfa-6-academic-freedom.php>. It must be noted that academic freedom can also be weaponized against interjecting TRC goals in other courses that are not seen as 'Aboriginal' or 'Indigenous'.

76 Indigenous Engagement Committee, *supra* note 60 at 6.

77 *Ibid*.

78 University of Saskatchewan, College of Law, "Spring and Summer Law Courses for Indigenous Students (last visited 13 November 2024), online: <https://law.usask.ca/programs/indigenous_summer_courses-info.pdf>.

79 Indigenous Engagement Committee, *supra* note 61 at 6.

80 *Ibid*.

81 *Ibid*.

82 *Ibid*.

83 *Ibid*.

84 *Ibid*.

and its instructors.[85] To provide examples, students compared the mandatory course to being as damaging as residential schools themselves, complained about the "total negativity" of residential schools being taught, and even submitted coursework arguing that racism is a myth.[86]

Recommendations relevant to these findings included smaller class sections for the course, in order to better manage classroom dynamics.[87] Moreover, it was recommended that students receive antiracist education prior to commencing study of the other topics listed in CTA28.[88] While this proposal was made in part for pedagogical reasons, namely in order to address issues of bias before instruction with Indigenous issues, it was also hoped that this change would also improve the work environment for Indigenous instructors, since it could lay the groundwork for more respectful communications during the study of other topics listed in CTA28 and the USask Law course description.[89]

Theme 5: Room for Development in the Law School more broadly

A theme running though responses related to the importance of bringing into other law courses materials on Indigenous perspectives on Canadian law, and on Indigenous law and legal orders, in order to achieve more comprehensive implementation of the TRC CTAs.[90] It was recommended that instructors in other classes specifically draw student attention to additional resources on these issues relevant to the course materials and/or make use of guest lectures.[91] Since this requires support to faculty to further develop their courses in this fashion, it was recommended that these supports to faculty to implement a more inclusive and less colonial *status quo* be identified.[92] As a further consideration, logistical support for Indigenous law programming, in the form of a budget for ceremonies, honorarium, and supplies, was recommended to be publicized as accessible in order to facilitate such programming i.e., tobacco bundles.[93] These developments also relate to the overall need for investment in Indigenous personnel recruitment and retention.[94]

Recommendations Resulting from the Review

Considering the above feedback themes relating to (1) achievement of transformational learning, (2) unique and complex pedagogical considerations, (3) range in student background knowledge, (4) interpersonal conflict and racism, and (5) a need for broader law school developments and supports, the Review Report made several recommendations, thinking through how to make shifts within the law school

---

85 *Ibid*.
86 *Ibid*.
87 *Ibid* at 7.
88 *Ibid*.
89 *Ibid*.
90 Scott Franks, "Some Reflections of a Métis Law Student and Assistant Professor on Indigenous Legal Education in Canada" (2022) 48:3 Mitchell Hamline L Rev 744 at 767 (on integration throughout the curriculum).
91 Indigenous Engagement Committee, *supra* note 61 at 7.
92 *Ibid*.
93 Offering tobacco is a custom found in many Indigenous nations across Canada. It is used when asking for assistance, and once accepted, there is an agreement formed. This is a respectful way to request assistance, Carleton University, "Tobacco offering protocol" (last visited 13 November 2024), online: <https://carleton.ca/indigenous/policies-procedures/tobacco-offering-protocol/>.
94 Indigenous Engagement Committee, *supra* note 61 at 7.

as its own microcosm, towards fulsome implementation of the TRC CTAs. As noted above, these recommendations concerned: continuing transformative learning, splitting the required 1L course into smaller components that build into each other, adding additional learning opportunities particularly in relation to Indigenous Law in the upper years, mitigating students' range of background knowledge, ensuring appropriate class sizes, and identifying support to faculty for more comprehensive decolonization and Indigenization of the entire JD curriculum and the law school.[95]

In the next section, we discuss TRC implementation and the Review Report in the light of how change away from the colonial *status quo* in legal education is a dynamic process operating at individual and institutional levels simultaneously, with interactions occurring as between these levels. We use the settler harm reduction approach to legal education, as well as understandings of decolonization, and Indigenization, to understand the individual and institutional changes required in legal education and to seek to navigate the limitations, challenges, and opportunities presented.

IV. DISCUSSION: MICROSCOPIC AND MACROSCOPIC LEARNING AT THE INDIVIDUAL AND INSTITUTIONAL LEVELS

Considering the gravity and scale of the topics raised in the TRC Final Report, rebuilding the Canadian legal system into one that is respectful towards Indigenous persons and Indigenous legal orders is a long-term task. An important level of scale to think about the mechanics of change is that of the individuals involved, and how the process of change will implicate persons' identity and positionality. Here positionality can be understood both in the sense of a person's social status, as well as in the sense of their role and status within the law school as an organization.[96]

In this Part, we consider the Review Report findings with a different lens – a focus on individuals, namely, learners, instructors, and other members of the law school community. We recall what the TRC CTAs require of learners and others in order to facilitate change within the legal system, and then acknowledge the needed space for "microscopic" instances of individual growth towards reconciliation, particularly as regards to persons' deepening understanding of their own positionality and identity. The settler harm reduction approach is insightful here because it expressly takes into account the fact that teaching and learning (which is often not yet action) Indigenous law can initiate defensiveness and discomfort in persons who perceive this instruction, either implicitly or explicitly, as a threat to the material, cultural, and political privilege afforded to such persons within settler colonial ideology and its political structures.

---

95 *Ibid* at 8-11.

96 Nathan D Brubaker, "Negotiating Authority Through Cultivating a Classroom Community of Inquiry" (2012) 28:2 *Teaching & Teacher Education* 240 at 242; Joan Acker, "Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations" (1990) 4:2 Gender & Soc'y 139 at 146–47 (gender as a form of positionality in organizations); Elizabeth Chiseri-Strater, "Turning in Upon Ourselves: Positionality, Subjectivity and Reflexivity in Case Study and Ethnographic Research" in Peter Mortensen & Gesa Kirsch, eds, *Ethics and Representation in Qualitative Studies of Literacy* (Urbana: National Council of Teachers of English, 1996) 115 at 115. On hierarchies within law schools see e.g. Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy" (1982) 32:4 J Leg Educ 591.

A. Educating Using Settler Harm Reduction

Settler harm reduction is distinct from the goals and methodologies of decolonization and Indigenization in legal education. Incorporating scholarship from social psychology, this approach acknowledges the importance of meeting people where they are at in terms of their knowledge levels and colonial preconceptions and racism.[97] It outlines a role for antiracism instruction, as well as for initiatives that prioritize the health and safety of Indigenous instructors and students. A settler harm reduction approach anticipates that instruction that addresses prejudice is pedagogically required for most learners prior to studying Indigenous law, in order to address and dispel preconceived notions about it.[98] This approach acknowledges that "the curricular-pedagogical project of critical consciousness as *settler harm reduction,* crucial in the resuscitation of practices and intellectual life outside of settler ontologies… is intended only as a stopgap."[99] Why is it intended as a stopgap only and not as an ongoing approach for decolonization? It is seen as a stopgap because learning, understanding, and moving away from… "[s]ettler colonialism and its decolonization implicates and unsettles everyone…"[100] and unsettling the settler shows the shaky foundation of colonization, which is necessary before decolonization can happen. At this time, the authors believe that it seems that unsettling the settler is occurring even within the settler-centric approach, as evidence by the very reasons for its use: learner defensiveness, racism within the law school, and the need for transforming out of the colonial status quo.

The goal of improving and transforming the Canadian legal system in the manner outlined by the TRC, achieved in part via law schools' provision of legal education, is far from a simple transmission of information process. As discussed in the preceding section it is fourfold and requires: (1) the overcoming of ignorance, (2) the dismantling of racism, (3) the teaching of new legal concepts and principles that are devoid of the colonial constructs of *terra nullius* and the Doctrine of Discovery, and (4) the teaching and valorization of Indigenous laws within the future legal profession.

Each of these educational dimensions have implications for learners and others' unique individual identities (such as more recent immigrants)[101] and how they envision themselves within Canada as a settler colonial state.[102] There will be likely be differing learning processes as between non-Indigenous multiple-generation settler Canadians who are uniquely privileged by a pro-colonial national narrative, as compared with newcomers to Canada. Settler discomfort in learning about colonialism and situating oneself within

---

97 Franks, *Settler Harm Reduction, supra* note 16 at 6 & 76. See also Battiste, *supra* note 46 at 126-27 (On mandatory instruction of all teacher candidates in a course in Indigenous Studies, Battiste notes that "[U]nderstanding how racial superiority in Canada was constructed and maintained created tensions in students, and these feelings needed to be understood and managed effectively if there was to be a transformation of thought."): Nicole O'Byrne, "Teaching Aboriginal Law in an Age of Reconciliation" (2019) 9:1 Antistasis, 56 at 60 (on material being challenging for students).

98 Franks, *Settler Harm Reduction, supra* note 16 at 6.

99 See Tuck and Yang, supra note 18 at 22.

100 *Ibid* at 7.

101 TRC *Calls to Action*, *supra* note 14 at 93-94.

102 Ravi de Costa & Tom Clark, "Exploring non-Aboriginal Attitudes towards Reconciliation in Canada: The Beginnings of Targeted Focus Group Research" in Ashok Mathur, Jonathan Dewar & Mike DeGagné, eds, *Cultivating Canada: Reconciliation through the lens of cultural diversity* (Ottawa: Aboriginal Healing Foundation, 2011) 327.

it can be manifested in a range of scenarios.[103] Expressions of discomfort, and the fallout from such discomfort, can be complicated by hierarchies within the law school, such as those related to grading, student rankings, competition for jobs, and administrative authority; and for instructors, the tenure system.

Notwithstanding this positionality, individual acts of learning may take the form of small scale interactions and realizations of a person's biases, stereotypes, privileges, and intersectionality that reverberate over time. These developments may allow shifts in identity and perspectives in a manner that is conducive to reconciliation but is not necessarily evident at that moment. Learning that challenges privilege and identity, particularly given the longstanding and often-taught myth of Canada as the benevolent peace-maker promises to be an on-going process.[104] It is important to mitigate any negative consequences of resistance to such learning, through supports to other persons such as instructors and students, who are themselves navigating the learning environment with their own identities and positionalities at play,[105] while also learning the new environment of law and legal education.[106]

In order to facilitate micro-level interactions that are conducive to reconciliation, there should be opportunities for exchanges between individuals in a manner that is removed from the coercive elements of law school hierarchy, (such as grading in the student context) to facilitate honest engagement, and that is done in a manner that is sensitive to persons' personal backgrounds. In addition, it may be helpful to have exchanges that occur within small groups, (e.g., avoiding electronic postings), in order to reduce the risk of public shaming, grandstanding or broad conflict that is not serving individual growth or change, but is simply encouraging conflict along old and problematic lines of polarization.[107]

Individual professors/instructors also may have much to learn as well in the reconciliation process within a law school. Setting up space and resources to encourage this is important. Being cast as "knowers" within the law school does not necessarily position instructors to easily pivot to relearning what they think they know, and to possibly pass through considerable settler discomfort in the process. Like students, professors and instructors will have to grapple with how their identities are implicated in a new understanding of law and Canada, as they consider how what they teach, and where they work, relates to perpetuating colonial harm and is tasked at the same time with implementing the TRC CTAs; this can entail dismantling what and how they themselves were taught and most likely teach. As is the case for students, opportunities for honest personal exchange, as free as possible from power differentials, can be helpful in encouraging new learning and capacity for teaching that is a move away from the colonial *status quo*.

The proposals made in our course Review Report sought in part to address the individual level changes required within members of the law school community towards reconciliation. Furthermore, different components of the relevant Calls to Action likely require different considerations of individual learners'

---

103 Emma Battell Lowman & Adam J Barker, *Settler: Identity and Colonialism in 21st Century Canada* (Halifax: Fernwood, 2011) at 90.

104 Paulette Regan, *Unsettling the Settler Within* (Vancouver: UBC Press, 2011) at 358.

105 Andrew W Haines, "Minority Law Professors and the Myth of Sisyphus: Consciousness and Praxis within the Special Teaching Challenge in American Law Schools" (1988) 10:3 Nat'l Black LJ 247 (on instructor supports).

106 Catherine Dauvergne, "New Crossroads and the Opportunity for a Crisis: The State of Canadian Legal Education" (2023) 101:3 Can Bar Rev 708 at 721.

107 Old lines of polarization are evident in former Prime Minister Stephen Harper's comment that Canada does not have a history of colonialism. David Ljunggren, "Every G20 Nation wants to be Canada, insists PM", *Reuters* (25 September 2009), online: <https://www.reuters.com/article/GCA-G20Pittsburgh/idUSTRE58P05Z20090926/>.

likely experiences. For instance, we thought it prudent to de-couple anti-racism instruction from instruction pertaining to other CTA28 components, such as Indigenous legal orders. Anti-racism instruction ought likely to be taught by persons trained to manage learner defensiveness, particularly pertaining to White Privilege,[108] since this is a challenging but vital CTA28 topic. Moreover, since this topic can be controversial and involve racist communications and interpersonal conflict, some implicit, the burden that it places on instructors of this material must be taken into account. It may be trite, but it is still truth, that experiencing racism does not equip one to teach what is necessary for anti-racism.

In terms of addressing ignorance, another dimension of the TRC mandate to law schools, it is also important to consider the experiences of IRS survivors asked to be involved in educating students, since it can be unethical to require such persons to compromise their mental wellbeing by (repeatedly) sharing their difficult experiences.

The order of instruction of CTA28 topics can also be guided by consideration of individual positionalities and a settler harm reduction approach. Anti-racism and a dispelling of ignorance of colonialism are likely needed prior to students' being ready to learn about the law of just relations amongst Indigenous and non-indigenous jurisdictions, or about Indigenous legal orders. Otherwise there will be a considerable risk of anti-Indigenous bias and erasure of Indigenous perspectives among students, rendering authentic learning in these areas next to impossible, thwarting the very reason for CTA28, and the TRC in general.

Lastly, it should be considered that individuals' openness to Indigenous legal orders' validity on their own terms ultimately needs to translate into institutional openness to valorize Indigenous approaches on their own terms, as regards to acceptable pedagogy, curriculum and assessment. The individual and the institutional levels of change are in thus constant communication with one another.[109]

V. CONCLUSION

In this article we detail how community input was reviewed in order to outline proposals for strengthening our law school's implementation of TRC CTAs. We furthermore considered settler harm reduction as a useful guide in understanding the law schools' implementation of the TRC CTAs. Acknowledging room for improvement and that there may be other approaches or additional ones that will need to be used, it is important for law schools such as ours to keep moving toward a horizon of possibilities, namely the development of legal education that redresses the legacy of the IRS and jettisons the colonial *status quo* in favour of a shift towards respect and justice. This is pursued by law school-level developments (as a sort of microcosm of society yet macrocosm as it pertains to individuals) and also by encouraging individual members of the law school community to incrementally develop their own understandings of their personal identity as they reject previously foundational concepts like the Doctrine of Discovery.

Instructors, TAs, Cultural Advisors and others contributed a tremendous amount of energy and effort in the development and delivery of our law school's 1L course over the past five years (including during

---

[108] White privilege is complex and can be defined as "being given the benefit of the doubt because a white person is (seen as) trustworthy and respectable", Shannon Sullivan, *White Privilege* (Cambridge: Polity Press, 2019) at 6.

[109] See e.g. Mahzarin R Banaji, Susan T Fiske & Douglas S Massey, "Systemic racism: individuals and interactions, institutions and society" (2021) 6:1 Cognitive Res Principles & Implications 82.

the pandemic) and this is worthy of recognition and accolades, as well as solidarity in their challenges in navigating the course. Many of those surveyed during the Review Report process expressed enthusiasm for the potential of this type of programming, noting that it is a "good start" with much possibility for development, particularly in the areas of cultural competency, and with Indigenous laws and land-based learning. The possibility for repairing relationships, and building respect and understanding between Indigenous and Canadian communities/legal orders was spoken about with hope. By understanding the TRC's mandate as multifaceted and involving change processes at the institutional and individual levels, it is possible to seek continual improvements that respond to pedagogical challenges in a nuanced fashion, one informed by understandings of settler harm reduction, decolonization and Indigenization.